



First Session - Thirty-Seventh Legislature

of the

**Legislative Assembly of Manitoba**

**Standing Committee**

on

**Privileges and Elections**

*Chairperson*

*Mr. Conrad Santos*

*Constituency of Wellington*



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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Seventh Legislature**

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**LEGISLATIVE ASSEMBLY OF MANITOBA**

**THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS**

**Thursday, August 3, 2000**

**TIME – 3 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Conrad Santos  
(Wellington)**

**VICE-CHAIRPERSON – Mr. Harry  
Schellenberg (Rossmere)**

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Ashton, Doer, Hon. Ms. Mihychuk

Messrs. Cummings, Martindale, Mrs. Mitchelson, Messrs. Nevakshonoff, Penner (Emerson), Reimer, Santos, Schellenberg

**APPEARING:**

Mr. Darren Praznik, MLA for Lac du Bonnet  
Mr. John Loewen, MLA for Fort Whyte  
Hon. Jon Gerrard, MLA for River Heights

**WITNESSES:**

Bill 4–The Elections Finances Amendment Act

Mr. Bill Hansen, Broadcasters Association of Manitoba

Mr. Bryan Stone, Broadcasters Association of Manitoba

Mr. David Goldstein, Canadian Association of Broadcasters

Mr. Bob Mummery, President, Manitoba Community Newspapers Association

Mr. Clint Szakacs, Executive Director, Manitoba Community Newspapers Association

Mr. Paul Nielson, Private Citizen

Mr. John Doyle, Manitoba Federation of Labour

Mr. Ken Mandzuik, Manitoba Association for Rights and Liberties

Mr. Dan Overall, Manitoba Chambers of Commerce

Mr. Paul Moist, President, Canadian Union of Public Employees

Mr. Victor Vrsnik, Provincial Director, Canadian Taxpayers Federation

Mr. Brian Hanslip, President, Manitoba Party

**WRITTEN SUBMISSIONS:**

Bill 4–The Elections Finances Amendment Act

Mr. Aaron Freeman, Democracy Watch

Bill 17–The Elections Amendment Act

Mr. Rob Hilliard, President, Manitoba Federation of Labour

**MATTERS UNDER DISCUSSION:**

Bill 4–The Elections Finances Amendment Act

Bill 17–The Elections Amendment Act

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**Mr. Chairperson:** Good afternoon. Will the Standing Committee on Privileges and Elections please come to order. The first order of business before the Committee is the election of a Vice-Chairperson. Are there any nominations?

**Mr. Tom Nevakshonoff (Interlake):** Mr. Chairman, I nominate Mr. Schellenberg, the Honourable Member for Rossmere.

**Mr. Chairperson:** Mr. Schellenberg has been nominated as Vice-Chairperson. Are there any other nominations? Mr. Schellenberg has been unanimously appointed Vice-Chairperson.

This afternoon the Committee will be considering the following bills: Bill 4, The Elections Finances Amendment Act; Loi modifiant la Loi sur le financement des campagnes électorales, and Bill 17, The Elections Amendment Act; Loi modifiant la Loi électorale.

\* (15:20)

We have presenters who have registered to make public presentations on Bill 4, and also on Bill 17. It is the custom to hear public presentations before consideration of the Bill. Is it the will of the Committee to hear public presentations on the Bill? If yes, in what order do you wish to hear the presenters?

**An Honourable Member:** Out of town first.

**Mr. Chairperson:** Is it agreed that out-of-town presenters are first heard to present? *[Agreed]*

I will then read the names of the persons who have registered to make presentations. On Bill 4, out-of-town presenters: Mr. David Goldstein and Don Kille, Canadian Association of Broadcasters and Broadcasters Association of Manitoba; by leave, Bryan Stone and Bill Hansen—in addition to Mr. Goldstein, there will be Bryan Stone and Bill Hansen, by leave. *[Agreed]* Mr. Paul Nielson, private citizen; Mr. Rob Hilliard, President, Manitoba Federation of Labour; Mr. Ken Mandzuik, Manitoba Association for Rights and Liberties; Mr. Dan Overall, Manitoba Chambers of Commerce; Mr. Paul Moist, President, Canadian Union of Public Employees; Mr. Victor Vrsnik, Canadian Taxpayers Federation; Clint Szakacs and Bob Mummery, Manitoba Community Newspapers Association. There is also a walk-in, Mr. Brian Hanslip, President of the Manitoba Party.

On Bill 17, The Elections Amendment Act, we have Mr. Paul Nielson listed there, but he indicated he will be making presentation on Bill 4, not Bill 17, and Mr. Rob Hilliard, the President of Manitoba Federation of Labour, will have a written submission on Bill 17 but no presentation. Those are the persons and the organizations that have registered so far.

Is there anybody else in the audience who would like to register or has not yet registered and would like to make a presentation? If any,

would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required by the Committee. If you require assistance with photocopying, please see the Clerk of this committee. I understand that we have some out-of-town presenters in attendance this evening. It has been expressed by the Committee to hear the out-of-town presenters first.

Before we proceed with the presentations, is it the will of the Committee to set time limits on presentations?

**Some Honourable Members:** No.

**Some Honourable Members:** Yes.

**Mr. Chairperson:** I hear both yes and no. What is the will of the Committee?

**Hon. Steve Ashton (Minister of Highways and Government Services):** I would propose we have the same limits we have had in other committees which have been 15 minutes for presentation and 5 minutes for questions.

**Mr. Jack Penner (Emerson):** I believe that there are times in committee when limitations can be set, but I also believe that there are times when there should be unlimited provisions for presentation, specifically on issues that are of extreme importance. I think some of these bills deal with people's rights. This one, especially, deals with the very process of the setting of democracy, establishing democracy. I think for that reason this committee should strongly consider not limiting the presentations on this very important bill.

**Mr. Chairperson:** We now have two suggestions: A time limit of 15 minutes per presentation and 5 minutes for questions, on one hand; and an unlimited presentation time and questioning on the other. We may have to make a decision as a committee. I need a motion in writing.

**Mr. Doug Martindale (Burrows):** Mr. Chairperson, I move that there be limits of 15 minutes for presentations and 5 minutes for questions.

**Mr. Chairperson:** It has been moved by Mr. Martindale, that there be a time limit of 15

minutes for presentations and 5 minutes for questions. This is a debatable motion.

**Mr. Glen Cummings (Ste. Rose):** Mr. Chairman, the government members are proposing a limitation on the very time that we probably will be hearing people who are concerned about whether or not they are going to have full access to the rights that we normally believe that they should have in democracy, the right of freedom of speech.

Of all the committees that we sit in during this session and many others in the past, I think this is an example of a bill and a type of debate that we would all be well advised to listen carefully and to not be limiting the opportunity to speak. I know the Government worries about how long presentations may take, but if we set off to limit these discussions, the public has only one question to ask then, and that is: Does anybody want to hear what they have to say, or is it going to be rammed through? I appeal to the better side of the members from government to open this one up, and let us hear what the people have to say.

**Mrs. Bonnie Mitchelson (Interim Leader of the Official Opposition):** Mr. Chairperson, I would like to just add a few comments. From time to time, there are pieces of legislation that have many, many presenters, and in order to try to ensure that there is a timely process of listening to the public and ensuring that people are not kept waiting in line for hours on end, I know from time to time there are limits that are put on presenters.

I look at the number of presentations that we have, and I believe we have nine presentations, which is not an inordinate number. I do want to indicate, too, that I do not believe, and I guess those will be questions that will be asked of presenters, but I do not believe that there was any consultation with many of these groups or organizations before this bill was brought in. They have not had the opportunity to make their views known.

We do know that the Government today, when they were in the middle of an election campaign, did indicate in a news release that they were committed to work with other parties

in the Legislature in a co-operative way to fully implement election finance reforms, and I do not think there is any party within the Legislature that would not be committed to that kind of a co-operative, consultative process.

Unfortunately, this bill was introduced without that kind of a consultative process that was committed to during the election campaign, so we as opposition members of the Legislature have not had the opportunity to provide any dialogue, discussion or consult with any of those in the community that might have been interested in having their views heard. So I think it is extremely important, given the last minute introduction of this legislation and the lack of consultation, that we all be afforded the opportunity to hear full presentations from those who have travelled great distances to be here, to have their views heard and known; especially on a piece of legislation, as my colleague has already said, that is fundamental to the democratic rights that citizens in Canada and Manitoba should have. That is full participation in the electoral process. I believe it is important that we do not try to limit or gag any individual at this committee stage who wants to make their views known.

\* (15:30)

This is the first opportunity for citizens to have input into significant legislation that will impact very dramatically the democratic process and the rights of individuals or organizations to that freedom and democracy and freedom of speech that we have all come to be known as Canada. If there are issues around people's individual rights or collective rights that need to be heard, I think we need to take the time to listen, and we need to have certainly enough time to ask legitimate questions of presenters around how they believe this kind of legislation is going to impact them into the future. So we need a process here at this committee that will not disenfranchise anyone that is here to make public presentation but in fact to hear them out.

**Mr. Ashton:** I would just like to note that it was the previous government that routinely did set limits, often less than 15 minutes for the presentations and including on some very significant bills, the MTS bill. I think what we

are doing here is we are having the same process that we have had in other committees, this period of time. I would note essentially this has been the precedent in the Legislature for the last number of years, the precedent set by previous members and, by the way, used on some very significant bills as well.

I would suggest we have a decision on this and do proceed. I think what has been adopted here is actually more generous, in terms of the presentations, than a number of bills in which we saw lesser time periods and we ourselves as members of the Legislature speak for various different lengths of time depending on the debate. I think members opposite did establish that precedent before, and that is all we are doing in this committee is continuing with a precedent. I think it will actually be helpful to the process as well, because just in looking ahead at the numbers of presenters, we will be here for a certain amount of time no matter what the limits are, but I think would also be of assistance to those presenters. As I said, this is nothing new. The precedent was set by the previous government and in fact this is somewhat more generous than what the previous government was on a number of occasions.

**Mr. Darren Praznik (Lac du Bonnet):** I would like to add a few remarks, having served as Deputy Government House Leader. The Member for Thompson is quite right that on many, many occasions, while my party was in government, committees imposed the 15 minutes for presentations, 5 minutes for questions. Those were usually used at times when we had significantly long lists of presenters and it was by and large there to ensure that, given there were many, many presenters, there was adequate time for everybody to have a chance to speak. I understand there are only nine presenters at this particular committee and perhaps the Member may find the odd precedent where it was imposed at the same time, but there is a significant difference between then and now, and it is one that this administration has brought onto itself.

One of the things that occurred in those days when we did have those limits is when we had presenters who came who represented significant provincial organizations, perhaps had come from out of province who required a few more minutes, and we were not talking about groups

who were planning to filibuster a committee for half an hour, or hour or a day. We are talking about organizations who are representing large numbers of people with an interest, and the committee often, more often than not, provided leave for those presenters to have additional time.

Now we would probably have a greater degree of comfort with these time limits if this were an administration that had demonstrated that they were prepared to in a common sense way provide leave. But what did we see happen? We saw in a committee just recently, on the very first day, actually the first committee, on a major bill of the present administration, going to committee, the very first day, not only did they impose the time limits, which was not necessarily unusual, but when the head of the Manitoba Teachers' Society had three pages left to go on a report, pardon me, the Manitoba Association of School Trustees, the President, Carolyn Duhamel, requested to finish their three-page presentation, not to filibuster, what did members of the New Democratic Party do? Some of them who understood, and I believe the Member for Thompson (Mr. Ashton) was one of them, who recognized the need for some flexibility, I think who was in the Chair was prepared to see leave, but the Minister of Labour (Ms. Barrett) said: No, shut them down. We do not like what they have to say. They do not agree with us. We do not want to hear them. Shut them down.

The Minister of Education (Mr. Caldwell), who had ample opportunity, had ample opportunity to consult with the head of the Manitoba Association of School Trustees, took every single minute of questions available and allowed none for members of the Opposition and said: Shut them down. Again, they do not agree with our bill. We do not want them to hear.

So that was a precedent, and what amazed us was this was the first major controversial piece of legislation of this administration of the Doer government. In the first committee hearing, the first day of the committee hearing, that was the way members of the Premier's administration behaved.

Then we saw it the next day, I believe, or a day or two later in committee when we had a railway act bill going forward, and we had a

presenter who had come all the way from another province who, initially, when time was asked, was cut down, if the recollection serves me—*[interjection]* Time was provided, but other members, my colleague the Member for Fort Whyte (Mr. Loewen) may want to add some comment on that. He was there. The reports that I had of the committee were, again, we saw some of that happen, despite, I think, the efforts of the Member for Thompson. What amazed us as a government was what occurred in that committee hearing the education bill.

So the Government is now saying, government members, trust us. We may provide that extra time, when, in fact, they had the opportunity to provide it to the head of the Manitoba Association of School Trustees, Ms. Carolyn Duhamel, and their attitude was you do not agree with me; we will shut you down. That is what this administration said to those presenters. So, here today, my leader, my interim leader, the Member for River East (Mrs. Mitchelson), says: Wait a minute. We are dealing with a bill about freedom of speech. We are dealing with a bill about the ability for people to address the public. We have presenters who have travelled many miles to be here, and this government, again, imposing time limits, if we knew we could trust them to have the appropriate flexibility to show some common sense, if they had a track record of doing that.

**An Honourable Member:** We do.

**Mr. Praznik:** Well, the members say a track record. We know what happened in the committee. When two senior members of this government, the Minister of Education (Mr. Caldwell) and the Minister of Labour (Ms. Barrett) did not like what they were hearing from the Manitoba Association of School Trustees, and what position did they take? Shut them down. That is what they said.

So we have a great deal of mistrust—not all, I tell you, the Member for Thompson said here today if he were government House leader and he said our members will ensure that there is some leeway and flexibility, I would take him at his word, but I cannot take the word of many of the current members who, in those other committees, clearly said shut them down.

**Mr. Jack Penner:** Mr. Chairman, I know the Minister of Highways indicated some leniency as far as he was concerned. I am not sure whether that pertains to all the members of the Committee on the Government side. I would just reflect on what the Minister of Highways equates the importance of this bill with, and that, I think, is where the difference lies in the importance of allowing significant time for debate on this bill.

\* (15:40)

In this bill, we are dealing with the fundamental rights of establishing government, of establishing a governing body, and that is significantly different than the sale of a Crown corporation, that the Minister of Highways deals with. I would think that the general public would place a great deal of significance on the fundamental right of expressing opinion on how to establish government instead of selling a Crown corporation. I think the distinction needs to be clearly made on the importance of maintaining a democracy in this province, and how we deal with the establishing of democracy. So that needs to be the consideration of the freedom of speech in this committee.

**Mr. John Loewen (Fort Whyte):** Just for clarification, and I share the same concerns as the Honourable Member for Lac du Bonnet (Mr. Praznik), because I have, although fairly new to the committee process, sat through a number of committees resulting from bills this session. In particular, I sat through the short-line railway bill where members opposite and the Minister of Highways are telling us that flexibility was shown. For the record, the flexibility was that people who came from out of town, when they reached the end of their 15 minutes, were allowed to finish the answer to the question they had been asked. Then they were cut off. Members were not allowed to ask further questions, and in a number of cases, members who had not asked a question were told that the time had expired and they were not to be allowed to ask further questions.

So again, before I would commit to the promise of flexibility, I think I would like to know what the flexibility is because I also sat through committee the other day when I think

we had six presenters on three bills. One of those presenters, the Association of Manitoba Municipalities, was advised late on Thursday of a committee meeting on Monday morning, because of holidays did not get the message and asked if they could present Tuesday. We went to 12:30 with the presenters, and we asked the committee if we could have leave to keep presentations open for the next day so that the Association of Manitoba Municipalities could speak to their presentation on the planning bill. We were shut down, and said no, that that would not be allowed. So, when the members opposite talk about flexibility, I am somewhat cynical about it.

I also feel that this is an extremely important bill. I spoke to it on second reading in the House yesterday. It limits a number of rights and freedoms, including those in our society who might wish because of their dissatisfaction with the existing political parties to start a new party. It is not fair. So I think that this is a very important bill.

I would go back to the Premier's news release, back in the election campaign when he said he would work in a co-operative and consultative fashion with all parties in the House, and here we are at committee after no consultation, and we are being asked to sit here while members of the community who have come here, some from out of town and of their own free time and free will to give us their advice are told that they are only going to have 15 minutes. So, based on that, I certainly would be interested in hearing the Premier's comments and his views on whether we are going to restrict and gag committees on this bill.

**Hon. Jon Gerrard (River Heights):** I am sure that the NDP does not want to be accused of gagging discussion on what some have called a gag bill. My case rests.

**Mr. Ashton:** First of all, and I look to the Member of the Liberal Party. I presented to the House of Commons committees, and I know something about time limits in the House of Commons committees. Believe you me, there is little or no flexibility there. We find ways, routinely, on a daily basis. We have rules. I think we have to set some parameters here. I think that is only reasonable.

What we are talking about, the 15 minutes and the 5 minutes, is what we have done in other committees. This was done in the past. There was. I will tell you, no flexibility in committees like the MTS committee in '96, believe you me. Zero flexibility. If members are concerned about this, I would suggest that we resolve the matter. Obviously there are two items that cannot be reconciled here. I mean we believe we should follow the precedent set by the previous government, but I think we can also be flexible on individual circumstances. There may be cases where presenters need a little bit more time to finish. I think we are sensitive to that, and I would suggest that we call the question. I am sure we can probably put our time to more productive use going along on this, showing a little bit of sensitivity to each particular case. I think that is our view. I am sure other members in the Committee will view it likewise.

Having been on the other side, I can, believe you me, point to not only the precedent but having been on the receiving end of absolutely zero flexibility in the past like a lot of us who sat through opposition.

I find it interesting to see members now converts here, presumably. It has been an interesting road to Damascus here. I think we can work this out as we go along. We need some ground rules. I do not think 15 minutes for presentations is out of line, and I do not think 5 minutes for questions is out of line.

**Mr. Harry Schellenberg (Rossmere):** I just would like to hear the presenters. I hear the Opposition every day, so I would like to hear the presenters.

**Hon. Gary Doer (Premier):** I think it is important to note two things: One, the Opposition acknowledges that: (a) they had time limits in the past; and (b), that we all have time limits as MLAs, if it is an emergency resolution, of 10 minutes; and (c), that time limits are used for public presentations to ensure that other people in the public are able to be heard.

The Member for Thompson (Mr. Ashton), the Minister, has said that we are going to be and should be flexible given (a) the limited number of people presenting; and (b), the fact that all

bills are important. So to say one bill is more important than another really demeans the public to come out to speak on bills when they decide to appear here.

The Member for Thompson has said: We will be flexible. I think it is important for all of us on both sides to be flexible. It is easy, if you have a rule of 15 and 5, you can give leave, as we do every day in the House to extend that in a reasonable limit of time without having undue filibusters that of course are the rules for us.

So I would suggest we now vote on this with the understanding that we will have flexibility, as the Member has stated. We are here to listen to the public, and let us get on with it.

**Mr. Chairperson:** Is the Committee ready for the question?

**Some Honourable Members:** Question.

**Mr. Chairperson:** It has been moved that there be a limit of 15 minutes for presentation and 5 minutes for questions.

#### Voice Vote

**Mr. Chairperson:** As many as are in favour of the motion, say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** As many as are opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** I think the Yeas have it.

\* \* \*

**Mr. Chairperson:** Now how do we deal with those presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list or shall the names be dropped from the list after being called twice?

**Mr. Doer:** Given that the Committee is starting in working hours, I would suggest we drop the individuals to the bottom of the list and call it twice as normal, as opposed to dropping them completely and missing, being disenfranchised from speaking out. Some people have to, as we all do, work for a living.

**Mr. Chairperson:** Is it agreed that we drop it to the bottom of the list and then we will be calling them again? *[Agreed]* The second time we call them and they are still not here, then we drop them off. *[Agreed]*

As a courtesy to persons waiting to give presentations, does the Committee wish to indicate how late the Committee wishes to sit today? Do you want to set a time limit?

**An Honourable Member:** Go till we are done.

**Mr. Chairperson:** Until we are done? *[Agreed]*

I would also like to inform the Committee that a written presentation from Aaron Freeman, Democracy Watch, has been received and also from the Manitoba Federation of Labour represented by Mr. Rob Hilliard with written submission only. Copies of this brief have been made for committee members and were distributed at the start of the meeting. Does the Committee grant its consent to have this written submission appear in the Committee transcript for this meeting? *[Agreed]*

#### Bill 4—The Elections Finances Amendment Act

**Mr. Chairperson:** The first presenter is an out-of-towner, Mr. David Goldstein and Don Kille, Canadian Association of Broadcasters and Broadcasters Association of Manitoba. Would you please come forward to make your presentations.

Also, it has been agreed previously, by leave, that Bryan Stone and Bill Hansen will be allowed to speak afterwards.

**Floor Comment:** Mr. Kille is not here, as earlier stated, and I believe we were granted leave for Bill Hansen and Bryan Stone to participate with David Goldstein.

**Mr. Chairperson:** Proceed please.

\* (15:50)

**Mr. Bill Hansen (Broadcasters Association of Manitoba):** I am Bill Hansen, past president and current member of the Board of the Broadcasters Association of Manitoba. With me is David

Goldstein, Director of Government Relations of the Canadian Association of Broadcasters, and Bryan Stone, also past president and current board member of the Broadcasters Association of Manitoba.

BAM represents the vast majority of radio and television services in Manitoba. Our members contribute over \$80 million a year to the Manitoba economy, while providing over 1000 direct and indirect knowledge-based jobs and are responsible for thousands of hours of community service through public service air time and direct participation in the communities that we serve. We thank the Committee for the opportunity to appear before it today and provide comments concerning Bill 4, The Elections Finances Amendment Act.

At the outset, we would like to say that we concur with the Government's desire that Manitobans gain the greatest possible benefit from their political system while protecting their democratic rights, and that candidates and parties be permitted to participate and compete as vigorously as possible in the electoral process. We agree wholeheartedly with Premier Doer's objectives, as he articulated them in the government news release on this bill, namely, that all parties play by the same rules and that individual citizens have the right to fully participate in the democratic process.

Historically, broadcasters are among the strongest defenders of freedom of expression. We recognize that we play a vital public role and we take that responsibility very seriously. In fact, the Broadcasting Act requires broadcasters to safeguard, enrich and strengthen the political fabric of Canada, to originate programming of high standard and to provide reasonable opportunities for public exposure to differing views on issues of public concern. To that end, broadcasters are committed to balance in their programming, dealing with matters of public concern, which includes political programming and election advertising with effective regulatory safeguards which protect the public from the receipt of political expression over the airwaves in an unbalanced fashion.

While the Government's objectives to enhance the democratic process are laudable, we

have serious concerns with the Bill's ability, as proposed, to achieve its goals of electoral fairness and citizens' rights to participate. On the contrary, due to a number of its provisions, if enacted, the Bill would have precisely the opposite effect, severely limiting Manitobans' fundamental freedom of expression, freedom of association, and right to vote, each of which is guaranteed by the Canadian Charter of Rights and Freedoms. While each of these rights is separate under the Charter, they are all related in the context of the electoral process. Freedom of expression guarantees not only the right of persons to express themselves but also the right of persons to receive information.

The provisions of Bill 4, which are of great concern to our members are: (1) the prohibition of contributions to political parties and candidates by corporations and organizations; (2) the limit of election communications expenses by third parties; (3) the limits upon the proportion of total election expenses which parties and candidates respectively may devote to advertising; and (4) the limit of advertising expenditures by political parties outside an election period.

**Mr. Chairperson:** For Hansard purposes, please identify yourself.

**Mr. Bryan Stone (Broadcasters Association of Manitoba):** I am Bryan Stone, past president of the Broadcasters Association of Manitoba and current board member as well.

On a legal level, the prohibition of political contributions by corporations and organizations breaches their Charter right to associate with a candidate or party. This limits the ability of individuals to band together to support a candidate or party. On a practical level, this provides incumbents and well-established political parties with established lists and networks an advantage over challengers and emerging parties. More importantly, however, the Bill seems to assume that group political activity through corporations, interest groups or unions by definition is a negative element and contrary to the interests of individual freedom. Group participation is a way to make individual political participation easier and more effective, whether this participation involves writing submissions to legislative

committees, carrying placards outside the Legislature, promoting collective views through mass media or making collective political donations. There is nothing inherently bad about it, and there is no evidence that it is causing any particular harm in Manitoba.

By limiting third-party election expenditures to \$5,000, Bill 4 clearly contravenes freedom of expression and association and will undoubtedly be struck down by the courts. Let us begin with the flawed assumption that interest groups are a negative force. As we have explained above, interest groups, whether they are comprised of farmers, day care workers, or those sharing religious values, or simply groups of individual Manitobans coming together to express themselves in the electoral process, there is nothing sinister about them. They are the cornerstone of the pluralistic democracy.

The fundamental problem with the \$5,000 limit is that it effectively precludes interest groups from reaching the most number of Manitobans by limiting their ability to use media to support a political party or candidate. Despite any empirical evidence, this section of the Bill is predicated on the assumption that third-party advertising unduly influences voters. Not only is this blatantly insulting to Manitobans, it disregards the view of the Supreme Court of Canada that Canadian voters must be presumed to have a certain degree of maturity and intelligence and that election broadcasting rules should not underestimate their intelligence and judgment. Indeed, this was the finding of the Supreme Court of British Columbia who ruled against the British Columbia government for trying to forbid individuals, alone or with others, in spending more than \$5,000 on advertising during a provincial election campaign. That limitation, very similar to the one outlined in Bill 4, was found to be an unjustifiable limit on freedom of expression and association and the right to vote.

At the end of the day, under our Charter, rights can only be limited where the limitation can be reasonably justified. The case law on the issue demonstrates very clearly that these provisions, if challenged, will be struck down as unjustifiable and therefore unconstitutional. Once again, the question of unreasonable limits

on rights relates to restrictions on allowable advertising expenses. Denying parties and candidates the right to make election expenditures as they deem fit limits their right to express themselves and associate with larger media.

We are aware of the history on this issue, including the repeal of the restriction. When the provision and previous incarnation of this restriction may have been upheld by the Provincial Court, we contend that the reintroduction is inappropriate and would not survive a court challenge, given recent decisions by higher courts.

**Mr. Chairperson:** We thank you for your presentation. Please identify yourself.

**Mr. David Goldstein (Canadian Association of Broadcasters):** Mr. Chair, David Goldstein from the Canadian Association of Broadcasters.

\* (16:00)

In trying to prevent political parties from spending more than \$50,000 in a calendar year on advertising outside an election period, we are faced with a provision in the Bill which places an unjustifiable limitation on freedom of expression, and there is no demonstrated harm from such advertising. Furthermore, the provisions yet again confer an undue advantage upon the governing party which may run advertisements in support of its programs in the name of the Government of Manitoba.

All of these examples lead to the same point, Mr. Chair. The Charter right of freedoms of association allows persons to come together to share ideas and express their views collectively, and the right to vote implies the right of access to information sufficient to allow a voter to make an informed choice.

At the end of the day, the Bill, as proposed, does double damage. On the one hand, it unduly limits the rights of individuals and groups while it strongly favours individual incumbents in well-established parties. At the end of the day, the result of the law would actually reduce the amount of political information available to Manitobans; deprive Manitobans of well-established means of expressing themselves poli-

tically; inhibit the ability of the opposition parties to participate fully; and handicap individual challengers to incumbent MLAs.

While we are certain that these are unintended consequences, we hope that closer review of the Bill and an examination of its underlying assumptions will encourage the Government to amend the Bill or at least to provide for more public debate. While electoral reform is a serious plank of the Premier's (Mr. Doer) electoral platform and it is reasonable that the Government work to diligently fulfil its promises, this matter cries out for far more extensive public comment and debate. Just because the electorate agreed to the notion of electoral reform does not mean they voted for Bill 4 as proposed.

Mr. Justice Bastarache noted in a recent Supreme Court decision, *Thompson Newspapers v. Canada (Attorney General)*, the key test of our commitment to democracy lies in the rules governing our elections and political speech. The fact that the Government has decided to conduct this debate in the dog days of summer at least three years before the next provincial election diminishes the spirit of public consultation. With no specific urgent harm that the proposed law is seeking to redress, we hope the Government will extend consideration of this bill into the next legislative session.

Again, as outlined in Premier Doer's own objectives, quote: All parties need to play by the same rules and individual citizens have the right to fully participate in the democratic process. These simply are not realized by Bill 4. Indeed, as we have explained, the Bill would have quite the opposite effect in practice by favouring established parties and infringing on the Charter rights of the citizens of this province. In the marketplace of ideas, there must be freedom to choose. The balance obligations under which broadcasters operate as a regulated business will ensure that at the end of the day all parties are treated fairly and no one dominates the airwaves.

Mr. Chairman, this government has always prided itself on being a government of the people. On behalf of the people of Manitoba, we respectfully request that you extend consideration of this bill. To that end, the Broadcasting

Association of Manitoba and the Canadian Association of Broadcasters would like to propose that the Government strike an all-party committee to look at this bill; wait for the review of the Chief Electoral Officer, which is expected this fall; conduct broader debate amongst the people of Manitoba; and then come back with a white paper to the Government for consideration of a re-amended bill.

Thank you very much. My colleagues and I would be happy to take your questions.

**Mr. Chairperson:** We thank you for your presentation. Do the members of the Committee have any questions they wish to address to presenters?

**Hon. Gary Doer (Premier):** I thank Mr. Goldstein, Mr. Stone and Mr. Hansen for your presentation. I thank you for the opportunity of meeting with you earlier on the concerns that the organization has and the review. I think we have tried to provide a copy of our spreadsheets because I think one of the original concerns we received in communication from the broadcasters is this is a limitation on third-party advertising totally in terms of outside of an election campaign and inside an election campaign. I hope that some of those notes have been helpful, notwithstanding our disagreements that we respect.

I would indicate to you that I am certainly going to listen to all the presentations, but one of the suggestions to deal with the interpretation—we have gone through most of the ads in the '99 campaign that we think are third party, and we do not think any would offend the section on the limit. I think the issue of interpreting those sections, we are going to suggest that the media representatives and representatives from each party be part of a committee to work with the Chief Electoral Officer prior to the election campaign to ensure that there is clarity and consistency prior to our getting into the campaign.

So that is one of the ideas that we are going to propose later to the Committee. I just want to thank you for your presentation. I was going to ask you questions about the effect of advertising. I have always believed advertising very effective. I am sure your sales representatives also

ships, have large lists. I would just like you to comment on your views of how this could prevent the establishment of new parties should there be like-minded people out there who do not agree with any of the existing parties at the time.

**Mrs. Bonnie Mitchelson (Interim Leader of the Official Opposition):** I would like to thank all of you for the presentation. It was, I want to indicate, very concise, very professional, and I think it leaves certainly with this committee—I think I could speak on behalf of members on our side of the House, in our caucus anyway—that there is a very solid recommendation as a result. I mean, so very often you hear presentations that are critical but do not often offer a solution. I think that you have offered a very practical solution in that the recommendation for an all-party committee to take a look at something which I think was promised before the election but has not taken place, an all-party committee to review this, and certainly consult with members of the public. After all, this does impact in effect their democratic right to vote, and I think it is important that they all have some input.

I guess my question for you would be: Was there any discussion with you as associations or organizations by the Government before this bill was introduced?

**Mr. Chairperson:** Who wants to answer this question?

**Mr. Hansen:** No.

**Mrs. Mitchelson:** Thanks. I just want to indicate that says an awful lot, and I just thank you again for your presentation.

**Mr. John Loewen (Fort Whyte):** I would also like to thank the individuals, Mr. Goldstein, Mr. Stone and Mr. Hansen for their presentation. I also concur that I think what has come out of your presentation is a very well-balanced and well-reasoned approach to the issue of changes to The Elections Act.

I guess one point that I just want to clarify. Certainly, in my view, this legislation tilts the deck in favour of existing parties and existing organizations who already have large member-

**Mr. Hansen:** We believe that by restricting the opportunity for individuals to come together, to form a group or an association and to work together to put their particular point of view across as part of the electoral process, they are clearly going to be at a disadvantage, obviously, to the party currently in power as well as to the other long-established political parties. That is the basis on which we believe that it is going to favour the incumbent parties and favour the well-established parties in the public's mind.

**Mr. Chairperson:** We have exceeded the time limit for questioning. Is there leave? *[Agreed]*

**Mr. Goldstein:** If I could just add to the answer, the specific provisions that limit the amount of allowable expenses that can be directed towards advertising is a clear restriction of expression and tells you as candidates and anybody else who wants to be candidates that you cannot spend the money that you hard raised, however you did that, however you want. Taking either challengers or emerging parties and not allowing them the access to broader media or restricting their access to broader media is stifling of democracy.

**Mr. Loewen:** In your opinion, would the same restrictions apply to individuals who sought elected office as individual candidates?

\* (16:10)

**Mr. Goldstein:** The same restriction exists for candidates and for parties. It is the section that states what percentage or what the formula is of your allowable expenses you are allowed to spend on advertising.

**Mr. Loewen:** Just one final point, and it pertains to the same issue, but I do notice in the amendments that there is no restriction on existing organizations such as unions or other groups who have large memberships already in place to send literature to their members which

may implore them to vote one way or another. Again, I believe that this makes any new organization who wants to come together to fight an election issue. It puts them at a distinct disadvantage. Would you concur with that?

**Mr. Hansen:** Yes. Obviously, what is advertising? Advertising is communication, regardless of the form of that advertising, and this bill is prejudicial to broadcast advertising as one kind. With respect to that, in that scenario, that group could not use broadcast advertising to get their ideas out and to communicate with members of their organization and the public at large.

**Mr. Loewen:** Just to clarify, and given the limits, not only could they not use broadcasting, but, unless they had a large membership already established, virtually they would be very limited in their ability to provide information to anybody because, if they did not have a membership, anything they sent out would be classified as an election expense, according to my interpretation of the Bill, and yet, if you had a union that had a thousand members, they could send as many pieces as they want to their membership and not classify that as an election expense.

**Mr. Goldstein:** If that is a question, we agree. The broader principle, and it is a discussion that we had with the Premier yesterday, while it is true there are no provisions within this bill that would prohibit that type of third-party support outside an electoral campaign, we feel firmly that any infringement on expression within the confines of an electorate are still limitations on freedom of expression which are unjustifiable.

**Mr. Doer:** I understand fully your views on the issue of third parties and the outside of writ and inside of writ and the issue of definition, and we are still committed, I just want to say, to working with you and other parties to make sure we get the interpretation correct, and that is why we will be moving an amendment.

Is your organization opposed to union and corporate donations to political parties, as I read the brief?

**Mr. Goldstein:** We feel with reasonable parameters and full disclosure that any Manitoban or

group of Manitobans should be allowed to freely associate and contribute and support the parties and the candidates of their choice.

**Mr. Doer:** The reasonable parameters, would that be a limit on their donations, or what would the parameters be, as opposed to the prohibition?

**Mr. Goldstein:** There are rules in practice in the Federal Elections Act and in other elections acts that, just as you have limits for individual contributions, reasonable and justifiable limits on organizations, and providing that there is proper disclosure, we think are appropriate.

**Mr. Doer:** So, our banning of, say, banks from donating or unions from donating, you would suggest that, rather than a bank be able to donate hundreds of thousands of dollars to a political party, particularly when regulatory conditions exist, there would be then a limit and that would be reasonable under freedom of expression.

**Mr. Goldstein:** That for banks and school teachers and daycare workers and farmers and whoever else wanted to come together and have their voices heard collectively.

**Mr. Doer:** Thank you.

**Mr. Chairperson:** We thank the presenters for their presentation.

**Mr. Goldstein:** Thank you for your time.

**Mr. Chairperson:** It has been brought to the attention of this Chairperson that the persons listed as No. 8, Mr. Clint Szakacs and Bob Mummery, are also out-of-towners, so we are going to give them the opportunity by calling them next. Is there leave from the Committee?  
[Agreed]

Mr. Clint Szakacs and Mr. Bob Mummery representing the Manitoba Community Newspapers Association. Please identify yourself.

**Mr. Bob Mummery (President, Manitoba Community Newspapers Association):** Bob Mummery. Good afternoon, members of the Committee. I am the President of the Manitoba Community Newspapers Association. We will refer to it as the MCNA. With me is Clint

Szakacs who is the Executive Director of our association. Besides being the President of the Manitoba Community Newspapers Association, I also own and publish the *Minnedosa Tribune*.

We appreciate the opportunity to appear before the Committee today and present our concerns regarding Bill 4, The Election Finances Amendment Act. We are representing the MCNA and its 48 Manitoba community newspapers throughout the province. Our members have a total circulation of 348 000, including a circulation of 174 000 in Winnipeg. The combined readership of our member newspapers is more than 514 000 Manitobans aged 18 years and older.

Established in 1919, our association and its members are advocates of free speech and free enterprise and in freedom of the press. We take these issues seriously, and that is why we appear before the Committee today.

The Government's objective of enhancing the democratic process by ensuring, as Premier Doer expressed in a June 20 news release, that "all parties play by the same rules" and that "individual citizens have the right to fully participate in the democratic process" is a worthy objective; however, we think that The Elections Finances Amendment Act, as proposed, fails to achieve its goals of electoral fairness and citizens' rights to participate. If passed as is, we believe Bill 4 would have the opposite effect and severely limit Manitobans' fundamental freedom of expression, freedom of association, and right to vote, each of which is guaranteed by the Canadian Charter of Rights and Freedoms.

Although these rights are separate under the Charter, they are related when it comes to the electoral process found in Charter section 2(b), freedom of expression guarantees not only the right of persons to express themselves but also the right of persons to receive information. Charter section 2(d) guarantees the right of freedom of association, allowing persons to come together to share ideas and express their views collectively, and the right to vote insinuates a right of access to information sufficient to allow a voter to make an informed choice.

Our concerns and those of our 48 members regarding Bill 4 are twofold. First, the limit of

\$5,000 on election communications expenses including advertising by third parties applicable to individuals as well as corporations and organizations, which is subsection 55.2(1) and No. 2, the \$50,000 limit on annual advertising expenditures by political parties outside an election period, 54.1.

We consider these limitations place unreasonable restrictions on constitutional freedoms, the \$5,000 third-party election expense limit. It is during an election when full communication of ideas and thoughts are critical for all Manitobans. They require information, and this provision eliminates the opportunity for individuals and groups to provide it at a critical juncture in the political process. If approved, this bill will severely restrict public debate, limit Manitobans' abilities to make informed decisions and limit Manitobans' abilities to participate in the democratic process.

By limiting election communication expenses by third parties, this provision terminates Manitobans' rights to free speech by gagging their ability to express ideas. As the Alberta Court of Appeal stated clearly in *Regina v. Somerville* in '96, paragraph 27, association for the purpose of participation and communication during an election must surely stand as a primary reason for constitutionally entrenching the right to association. Paragraph 28, the inability of associations and individuals to identify their own good will with a candidate or party muzzles during an election campaign what might otherwise be a strong, independent voice of people with shared goals. By interfering with this ability of individuals through association of their choice to independently lend its strength to a candidate or party, this legislation is a limitation of legitimate activities of association.

\* (16:20)

In addition, virtually everything that can be used as a communication tool, including flyers and handbills, comes under the restriction and makes the dissemination of information even more limiting. Furthermore, Bill 4 implies that third-party interest groups are sinister. Whether they are a service club, farmers or a union, interest groups are merely individual Manitobans joining together to express themselves in the electoral process. They are a normal part of a

pluralistic democracy, and there is nothing bad about them.

In the ban on third-party advertising, Bill 4 also implies that voters will blindly follow effective third-party ads. As our predecessors mentioned, this insults Manitobans and is contrary to the view of the Supreme Court of Canada in that Canadian voters must be presumed to have a certain degree of maturity and intelligence.

The British Columbia government is already being sued for trying to forbid individuals, alone or with others, from spending more than \$5,000 on advertising during a provincial election. The limitation was found by the Supreme Court of British Columbia to be an unjustifiable limit on freedom of expression and association and the right to vote in *Pacific Press v. Attorney General of British Columbia* heard recently, February 2000.

We are confident that subsection 55.2(1) of Bill 4 will be struck down as unconstitutional when it is challenged by the MCNA in conjunction with other interested parties. Open and free speech should be promoted and encouraged in our present information age. This provision has the exact opposite effect and would be a sad legacy of this government.

With regard to the \$50,000 annual advertising expenditure limit outside of election periods, Bill 4 deals with election finances, and subsection 54.1 deals with a timeframe outside the election period preventing political parties from spending more than \$50,000 in a calendar year on advertising. Logically, the subsection does not belong in Bill 4. The provision places an unjustifiable limitation on freedom of expression and prevents any political party from voicing another side to an issue. It clearly gags and muzzles free speech and free exchange of ideas plus it gives undue advantage to the governing party which may run advertisements in support of its programs in the name of the Government of Manitoba.

In fact, subsection 54.1(5) states that allowances paid under The Legislative Assembly Act do not constitute party advertising expenses for the purposes of subsection 54.1(1). This

gives incumbents a clear advertising advantage. Again, this provision clearly limits Manitobans' ability to make informed decisions, limits public debate and therefore limits Manitobans' ability to fully participate in a democracy.

In conclusion, Bill 4, in our opinion, is flawed legislation that fails to achieve its goals of electoral fairness and citizens' rights to participate. If passed as is, we believe that Bill 4 would have the opposite effect and severely limit our fundamental freedom of expression, freedom of association and right to vote, each of which is guaranteed by our Charter of Rights and Freedoms.

We also believe that Manitobans' opportunity to publicly debate this bill is limited, due to its presentation during the summer and its hurried passage through the Legislature. People need appropriate time to participate in the political process. Therefore, we urge you to amend this proposed bill by (1) eliminating the proposed provisions limiting third-party election communication expenses, and (2) deleting the proposed provisions relating to advertising expenditure limits by political parties outside of election periods. If this issue must be dealt with, it should be introduced as a separate bill in the Legislative Assembly.

If not amended as above, we urge you to delay the passing of this legislation until the next session. This will allow broader participation in this political process, and that, we believe, will result in the creation of a better, more fair and equal legislation. Thank you.

**Mr. Chairperson:** We thank you for your presentation.

Are there any questions?

**Mr. Doer:** I thank the Manitoba Community Newspapers Association for their brief to the Legislative Committee, and I congratulate the community newspapers for their ongoing work to inform us all, even when we do not agree with entirely everything you have recommended to us.

Is the Community Newspapers Association in support of the provision to ban union and

corporate donations? It is a large part of this bill, and there is no comment in the brief on those proposed sections.

**Mr. Mummery:** As an organization, no, we have not—

**Mr. Chairperson:** Order, please. We have to recognize you, sir, for the purpose of recording.

**Mr. Mummery:** As an organization, the Community Newspapers Association is not addressing that concern at this time. Our concern, of course, is on the issues of freedom of speech. We have no opinion on the election contributions. I certainly have one personally, but the Association does not.

**Mr. Doer:** It is a gamble to ask you personally. Never ask a question that you do not have the answer to.

I am sure you have a national association of community newspapers. I think they have made excellent presentations on postal rates and its impact on the readership and the viability of your organizations and newspapers. There are provinces in Canada that have limits on advertising between elections on political parties. I am certainly aware of the provinces of Saskatchewan and New Brunswick, and there may be others. Has this topic been raised at your annual meetings as a concern, and have there been court cases in the past on this limit issue?

**Mr. Mummery:** Mr. Szakacs would respond to this.

**Mr. Clint Szakacs (Executive Director, Manitoba Community Newspapers Association):** To answer your question, no, it has not been raised on a national level as far as the expense limits, and if you could just rephrase the second part of your question, I will try to answer it as well.

**Mr. Doer:** I think you have answered the question of whether it was a concern or had been brought to your attention by your counterparts in other provinces. I asked: Are you aware that this limitation is in other provinces, and, secondly, did you look at taking any court action on this in other provinces?

**Mr. Szakacs:** No, we have not taken, because we are specifically dealing with Manitoba

community newspapers. We have not looked at taking court action to other provinces.

**Mr. Mummery:** I also happen to be a board member, a director for the Canadian Community Newspaper Associations, and there have been some discussions about it. There has been no consensus across the country as yet. At the time of our convention just a short time ago, we were unaware of this legislation at that point, or it certainly would have come up.

**Mr. Doer:** Originally there was a concern in the media, including newspapers, that the ban on third parties, or the limit on third parties—there is no ban on third parties—would be throughout the year. The ban exists under this; there is no ban or limit on third-party advertising for the periods outside of the election campaign. It is full freedom of expression for third parties outside of a writ. There is a limit proposed in terms of inside a writ period, the period of time, and there is a definition of what would be just normal third-party advertising that would not be subject to the limit.

There were a number of third-party ads in '99 and '95. Are there any ads that you feel that were run by third parties in the last two election campaigns that would be prohibited by this law, because our view is there would not be?

**Mr. Mummery:** In the view of the cost, you are talking about over \$5,000?

**Mr. Doer:** The ability to advertise, for example, the taxpayers association argued for lower taxes, nurses argued for better health care. We do not believe that is subject to the \$5,000 limit, and I am not aware of any ads, and I may be wrong, any script of any ads or any ad in the '99 campaign or the '95 campaign that would be limited by this bill as proposed. Are you aware of any ads of third parties in past elections that would be prohibited or limited?

**Mr. Mummery:** I am not aware entirely of what your definition is of an election ad or rather, excuse me, a third-party ad. There is certainly no explanation that I have been able to understand that can segregate one ad from another in my mind, which leaves the whole thing open to far too much interpretation at the last minute. You are talking about having a sit-down with the

previous speaker previous to the election and everybody reaching a common ground as to what is allowed and what is not. We submit that that may be leaving it awfully late, and perhaps the entire process is unnecessary. The limitation of third-party advertising is basically a freedom-of-speech issue no matter who they are or what they have to say, what their message is.

\* (16:30)

**Mr. Chairperson:** The time limit has been reached. Is there leave to extend? *[Agreed]*

**Mr. Doer:** We are suggesting or we are going to be proposing an amendment to allow for the political parties, the Chief Electoral Officer who is responsible for interpreting this, the broadcast-media, including newspapers, to be involved in an advisory committee to the Chief Electoral Officer as an amendment to help make sure that it is not last-minute advice being given to the Chief Electoral Officer. Notwithstanding your disagreement, do you think that would be helpful to your organization? I know you disagree with the fundamental principle, but on the implementation of what we are proposing, would that be helpful to you?

**Mr. Mummery:** I certainly believe, in a legal sense, it is absolutely necessary that the legislation be explained and set out in great detail because you are leaving a lot of people on the edge. Unfortunately, nobody knows whether an infraction has been created until after the election and the charges are laid. We think this whole process is unnecessary, obviously, as you stated, and you understand our position. It is a fundamental disagreement. We believe this is an attack on the very basis of our Charter of Rights.

**Mr. Doer:** Thank you.

**Mr. Glen Cummings (Ste. Rose):** I am interested in your reference to allowances paid under The Legislative Assembly Act, and I am wondering if you are thinking of the possibility of people not necessarily associated with known political parties who might want to become actively involved and even position themselves to run during an election, if this would be seen to be an unfair advantage to an elected member

either in government or in opposition and if that was the direction that you were taking, that concern about section 54.1—

**An Honourable Member:** The question is?

**Mr. Chairperson:** The question is?

**Mr. Cummings:** My question is if in your comments on that section you were also concerned about whether or not individuals would in fact be disadvantaged by restrictions that would flow from this, or is it a reverse situation that in fact the advantage already lies with the elected individual either in the governing party or opposition and therefore this handicaps anybody who might choose to run outside of a known party structure?

**Mr. Mummery:** We do certainly believe that this legislation will leave the ruling party with a certain advantage, no question about it. You are talking about independent candidates coming forward? I do not know how it would affect that situation and we have not really addressed and do not intend to address that in this presentation.

**Mr. Cummings:** I appreciate that you maybe not have taken it that far, but I would submit that one of the fundamental important rights that we have in this country is that, no matter where you are on the political spectrum, you have equal opportunity to be heard and to fight a strong battle on a matter of principle during election time, and between elections, any lead-up to that, all of the opportunity and all of the, in fact, support lies with the governing body at the time of the issue being debated, and anything we do to equalize that would be an improvement and we should not be moving to set aside or set back the opportunities for individuals to run independently or otherwise. I appreciate your raising it.

**Mr. Mummery:** We would certainly agree with that.

**Mrs. Mitchelson:** Thank you very much, Mr. Mummery, for your presentation. I do want to just indicate that you make a lot of good points. There is a lot of common sense in the presenta-

tion that is before us, and just a question of whether in fact you had any opportunity to dialogue or discuss this bill with the Government before it was introduced into the House. Was there any consultation, any discussion with you or your organization?

**Mr. Mummery:** No, there was not. We had no idea. We do not retain lobbyists or anything, and we had no indication at all other than the same time everybody else did.

**Mr. Jack Penner (Emerson):** Thank you very much, Mr. Mummery. A very good presentation and you certainly touch on a number of issues that have been of concern to us as opposition members in regard to this bill.

First of all, I was interested in the First Minister's comment or question to you regarding the establishment of a committee that might deal with the Chief Electoral Officer to clarify procedure. This, in fact, might be called a clarity council, and I, as a member of the Legislature, having been involved in the formation of legislation over a period of a dozen years or so and having sat at the head of this committee table for eight years or so, you wonder whether the clarity council would in fact be needed if the legislation was clearly enough drafted to indicate clearly enough what the decisions must be when you do this kind of legislation.

Is it your view that there could be significant changes made to this act that in fact would clarify to a greater degree the responsibility of individuals and/or groups of individuals wanting to participate in an election procedure and the expenditures contained therein?

**Mr. Mummery:** We do not have a position on that. Our position is that the legislation should not be passed at all, and no compromise.

**Mr. Jack Penner:** As we all know, currently, as the legislation stands, there are limitations of spending of each individual member, and there are global spending limits, same as there are global party spending limits, for advertising and/or other expenditures. Is there a reason, in your view, why individual contributions should be limited within the context of that global expenditure? What might be some of the reasons

that government might have in wanting to put forward this kind of legislation to limit the contributions, other than curtailing the voice of the individual wanting to make their views known?

**Mr. Mummery:** I do not believe that the limits being placed here on individuals or groups should be any different than they are placed on political parties as it is outlined here. We do disagree with the figure of \$50,000 during the yearly expenditure limit outside of an election year. We disagree with that, and we would disagree if the government were to restrict individuals or groups to \$50,000 a year as they are the opposition or other parties. We think everyone should be treated alike, and there should be full freedom of expression, freedom of assembly and association, and freedom of speech. Freedoms cannot be limited or put a dollar value on. We are adamant about that.

**Mr. Loewen:** I would like to thank the gentlemen for their presentation. I think you have raised some very vital issues in terms of fundamental rights and freedoms of individuals and groups to associate. We heard earlier from the Broadcasters Association of Manitoba and the Canadian Association of Broadcasters who were recommending a process that would involve an all-party committee, public consultations with a white paper and full public consultations. Would you be in agreement with that process and more comfortable with the outcome of that determining how legislation should be amended?

\* (16:40)

**Mr. Mummery:** We would be happy with the outcome as long as it agreed with our position.

**Mr. Loewen:** Also, under present legislation, if someone is going to advertise during an election campaign, they are required to identify themselves or their group that they are associated with, and I take from your presentation that you believe Manitobans are fully able to discern the motives of those who identify themselves as campaign advertisers.

**Mr. Mummery:** Nobody fools the people in the Minnedosa coffee shops, and they are not fooled

for very long. Yes, I believe we have a competent voter population in the province and they are quite capable of making those discerning decisions.

**Hon. Jon Gerrard (River Heights):** I would like to return to the question of what is an election communication expense because under the definition there are two clauses, and the second clause refers to communication which relates to a policy or a platform of a party, and clearly that is vague enough that if you can link the communication in some way to the communication or the policy of the program of a party, the interpretation could be quite broad in terms of what is or what is not an election communication expense. Can you speak to the difficulties that that could potentially put you in as a newspaper owner in trying to interpret this in a middle of an election?

**Mr. Mummery:** It certainly does increase the difficulties. The Elections Act is difficult enough now to understand, and every time the federal government tries to clarify the Income Tax Act, we all know what happens. The clarifications become longer than the Act itself. I do not know where my fellow publishers stand on that, but as soon as you get to lengthy clarifications, obviously, problems can arise and will arise.

I certainly would not want to see any of my fellow publishers being put on the spot, and being put in a very difficult or a position in an illegal sense in taking an advertisement or not being sort of a policeman of how much one particular advertiser has budgeted. We are very small newspapers and we have a very close-knit staff and a very tight staff, and we just do not obviously have the resources to interpret acts. Any time I have seen an interpretation of any legislation it has generally become more difficult to understand the interpretation than it has the initial legislation.

**Mr. Gerrard:** I would also ask you if you would feel comfortable giving your personal opinion in terms of the ban on corporate and organizational advertising?

**Mr. Mummery:** No, I do not believe there should be any limits. No. I think anybody, any group, any corporation, anyone who wishes to,

should be allowed to contribute to their political party, the party of their choice. I make my choice; everyone makes theirs. Suddenly to be limited, because I have a company, to be forbidden from supporting a political party, I do not believe is right. That is my personal opinion. I am not representing the opinion of our association.

Obviously it can lead to problems, as it has in the U.S., as we are quite well aware, but in my opinion, the problems can be solved.

I did miss part of your question, which was what qualifies as advertisement and what does not. Everything, in our opinion, qualifies as advertisement. If you have a campaign worker who walks up the street and knocks on doors and hands out pamphlets, his time chargeable as volunteer time is part of your advertising. Your pamphlet is an advertisement. A flyer through the mail is an advertisement, direct mail. Newspaper, print, media, any kind of media, radio, it is all advertising. That is what it is. Getting your message across is advertising, and it makes no difference in my opinion how you do it. Whether you have somebody, a volunteer, knock on a door and explain his candidate's position, that is still advertising.

**Mr. Loewen:** Mr. Chair, I would certainly agree with your last statement. I mean one of the interesting parts of these amendments is that volunteer time, whether it is from people within the province or people from outside the province, who come to Manitoba and volunteer their time during an election campaign, or any communication that a union or any other group might have with somebody who is already a member of their association, does not count as an election expense according to this legislation.

The Premier mentioned and, I think, was asking you in a previous question whether you felt any of the ads that were in this run by special-interest groups in this last campaign would have not been allowed under this new legislation. I believe you stated you were not in a position to answer that. Given that the definition is very, very broad and includes, and I will read it to you, a message that promotes or opposes the programs or policies or the actions or the proposed actions of a candidate or a registered

political party, how easy would that be for someone like yourself, who is publishing a paper, to make a determination during the middle of an election campaign? How comfortable would you be trying to make that determination on a day-to-day basis?

**Mr. Mummery:** I would not be comfortable at all. In fact, I would consider myself incapable of making that decision, because it can be second-guessed by a policeman on the street, by the next Provincial Court judge, by the Court of Appeal judge, by God knows who. I am certainly not going to put my business at any risk at all if that is the situation, and I do not believe anybody else would.

**Mr. Loewen:** If that is the situation, would you like to see a watchdog agency set up which would have to vet every ad that was proposed during an election campaign before it got to the broadcasters?

**Mr. Mummery:** You have white papers, and you have watchdog committees and explanatory legislation. Would it not be just a lot easier to drop the whole thing?

**Mr. Chairperson:** The Committee thanks the presenter.

The next person is Mr. Paul Nielson, private citizen. Mr. Nielson, please proceed with your presentation.

**Mr. Paul Nielson (Private Citizen):** I would like to say that, even though I am a private citizen, I am a professional librarian who has had 15 years of experience in the field of government information. I am trying to convey some of that experience by giving you my thoughts on this particular legislation.

The other thing in my background that I think I would like to bring forward as very important is that I used to be the information content chair of Blue Sky Community Networks. In the 1995 election—we were defunct by the time the 1999 election had come around—we attempted to provide information to citizens outside the media, outside the party, through three different modes.

One was to do biographical interviews with candidates using Red River journalism students

and creating a Web site of that. We collected or tried to collect from 50 different third parties their views on the issues. Our purpose there was to get a broad spectrum from all corners of the opinion of all the groups that had a lot to offer in intelligence and expertise.

The third thing we tried to do was promote discussion, intelligent, informed discussion beyond slogans, and really evaluating the record of the government, the record of the opposition in trying to propose themselves as alternatives. That was our goal.

So when I look at this legislation and see what it is attempting to resolve, I studied it by reading the legislation and by reading the debates on second reading, and comparing it as well with my experience and research. I came up with five questions that I believe are unanswered and that mean that the legislation is not, in my eyes, legitimate, and I think in the eyes of most reasonable people legitimate. Therefore, I would like to go through these five questions.

The first question is: Why are the proposed changes not endorsed by all parties? Election laws are fundamental to democracy, good government and individual rights. They set the rules for elections which decide who governs. They must be fair and should be agreed to, in my opinion, by all parties, if at all possible, unless there is compelling evidence presented otherwise to show that maybe one of the parties was just arguing for very poor reasons. But it should be an attempt to achieve consensus from all parties.

\* (16:50)

I would like to point out that historically the last time these acts were under consideration coming out of the Monnin inquiry, I was one of only two people to present at that time. The interest groups were not around. I discovered that there was an all-party done deal in front of me at that time. It turned out that a consensus had been achieved. Unless other reasons can come forward, I believe such a thing is required for legitimacy, democratic legitimacy.

The second question that I feel is unanswered is: Why is there such a rush to pass these changes? I cannot understand the urgency

or priority. The next election will not be held for at least three years. The Chief Electoral Officer has not yet reported on the results, the alleged violations, if any, and the finances from the last election. Should not his evidence be the factual basis for any proposed changes, especially when it comes to setting quantitative limits and evaluating the effect of abuses and problems? What exactly were the corporate abuses and the union abuses that appeared in the last election? Perhaps a case can be made for that, but I believe that it would be far better, before dealing, as much as possible, in making decisions for the people of Manitoba based on evidence. I have not seen a compelling public interest, rather the fulfilment of an election promise, which I did not understand as a citizen was a priority during the campaign. It was not one of the dominant issues of the campaign that had to come forward immediately in the first session of the Legislature.

The third question I ask is: Why does the Government propose public consultation on the question of public funding of parties and candidates during elections but not on, in my opinion, the equally important question of limiting individual and organizational freedom to participate in elections? They are both highly complex balancing issues, and dealing with one without the other—to my mind, what we are dealing with is an electoral system. Tinkering with one part without dealing with the whole part is not the way to go about it.

Again, I believe that public consultations—and I commend the Government for doing consultations on other issues. I think they are going in the right direction in that way. Allow for time, research to be done, and discussion. I believe that people should be discussing with each other and debating with each other, and they should as much as possible be using evidence which would include scholarly literature and experiences from other comparable jurisdictions who have dealt with the issue, Québec, B.C., Alberta, Canada, the Royal Commission on Electoral Reform, and the United States.

I believe the net result, after a consultation like this, first of all, improves the quality of the results and at the same time it educates and produces informed consent among the voters. I

also am quite dumbfounded by the fact that the electoral experience that is going on now in a time of rampant change in technology—I also believe that systematically one should be looking at what the Internet can do. It offers the chance to realize, never perfectly, of course, the ideal of a marketplace of ideas, informed discussion and evaluation, and again working for consensus and removing such things as suspicions that somebody is proposing something without adequate reason and is trying to trick or trying to serve their own interests first and foremost.

Again, I think this committee and the whole Legislature should know that Québec is currently dealing with such an issue. One of their committees of the Legislature is discussing the proposed free trade agreement on the Americas, again, because they believe it is a complicated issue and they want to have it fully debated. They have opened themselves up to electronic submissions and hopefully discussion. Similarly, Tony, and I forget his last name at the moment, of Great Britain—[interjection]—Blair, has been doing a lot of consultation, including on freedom of information in Great Britain, and the Swedish parliament has been doing a lot. So these models allow for not interrupting your work to come down and make a presentation in a hot environment, under stress, et cetera, but more options for other individuals to make presentations and to see what other people are saying.

Again, there is a lot of activity on the Internet, a vast amount which I believe should be considered in any kind of thorough evaluation of what the future of democracy is in Manitoba. I really believe we can improve it a lot systematically and democratically.

Again, one other interesting point, just to illustrate what is going on, you know, the United States is a different environment. We cannot borrow from them holus-bolus. They emphasize freedom to an incredible degree, but 25 states have worked towards real-time campaign finance disclosure. Some of the discussion I heard today here was: Well, how are you going to deal with somebody who is trying to advertise with you? Have they exceeded the limit? How are you going to find that out? The only way to

really find that out in real time is to have electronic submissions of individuals who are making contributions, individuals who are making advertisements and to have a publicly available data base, with the Chief Electoral Officer to make that kind of information available. That kind of thing is going on right now in the United States. George Bush does not have—I mean, I do not endorse his candidacy personally, but he himself is putting all of his multitudinous contributions up on the Internet. I know it does not solve everything, but it is one thing where people want to make up their own minds, and they want to understand who is giving what to whom. I think that is a very important way to go.

The fourth question I had to ask is: Once you get down to the detailed provisions of the Act, what are the justifications for the limits of \$5,000, \$3,000, \$50,000, et cetera. Are they based on the current advertising rates for using the mass media in the Winnipeg market, in the Manitoba market? I was glad to see that there was some consideration. It appears there has been some thought given to, well, what happened in the last election, but I believe, when a government is proposing to put limits on individual freedom, you have to be reasonable, you have to justify. It is vitally important to do that.

I read the Premier's defence or justification for the Bill, and I did not feel that the mode of justifying it was adequate for going ahead at this time. Fulfilling an election promise, I do not think, is good enough, citing Chief Electoral Officer in support of advertising limits, which I am not sure he does entirely. Again, the ultimate goal I agree with, a level playing field so that all parties will be more dependent on individuals. I totally agree with that goal. I think it is an excellent goal, but I believe that you have to show why these financial limits are necessary, what kind of abuses there were, and what will the effect of placing these limits be, what kind of negative effect, unintended effect, hampering effect there will be.

Again, I am saying that citizens in modern democracy, whether they are in the Minnedosa coffee house or wherever, if they follow the deliberations of the Legislature and the way legislation is debated in detail and in commit-

tees, unrefracted through the media filters which provide us only the briefest of summaries and the most exciting of points, they do not really end up with an adequate understanding or the rationale for most proposed changes. I think we do not have to listen just to the media as to the view of what a proper information flow is in a democracy.

Finally, I think one thing that has not come out yet in the hearings is, I ask myself, what do I consider to be the greatest source of power and potential abuse and threat to an election where the citizens get all the information on the record of the government in power and all the information on what is proposed to go forward. I believe the incumbent government has a tremendous advantage. Scholars like Professor Peter Russell of the University of Toronto, who is an expert in constitutional law, describes the current Canadian system as so tilted in favour of incumbency—this is everywhere, not just here—as cabinet dictatorship with periodic elections, that the Government and the Cabinet can control the agenda, can control the votes and, more importantly than anything, can control information that enables the citizens to judge whether they are performing adequately and whether they are being accountable in their administration.

So, I think, in conclusion I do not see a compelling case that the abuses are there, that the limits are necessary, and I highly recommend that this Legislature move forward in a new direction of discussing and using information technology in creating a more informed citizenry.

**Mr. Chairperson:** We thank the presenter. Do members of the Committee have any questions they wish to address to the presenter?

\* (17:00)

**Mr. Cummings:** I thank you for your presentation, and certainly you were fairly clear, but for the record I would like to ask you: Would you be in favour of an all-party group, or would you expand it beyond that to review this bill and make recommendations?

**Mr. Nielson:** My view of democracy is that parties are very important, and they are the main way of aggregating and organizing and helping people make choices. I could certainly go with

an all-party committee, but I would like to see it very open.

My suggestion is that you make it open as much as possible to interaction and information exchange with people via the Internet, not just through committee hearings. I really believe that is a way you can gather more information.

One of the problems I have with all-party committees is I read in the latest Budget Estimates that your committees have \$5,000 worth of research assistants. Parliamentary committees at the federal level have far more than that. Congressional committees have far more. I believe in this particular case, again, it would be nice to have some expert advice to guide you through the literature and the experience of other jurisdictions as you study the questions, which are very, very complicated, but they are also very optimistic. I really believe that democracy has a great chance to advance and grow, and I would love to see Manitoba actually, from its experience, lead the rest of the country.

**Mr. Cummings:** You were very balanced in your approach to this. You emphasized the electronic age that we are well into, and many of us are just realizing it. Is this an opportunity to look at this whole process and make sure that we are not overlooking the current growing information by quantum leaps that is available on the Internet? Is that one of your concerns, that that in fact may create some future inequities that we are not even talking about?

**Mr. Nielson:** I believe that a legislature that is open to the exchange of information and, hopefully, to discussion types of situations, not just submissions up-down, is the way to go.

Sweden, I think, is actually the most advanced in this particular case, although the United States has a lot of examples as well.

Getting good quality information and evaluating legislation by hearing testimony, not only from affected citizens, but comparable jurisdictions and what is available out there in the scholarly or Internet literature, would make for better decisions everywhere. Again, how to go through that? I think the process would take time. It would not happen overnight, but I really believe it would result in better decisions, fairer

decisions, more dynamic decisions and more change in Manitoba society, following the marketplace of ideas, which I think is what the Internet really is.

**Mr. Gerrard:** I am quite interested in your evaluation of the role of the Internet in the democratic processes currently. I would ask, in the context of elections and party politics, and this act as it is proposed, if there are not some particular issues related to the Internet which really need to be looked at a whole lot more carefully than have been looked at so far as to how they would affect this act.

Let me give you for example two issues. One is the cost of advertising on the Internet. What is advertising on the Internet? What is an election communication on the Internet? At first glance, it may seem simple, but the more you actually get into it, I think that this is quite complex. What is the market value of a Web site on the Internet, if you want to go to current market value? There is quite a variation. Right? Who assesses what is the market value of an Internet Web site and how it performs?

One of the interesting aspects of The Elections Finances Act is that where you have a small business and you are involved in some way, for example, in the activity, which you may be involved in as a volunteer in an election, then that becomes a donation in kind and not just a volunteer activity. So this differentiates somebody who does this as part of their job from somebody who does not do it as part of their job. Well, there may be many who, as part of their job, are using the Internet and doing things on Web sites. I would include even teachers, who may be using Web sites in schools, small business people, and various other things. If you really followed this all the way, it would seem to me that there may be some boundaries here which should be explored pretty carefully before we start passing legislation like this, so that we know what is appropriate and what is not under this act if it were passed.

**Mr. Chairperson:** Is there leave to extend the time for questions? *[Agreed]*

**Mr. Nielson:** That is one reason why I tried to make the point that you need a systematic evaluation of the election system, and you have

time for that, and try to deal with what the technology can do and what its implications are.

I can tell you that the federal electoral commission of the United States, of course, has already had to deal with it because they are in the midst of just a huge activity in the United States, just phenomenal activity. They tried to issue a ruling because they did not have any precedence; they did not have any law to ask the person that put up a Web site on an issue as a third party in favour of a candidate, they asked them to evaluate and fit within the U.S. system. That ruling was withdrawn upon huge protests saying that regulating the Internet is a problem at the moment.

One of the things that I would argue is that a lot of parameters, mass media, traditional government, et cetera, are going to change as a result of the incredible availability of information. Again, I believe that if it is done properly, a government and a Legislature can move towards providing quality, comparative information that is fair and that enables a citizen to participate and to understand and evaluate, et cetera. I agree with you that it has to be done systematically and there are various models already out there, but nowhere is it perfectly set up, and things probably change so fast it would never be perfectly set up.

I would not recommend putting it into law. I believe that the attempt to overregulate sometimes is not a good idea.

**Mr. Chairperson:** No more questions? Thank you, Mr. Nielson.

The next presenter is Mr. Rob Hilliard, President, Manitoba Federation of Labour.

**Mr. John Doyle (Manitoba Federation of Labour):** I have changed. Mr. Chair, my name is John Doyle. I am appearing on Mr. Hilliard's behalf.

**Mr. Chairperson:** Mr. John Doyle, representing Rob Hilliard. Is there leave? *[Agreed]*

**Mr. Doyle:** The Manitoba Federation of Labour is pleased to present our views on the contents of Bill 4, The Elections Finances Amendment Act.

The MFL is Manitoba's principal central labour body representing the interests of some 90 000 working women and men and their families in Manitoba.

\* (17:10)

In beginning our response to Bill 4, we want to make a couple of important points. First, the labour movement did not ask for nor lobby government for this legislation. Prior to this bill being introduced on the Order Paper of this legislation, we had not debated this topic either at our conventions or at any of our executive council meetings.

Second, this bill expects a lot from organized labour and from business. It expects both of us to forgo our rights to political participation. The reasonableness of this expectation will have to be judged against the expected benefits for the citizens of Manitoba and the prospects for achieving them. It is in this light that we offer our comments.

A major concern of working people is the state of democracy in their community. The Government of Manitoba has introduced legislation to amend the laws governing the financing of political parties in Manitoba, particularly during election campaigns. When governments amend laws and create laws and public policies, caution should be the touchstone to ensure that these changes will have the intended effect. This is particularly important when the basic workings of our democratic processes are the subject matter.

Unfortunately, the political process in Manitoba has been victimized by events that have undermined citizens' faith that it is a fair one. The facts brought to light in the Monnin inquiry, along with more revelations of wrongdoing in the most recent election campaign, threaten democracy. So does the influence of big money.

The Government's stated purpose of the amendments now before this committee is to restore public confidence in Manitoba's electoral system. An important aspect of that restoration is the removal of the perception that governments are beholden to business and unions because of

their financial contributions and that these groups have easier access to the decision makers than ordinary citizens do. The key elements of the Bill that address that perception are eliminating political contributions to individuals resident in Manitoba only; establishing a ceiling on the amount individuals can contribute; limits on third-party spending; and tightly regulating expenditures, both between and during election campaigns.

The Manitoba Federation of Labour agrees with and supports the objectives contained in Bill 4 that are designed to remove the appearance or fact of influence from business and labour on electoral politics and the public's perception that substantial financial support purchases favours from government.

While these measures can be viewed as an infringement of the rights of business and labour to participate in the political process, the MFL is prepared to support the Government at this time with its laudable objectives. However, we must also carefully monitor the effectiveness of this legislation to see if it accomplishes its goals. In short, we want to see if it will work as it is meant to and result in a stronger democratic process for the citizens of Manitoba. These amendments may well be as effective as they are intended to be. Conversely, it may turn out that further amendments will be necessary at some point in the future to remedy unintended impacts.

Some people have said that limiting the amount of money that individuals can contribute to parties or candidates infringes on their rights. We do not believe this is the case. What we believe is that these amendments will do to make the process transparently fair for individuals. By establishing a contribution ceiling for individuals and limiting the amount of third-party election spending, the Government is removing an obvious way around the intent of the amendments. It also ensures that well-heeled individuals and third parties do not have the ability to have a political influence beyond that of any other citizen.

The results should be an electoral system that is based on citizen participation and not on how much money the supporters of political parties have. It should result in a system based on ideas and on policies, and not on the well-

documented impact of large-scale multimedia advertising. Viewed in this light, the limitations established by these amendments increase the influence of grass-roots voters on elections and improve their democratic condition. Democracy should be more than a contest of wallets.

As this committee is well aware, society has instigated and accepted many limitations on individuals, groups and institutions, including governments, in order to bring benefit to society at large or to minorities. Examples are many, ranging from progressive taxation to laws governing alcohol use, driving and firearms. The notion of limitations in order to benefit society is neither new nor inappropriate.

In order to bring about the intended goal of these amendments, it is clear that more than donations and fundraising activities by political parties need to be regulated. This approach has been tried and discredited in other jurisdictions already. For example, the United States has had laws that governed fundraising in place for decades. In essence, the American laws have banned corporate and union donations for many years. We know that these institutions have had an easy time circumventing the laws and legally continue to pour millions of dollars into the coffers of the major political parties there.

The absence of effective limits on election spending has meant there is a great incentive for these institutions to find a way around the donation laws. The result has been that in the U.S. only wealthy people, or those with wealthy backers, can afford to seek an elected position. This is eloquently illustrated by New Jersey millionaire Jon Corzine's recent run for his party's senate nomination. Corzine spent \$34 million of his personal wealth to beat the state's ex-governor, Jim Florio, for the Democratic nomination, \$34 million just to win the nomination. How much more will be spent on the actual campaign?

In the U.S., unions and corporations continue to raise and spend large amounts of money during election campaigns. Big money wins and the average person loses.

What sets the proposed legislation that you are considering here today apart from the

American experience is that it addresses both contributions to political parties and spending, both between elections and during campaign periods. The idea of regulating political fund-raising and political party spending during election campaigns is not new to Canada. The Province of Québec has regulated these activities for about two decades.

The major reasons behind their relative effectiveness is that they have proved hugely popular with the citizens of Québec, and the news media have devoted great effort to monitoring compliance by both companies and unions. In addition, the Québec model has had a strong public election financing provision. Together with election spending limits, this takes away or greatly reduces the incentive for political parties and their supporters to circumvent the intent of the laws. In this light, we believe this bill contains what may be very effective elements. Not only are political donations regulated but attention is also focussed on the expenditure side.

Bill 4 addresses spending between election campaigns, not just during election campaigns. The Québec legislation is weak in this area, and it has been identified as a loophole subject to large amounts of pre-election spending that circumvent the intent of that law. Bill 4 would close that loophole in Manitoba. The Bill also places limits on advertising and polling during election periods by requiring those expenditures to be properly identified and subject to the expenditure ceiling for election spending.

Up until now, polling costs did not have to be accounted for in the political party's report to Elections Manitoba. This not only allowed wealthier parties to do more polling, it also opened the door to practices that, in effect, amounted to telephone campaigning under the guise of election polling. This loophole will now be closed. The Bill also regulates third-party advertising, which is a necessary step to ensure that this law will do what it is intended to do. After all, unfettered third-party spending can result in political parties using others to circumvent the limitations placed on themselves.

To achieve the objectives of these amendments, it is vital that the strategy includes a number of elements. It is important that there be

strong public financing. This will allow the parties to focus their attention on developing policies and goals that will benefit all Manitobans without the perception that groups, individuals, and institutions that provide major funding to parties are pulling the policy strings like puppeteers. Just as important, public financing will greatly reduce the temptation for political parties and their supporters to find creative ways to circumvent the legislation. We will have to wait to see if this crucial element of the legislation will be sufficient to eliminate the temptations to get around the intention of the legislation. However, this is not enough.

There should be substantial fines and penalties, possibly including jail terms, contained in the legislation to give it teeth, providing a further disincentive to cheat. We believe that the fines currently proposed are far too low. We suggest that the maximum fines for individuals be substantially increased. Furthermore, we suggest that there be significant fines for organizations that are found guilty of breaking these laws. They should be at least five times the maximum for individuals.

The current level of maximum fines, when applied to businesses and unions, could be seen merely as a licence to break the law rather than as a disincentive. There must also be an effective enforcement strategy to ensure that all affected parties live up to the provisions of Bill 4. It is only through effective enforcement that government will be able to properly assess the effectiveness of these measures and implement any needed future amendments that are identified.

In conclusion, we wish to reiterate, though, elements of this bill that we find positive. There are limits on the amount the individuals can donate and remove the advantage of wealth. There will be public financing to reduce the incentive to circumvent the provisions of the amendments. There are limits on paid advertising. Polling spending will be recognized as a regulated expenditure.

\* (17:20)

There are restrictions on third-party spending to avoid circumvention of the legislation. There are limits on advertising spending between election periods. The Government of

Manitoba should be congratulated for taking this courageous step. Exclusion and marginalization effectively threaten true democracy. There certainly exists in today's world a skewing of influence towards those with deep pockets. One of the very real aspects of the modern globalized economy is a maldistribution of the wealth generated through economic growth. This means that more and more citizens feel and effectively are outside the spheres of influence that impact many decisions that hold sway over their lives. Governments, if they are to foster our democratic traditions, need to address these problems or else we will slip into a system of the wealthy few governing the many with little or no genuine accountability.

While the Manitoba Government is attempting to address this difficult issue, we need to remember that this legislation is really an experiment, albeit a noble one. That means we must closely monitor the results to assess whether or not the objectives are being met. The labour movement is prepared to forego our rights to political participation for the common good, but the benefits to individual citizens must be achieved in order for us to support this trade-off.

**Mr. Chairperson:** We thank you, Mr. Doyle, for your presentation. Do the members of the Committee have any questions that they wish to address to the presenter?

**Mr. Doer:** Thank you, Mr. Doyle, for the presentation to us today and the vigilance you are going to place to monitor the effectiveness of this bill. You mention the U.S. experience and the ability of unions and corporations to get around the donation laws resulting in these massive expenditures and some political debate now going on in the United States with candidate McCain when he was running in the primaries particularly. I just want to ask: Is it the experience of the Federation of Labour that in examining the U.S. system of campaign contributions that the people are able to get around it and organizations are able to get around the restrictions by going through in essence a third-party set of donations that circumvent the intent of the law as we understand it?

**Mr. Doyle:** Yes, that has certainly been the analysis put forward by our brothers and sisters south of the border. Indeed, there are many

academic-based research efforts that have identified this as the essence of the weakness of the U.S. legislation. The fact is American laws governing political donations have been around for decades and they quite frankly have never been effective, and it is probably the worst-kept secret south of the border that there is. Everybody from college students up to long-time academics have acknowledged that this is simply not working out down there.

This week the Republican convention had enormous amounts of television coverage and a great deal of time was spent talking about financial contributions to political parties and the electoral process south of the border. Their donation laws require donors to be identified, and yet on ABC News *Nightline*, according to Ted Koppel, 139 donors have given \$34.8 million in soft contributions to the Republican Party, but fewer than 60 have been able to be identified. More than half are simply donors that have been able to, legally or otherwise, circumvent the identification laws that are linked to donation regulations in support of political parties.

Six hundred others donated another \$60 million. That means, collectively, almost 740 individuals gave nearly \$95 million to the Republican Party, only some of which have been identified. Now that is the kind of thing that we do not want to see creeping into the electoral process any more than it already has here in Canada or Manitoba.

**Mr. Jack Penner:** Thank you for your presentation, Mr. Doyle. Just a few brief questions. Would it be legal under this act for your union, for instance, to ask your membership for a deduction off of their paycheque, annually, to a total amount of \$3,000 and contribute that to a political party as individuals? You indicated you had 90 000 members; and 90 000 times 3000, in my calculation, would give you \$27,300,000 a year to contribute to a given party and; times four would be about 120 million some-odd dollars that would be an annual contribution by the membership. Is it legal under this bill, in your view, for your union to make those kinds of deductions?

**Mr. Doyle:** I do not have a legal background per se, so I do not know if an organization could poll its members and collect political contributions

on their behalf. I am not sure. That might be an organizational contribution that would not be permitted under this. I do not know. I would have to consult a lawyer on whether or not that would be legal.

But just as an aside, I have been a trade unionist for many years. I have been a shop floor member of our trade unions, and I have been a member of our executive board. Now I work for the Manitoba Federation of Labour. If you had any idea of the inner laughter that I am feeling when I say: I need another five bucks a year for dues, guys. Then I am run out of town on a rail. I can imagine what they would say if I said I wanted \$3,000 from them.

**Mr. Jack Penner:** But that is not the question I asked.

**Mr. Doyle:** I am not a lawyer. I cannot answer your question.

**Mr. Jack Penner:** I think we need some legal interpretation of the Act. I have done a few acts and reviewed a few acts in my lifetime as a politician having sat as chairman of the legislative review committee for eight years. It gives me a bit of an overview as to what legislation means. I see nothing in this bill that would prevent it.

I see nothing in this bill that would prevent an organization from making the annual \$3,000 deduction if the Member requested it. Therefore, an organization that has significant influence over its membership, in my view, could be a very powerful force during an election campaign. So I am asking whether you have asked for, as a union or as an organization, an interpretation of this act to ensure that that sort of thing could not happen.

**Mr. Chairperson:** The time for a question has expired. Is there leave to extend it? *[Agreed]*

**Mr. Doyle:** Again I repeat, I do not know if it would be legal or not. Quite frankly I do not have a great deal of interest in it because it is just so far out of the realm of reality and possibility, for me personally, that I do not think it is something I will ever have to grapple with.

However, when I speak to a group of trade unionists, and they ask me questions about the political process and which political party I thought that I would be supporting, and the reasons why, I do not see any reason why I cannot say: Look, I am supporting the New Democrats in the coming election campaign because I believe in their policies, and I urge you to do the same. I do not believe that anything in this bill would limit me in that ability. If those members choose to make a \$3,000 donation based on my eloquence, then great.

**Mr. Loewen:** Thank you, Mr. Doyle, for your presentation. There is certainly some useful information in here, and I appreciate the opportunity to receive your presentation. It will take me a few times to go through it, maybe to separate some of the valuable information from some of the rhetoric.

**Mr. Doyle:** I wrote it, and I have to do that.

**Mr. Loewen:** But I am sure, once I sort through some of the rhetoric, I will be interested in seeing the point you are getting to.

One of the things I come at odds with is your argument—I will be up-front about this—about why this is being done and your premise that it is being done in an attempt to promote fairness and limit the perception that different groups, whether it is wealthy individuals, business or unions, have access. I guess I fall back to the royal commission presentation by Dave Gothilf, where he argued the same thing on behalf of labour, but his premise was that the reason to do it was because, although the public identified with a lot of NDP policies, it did not translate into votes, particularly at the federal areas and sometimes in the provincial areas, because a lot of the public saw and felt that unions were too closely tied to the NDP and that the NDP was really very, very tight with the union and had too much influence. So I hope you appreciate that I will have to sort of give some thought to each of those arguments and, in due course, come to my own conclusion.

\* (17:30)

I do, though, have a number of questions, and I guess I would invite the Premier to jump in

on this for clarification, as well, because a couple of points that you have made seem to be at odds with what the Premier has indicated to previous presenters, particularly your premise that the Québec legislation is weak in its regulation of advertising in a pre-election period and a build-up. I do believe that the Premier, Mr. Premier, on the first two presenters, you wanted to clear up a misconception that in fact there was no limit on third-party advertising at any time except during an election period. So I guess, in that respect, if what I have heard from the Premier—and I believe that the Premier is right. I believe there is nothing in this legislation that puts any limit on spending on third parties in between election periods, and so therefore, unless I hear something different, I am going to have to, I guess, dismiss that argument as a reason to pass this legislation.

**Mr. Doyle:** I do not want to create any misconceptions here in that I was referring that between election period I was making reference to political parties as opposed to third-party individuals. If I inadvertently created the wrong impression, then I apologize.

**Mr. Loewen:** Again, I will take some time to digest it. So you are in agreement that, in fact, take for example, a union could spend as much as it wanted on political advertising outside of a writ period. Is that your understanding of the bill as it stands?

**Mr. Doyle:** My understanding is that third-party advertising has been regulated or would be regulated during an election campaign period and that there would be lesser or none at all regulation between campaigns.

**Mr. Loewen:** Well, my point being that—*[interjection]* Yes, I think we are talking the same thing. I am just coming at it from a positive; you are coming at it from a negative. I think what I am saying is that, outside of the writ period, a union could advertise, spend as much as it wanted on advertising for political purposes. Is that your understanding of the Bill?

**Mr. Doyle:** I suppose, if money were not a question, that might be a fairly accurate statement, but quite frankly, like many institutions and groups in society today, finances are always a

challenge for the trade union movement. For example, if you took every union in Canada and put them all together in one pot and consider them to be the same creature as any corporation, then the trade union movement inc. in Canada would rank probably around 170 on the list of companies in Canada. We would not even crack the top 100. To suggest that between election campaigns unions could zip out unlimited bank-rolls to support any government or any political party is really quite a stretch.

**Mr. Loewen:** Well, I can assure you, Mr. Doyle, that I was not talking unlimited. All I am talking about, they can spend as much as they want. The decision lies with the leadership of that particular union. They cannot spend more money than they have, unless they choose to borrow it, and presumably then the members would have something to say. But I think the point is, under this legislation, which is contrary to what I believe you are saying in here, the unions could spend as much as they want.

On a different issue, which I think needs to be clarified in your presentation, because you are suggesting that the Bill regulates third-party advertising and you agree that it is a necessary step. I do believe in an earlier question that the Premier (Mr. Doer) put to the Manitoba Community Newspapers Association, and the Broadcasters Association of Manitoba and the Canadian affiliate, I think specifically I guess to the Manitoba Community Newspapers, it was his premise that the ads that had been run in the last campaign or in the lead up to the last campaign would not have contravened this legislation.

I guess I would look, specifically what I am aware of, the ads, the campaigns run by the Manitoba Teachers' Society and the Manitoba Nurses' Union, which I think were considerable. It would not be fair to the citizens of Manitoba to call that a minor sum. There were significant dollars spent on those campaigns. My understanding is that, even under this legislation, those would still be allowable. I believe the Premier confirmed that in his comments.

I guess my question is unions and other parties will have unlimited opportunities to spend money for political purposes, and will

have the opportunity to tailor ads during election campaigns, such as we saw from the Nurses' Union and MTS. Do you believe that is fair to other organizations who do not have a built-in membership and who have no other means of raising money to pay for these ads than to go to individuals and ask for them?

**Mr. Doyle:** I guess companies can communicate as freely with their shareholders as I can communicate with the members of my particular union. Between elections, if they want to support that particular company's brand of issue advertising or whatever kind of advertising that would comply with this legislation, then I do not see anything that would fetter them from doing that.

Now insofar as the creation of a brand-new organization, starting from scratch with zero members, that is a challenge at the best of times. Quite frankly, I wish them well. I do not want to see them choked off, but I am sure if they are committed enough to whatever it is they are supporting, they will find a way to comply with the legislation and exercise their democratic rights.

**Mr. Loewen:** Well, I hope you can give that some thought, because my contention certainly would be that those organizations would be choked off under this legislation. What we will manage to do is create a playing field where only those that are in existence at the time this law comes into effect will have much hope of influencing anybody. That, too, would apply to any independent candidate who, for whatever reason, decided to run.

A couple more questions, I guess I would like your feelings. You mentioned in here that you feel it is important that contributions be restricted to individuals resident in Manitoba only. I think it has been a common practice, one that is well known, of people coming from other provinces to work on election campaigns. Do you think there should be a restriction on individuals coming from out of province to work on campaigns, or only telling people that want to contribute in a financial way that they are not welcome?

**Mr. Doyle:** From what I can see, my interpretation of the intention of this language is to make

it so that Manitoba does not become the test ground, the test tube in the laboratory for whatever national organization has a particular axe to grind against a particular government somewhere in Canada and chooses Manitoba as the place to wage its fight, either at the outset or at some stage down the road. I do not believe this is an unreasonable aspect of this bill, and I think it will go a long way to ensure that Manitoba politics remain to be Manitoba politics and not something else.

\* (17:40)

**Mr. Loewen:** Again, I find your argument a real stretch, because the testing has been done in previous elections. We have seen it all over the place. I am assuming from your answer that you have no problem with workers coming in from out of province to work on campaigns, either on a voluntary basis which would not result in elections expense or on a paid basis which would result in an election expense. Either way, you have no problem with people coming in from out of province to work on a campaign. You just have a problem with people from out of province who want to contribute in other ways to the campaign.

**Mr. Doyle:** That is one way to characterize my answer, but let me characterize my answer by saying that I do not know if that is the intent of this legislation. I do not know if that is going to be the impact of this legislation. Again, as I said to a previous questioner, I am not an expert in law. I do not know what the long-term impacts will be. In our brief we discussed the potential for reviewing this legislation at some point in the future to make sure it is doing what it is meant to do. If it is not doing what it is meant to do, I am confident that the government of the day will introduce amendments to make sure it is an effective piece of legislation and not having unintended impacts.

**Mr. Loewen:** I appreciate, Mr. Doyle, that you are not a lawyer, and I am not trying to put you in a position where you are having to answer legal questions, but on the other hand you have come before the Committee with a very extensive brief and a very thorough analysis that you believe justifies this bill. Maybe if you might consider some of these questions, and I

am sure the Manitoba Federation of Labour has access to legal help, maybe if this Legislature is not put in a position where it has to rush this legislation through, you might give some thought to those issues.

I would also indicate, by way of question, this legislation, which you have not mentioned anything about in your presentation, does remove the right for your members to indicate to the union that they do not wish any portion of their dues to be spent for political purpose, that they would rather that those dues were spent for charitable reasons. Once again, we have a situation where, I believe, you and the Premier are in agreement that outside of the election period unions can do all the advertising they want for electoral purposes. Certainly business can, and shareholders have opportunities to vote at shareholders' meetings. I am not quite sure why you are not addressing the issue of taking away the workers' rights to indicate how they would like their money spent, particularly when it also applies to municipal elections.

It seems to me that it is pretty heavy-handed on behalf of us as legislators to be telling people that they no longer have a say in how they will spend their money. We seem to want to do that with taxes all the time, but I would suggest it is an error for your organization not to address that situation. I assume by the fact that you have not addressed it that you are in favour of taking away the rights of workers to indicate to their unions that they do not want to participate in electoral advertising and have their money donated to charity. You are in favour of the removal of that right?

**Mr. Doyle:** I do not recall writing that, but I am not necessarily sure that I agree with your premise. As I understand the intent of Bill 4, it removes the ability of corporations and unions to advertise during election campaign periods. In my experience, the kind of advertising that unions have done in Manitoba and indeed other provinces in Canada between election periods have been issue based, have been to promote the ideas that are held very closely by the trade union movement in Canada and indeed by my own particular trade union. I do not think that is the kind of advertising that is being addressed by this particular bill.

In the Canadian labour movement we are very closely wedded to the premise of democratic process. The plans that we lay for ourselves in terms of advertising intentions, indeed the position taken during advertising or taken by the union at any time is the subject of great debate at our conventions. Those issues are the subject of resolutions that are debated at length. When we use the democratic process to arrive at a conclusion at the end of a day that sets the tone of what we do at any time.

Now, that being the product of a democratic process, I do not understand how this takes away the democratic rights of any of our members.

**Mr. Loewen:** Again, I would suggest that possibly the organization analyze the Bill in a little more detail and reflect upon how repealing section 76(1) in Bill 44 would apply to this.

I just want one further question. In your analysis of the Bill, you must certainly be aware—we touched on it earlier in the Committee—that during an election period, and at any other period for that matter, that a union would have the right to transmit documentation directly to any union member, any household which includes a union member, advising that individual to vote. As you said, if you believe as a leader of the union that the union should support the NDP party you have the right to tell people. This legislation gives you the right to send that to all your members and not include that as an election expense. At the same time, if an individual wanted to have that same message delivered, say by mail to everybody in his constituency, that would be considered an election expense.

Do you see the discrepancy there, and do you feel it is right that existing groups, such as unions, can have the access to sending their members that information but individuals who may disagree with all political parties have limitations placed on them?

**Mr. Doyle:** I do not see that this limitation during a five-week election campaign out of what, the statutory possibility of five years for a term of office, and five weeks out of five years is an onerous reduction of anybody's ability to communicate effectively with their members and

with new people. If that is the test, if we have a five-week attention span, then we have a lot more problems than we are trying to deal with, with this particular bill.

No. The emergence of new political parties, the emergence of a new candidate-look, new candidates have always been under the gun in terms of being up against incumbents. Incumbents have always had the advantage. They have had four or five years of publicity through their activities in the Legislature or whatever elected office they are striving for. The fact of the matter is when you take away the advantage of great wealth being poured through any particular incumbent party, I think it enhances that individual's opportunity to get their message out in a clear way to the public.

**Mr. Loewen:** Again, I guess my advice would be maybe to have the organization take another look at this bill because, once again, what it states very clearly is that during that five-week period you can send any amount of literature that you want to your members telling them exactly what you want, telling them about policies, advising them how to vote, because that is excluded under this legislation. So if what you are truly interested in is a level and fair playing field then my suggestion would be to have the Manitoba Federation of Labour maybe take a look at Hansard and review some of the points that I have raised today. Thank you.

**Mrs. Mitchelson:** Thank you, Mr. Doyle, for your presentation. I guess I might come from a little different perspective. I would ask you, Mr. Doyle, whether at any time, sort of as a part of your affiliation with the union movement and the Federation of Labour, whether at any time you have sat on the provincial council for the New Democratic Party.

**Mr. Doyle:** No.

**Floor Comment:** What does that have to do with the presentation?

**Floor Comment:** Well, we had better get that on the record.

**Mr. Doyle:** No, I have not.

**Mrs. Mitchelson:** Okay. There is some relevance here because, Mr. Chairperson, as part of

the New Democratic constitution, the provincial council of the New Democratic Party is made up of five union members who are individual members of the party representing the affiliated unions elected by union delegates at the provincial convention. So, obviously, there is a process for election of union members as union delegates to the provincial convention. Are you aware of that process, Mr. Doyle?

**Mr. Doyle:** Yes, and it is a democratic process that we are all very proud of.

**Mrs. Mitchelson:** So should you be proud of that democratic process. I have no argument with that. But I guess I would come from a different angle from my colleague in indicating that if in fact part of the constitution of the New Democratic Party requires five union representatives through that democratic process, that would then tie all unions to the political party, the New Democrats.

When we are looking then at donations, political contributions from political parties, because the union movement is an arm of the democratic party, they then, by interpretation, my interpretation of this legislation would limit them to be part of the \$50,000 that political parties can use for advertising in between elections when it is not the writ period.

My sense is, and I would certainly ask government, through their legal people, to provide an interpretation of whether in fact, and I am sure it is something that you have not looked at as the union movement, but if the democratic constitution of the party indicates that the unions and the union movement are a part of the provincial council or executive of the party, then indeed I would interpret that to mean that unions would be under the same restrictions as part of that political party for advertising outside of the election period.

\* (17:50)

I think probably the Government should take a close look at the legislation and see whether that is a factual interpretation. Maybe as the union movement, through the Federation of Labour, you might want to look at that and see, because I think it might in fact have some impact. Have you had a chance to look at that or attempt to interpret that?

**Mr. Doyle:** No. The first we heard of the potential of this kind of legislation was at the same moment that the rest of Manitoba heard, during the last election campaign. The first time we got a look at the Bill was when you got a look at the Bill. So, in answer to your question, no, we have not had an opportunity to explore all the nuances of the kind of detail that you are talking about, but I can assure you we will.

**Mrs. Mitchelson:** It probably would be important that you do take a look at it. It would be a significant issue. I am sure. I hear you indicate that the first time you had a chance to look at the legislation was the day all Manitobans got a chance to look at it, but by way of the union movement being a part of the provincial council of the New Democratic Party, I know that there was a provincial council meeting on December 4, 1999 where the issue of Bill 4 and the contents of Bill 4 were hotly debated at the New Democratic provincial council meeting.

Mr. Doyle, I know that you may not have personally and maybe it was not debated at any of the MFL conventions or the executive council meetings of the Manitoba Federation of Labour, but I think by way of the membership of unions in the New Democratic Party, I would venture to guess that there were lines of communication and probably some comment by the labour movement at the council meeting that they were a part of, that five members of the duly elected, democratically elected individuals from the union would have been a part of. I just wanted to indicate whether you would agree that that might be fair assessment and that there might have been certainly some indication as a result of that for members of the unions in Manitoba?

**Mr. Doyle:** I have no knowledge of what occurred at that particular general council meeting. I was not in attendance and, to be quite frank with you, I have not had that discussion with anybody who was there. I would be greatly surprised if the provincial council of a political party did not talk at least in general terms about legislation coming down the highway.

**Mr. Chairperson:** The Committee thanks you, Mr. Doyle.

**Mr. Gerrard:** I just have one issue that I would like to raise with you. You are in support of

increased public financing to reduce the incentive to circumvent the provisions of the amendments. Now, one of the questions here is if there is increased public financing, how can that be fairly allocated so that it does not automatically prejudice against a party which is just starting for example and has no track record in the previous several elections? How does it provide a level playing field? How do you allocate those public dollars? Maybe you could comment.

**Mr. Doyle:** I would presume that sort of consideration would be given on the basis of some indication of popular support for this new organization and its plans and policies, perhaps determined by membership levels. I do not have any useful advice to give you on that. Are you starting up a party or what?

**Mr. Gerrard:** As a leader of the Liberal Party, we have had sort of ups and downs. I just want to make sure that we would be treated fairly, but I also think that for the whole democratic process this is a very important issue and it is not an easy one. Because you have specifically come out in support of this, I thought it would be important to get your view in terms of how this really should be allocated, because that is a question which will have to be dealt with if this bill passes.

**Mr. Doyle:** Those are very important considerations, Doctor Gerrard, and I hope I did not create the impression that I was trying to trivialize them because the fact of the matter is, in this particular brief, we were addressing the broader issue of public financing for the electoral process. Not a great deal of thought, I do not believe, has been given in the past within the labour movement to the actual mechanics of how you deliver that kind of support. I agree with you that it is a very important issue, particularly as new groups and organizations emerge in response to as yet unforeseen issues. It is going to be a real test of our commitment to democracy and our commitment to fairness to find some way to allow the emergence of these new organizations and parties and groups who wish to address issues that we have no way of foreseeing at this point.

**Mr. Gerrard:** I think, when one is looking at a bill and how it works, that it is very important to

think of the implications, because if you do not think of those ahead of time, then you may end up in circumstances which are more difficult than you expect.

**Mr. Chairperson:** Thank you, Mr. Doyle, for your presentation.

The next presenter will be Ken Mandzuik representing the Manitoba Association for Rights and Liberties. Mr. Mandzuik, please proceed with your presentation.

**Mr. Ken Mandzuik (Manitoba Association for Rights and Liberties):** Good evening, Mr. Chair, honourable members. I am happy to be here on behalf of the Manitoba Association for Rights and Liberties, which is a provincial non-government volunteer organization that looks after the human rights and civil liberties of all Manitobans.

The hallmark of any democracy is free and fair elections. As the American experience has demonstrated and as the presenters before this committee today have shown, the issue of election finance reform can be emotional, difficult, and controversial. In fact, when MARL's legislative rights committee debated this very bill, we were able to come to consensus on only one major aspect, and that is the issue of third-party spending during an election period. I am going to restrict my comments to that issue.

Any restriction on advertising is going to be a clear infringement of the guaranteed freedom of speech. The only saving provision that the Charter allows is when that infringement is justified in a democratic society, and it is our submission that a \$5,000 limit on election spending cannot be so justified.

A financial limit on advertising expenses restricts speech because the most effective way to reach a significant number of people is through the media or through mailings. Unfortunately, \$5,000 is not going to go far either way. It is not going to pay for full-page advertisements in the *Winnipeg Free Press*. It is not going to pay for any sustained media campaign otherwise.

\* (18:00)

As defined in the Bill, election communication expenses are limited to those expenses

incurred in communications that promote or oppose a party or a candidate, and without, for a second, considering the rationale behind the proposed amendments, it is important to consider what kind of speech these amendments will have. If a candidate were to make a racist remark, if someone were to come out and say there are too many Jewish lawyers in Manitoba, we have to put a cap, a legislative cap on how many Jewish lawyers there are in Manitoba. Well, if the Jewish groups in the city, B'nai Brith, the Jewish Foundation, wanted to speak out against this candidate, against the racist, anti-Semitic views, they would be prevented from spending more than \$5,000. Any speech that they would forward would be opposing this candidate. Similarly, the Manitoba Bar Association would not be allowed to spend more than \$5,000. If these groups combined wanted to make the same point, that this kind of speech ought not to go unchallenged, they would be prevented. They would have to pool that \$5,000 and not get their message across as properly as they should be able to. Another problem is that groups are going to face that chill.

The Honourable Premier (Mr. Doer) mentioned that the Government's position is that many of the advertisements that were put out in the previous elections would not be stopped by these third-party restrictions. I am not sure. I have not reviewed all those advertisements, but I think a fair argument could be made that those advertisements maybe not expressly, but at least implicitly, are supporting the policies of a party or candidate. If a group is not sure whether their campaign, the advertisement they want to communicate to the public, is going to be in contravention of this act, they might be hesitant to make any speech. That is why this kind of legislation is chilling that kind of speech. You are going to have groups afraid to say anything for fear of contravening this act.

Another problem on this point is that groups most affected by a proposed policy because the proposed amendments would bar communications on a policy as well as a party or candidate and groups that are most affected by a proposed policy are prevented from educating or trying to influence the public on that policy. If the media choose not to cover that issue more than superficially, the public is going to be kept in the

dark about the pros and the cons of that subject. You can see the media that were here today in large numbers have left after three and some hours. That is their editorial policy, not necessarily because of what they want to print, but time constraints.

Without groups such as MARL or such as the Taxpayers Federation or anyone else, without their being able to put forward their own agenda, so to speak, the public is going to be put in the dark.

I am afraid also that the mischief that the amendments are trying to address might be more apparent than real. Underlying the proposed amendments is arguably a belief that the electorate votes according to which third party spends the most money advocating for or against an issue or a party. This is betraying a fundamental lack of confidence in voters to decide upon important issues on their own.

The Supreme Court has considered the banning of publication of opinion polls on the eve of an election in the *Thompson Newspapers* case. Mr. Justice Bastarache, as you heard before, commented on the purpose of the legislation in that case, and I quote: "It suggests that Canadians will become so mesmerized by the flurry of polls appearing in the media that they will forget the issues upon which they should actually be concentrating. This reasoning cannot be countenanced. Canadian voters must be presumed to have a certain degree of maturity and intelligence. They have the right to consider the results of polls as part of a strategic exercise of their vote. It cannot be assumed that in so doing they will be so naive as to forget that the issues and interests which motivate them to vote for a particular candidate. I cannot accept, without gravely insulting the Canadian voter, that there is any likelihood that an individual would be so enthralled by a particular poll result as to allow his or her electoral judgment to be ruled by it." The same comments apply to the proposed amendments in Bill 4.

The Supreme Court did uphold in *Libman* third-party finance restrictions, but a subsequent case has determined that the foundation that the Supreme Court relied on in *Libman*, being the Lortie Commission, that foundation was flawed,

because Professor Richard Johnston, who testified in front of the commission and led the commission, or the commission drew its conclusion that third-party advertising affects the outcome of an election. Professor Johnston re-evaluated his analysis after the Lortie Commission was done, expanded his analysis and concluded that there is no effect. Chief Justice of the British Columbia Supreme Court found in *Pacific Press* in British Columbia that the Bill in British Columbia, which for all intents and purposes is identical to the third-party finance restrictions here, was unconstitutional. The Attorney General did not even argue that it was not an infringement on the freedom of speech, the freedom of association. That was admitted.

The only question was whether it was saved under section 1 of the Charter, and the Chief Justice found, notwithstanding *Libman* and the Supreme Court's direction, that it was not justified. He concluded that the experts who testified at trial agreed that there was no empirical study or evidence that third-party spending has every impacted on a referendum campaign or an election campaign in Canada. If that is the case, then we do not need this legislation.

The media's role in promoting or opposing candidates and parties is not affected by this legislation, notwithstanding that their role in affecting election outcomes can be far greater than the effect of third parties. As this week's news has shown us, Canada's media are becoming more and more concentrated in the hands of a few corporate conglomerates. Have a quick look at the *National Post*. They are going to be singing the praises of the Canadian Alliance. The media are going to have unfettered discretion to promote whichever policy, candidate, party that they choose, and rightly so. Who is controlling the media? The corporate conglomerates. Who is paying the media? The corporate conglomerates who are advertising in the media. So the corporations will still be able to get their point across through possibly affecting the editorial leanings or slants of the media.

Another problem with the legislation is that wealthy third parties can literally saturate the media before an election period, either supporting or opposing a party, a candidate or an idea. If someone thinks there is going to be an

election coming up in November, well, the left and the right and everyone in between, seeing this \$5,000 limit, is going to saturate the airwaves. They are going to have everything full of their point of view in that 10, 11 months.

\* (18:10)

Then when it comes time where the most people are paying attention, the smaller groups, the fringe groups, the little groups on the left, the extreme groups on the right that do not have the big money to advertise year-round, they are going to be stuck. They are going to have \$5,000 to spend when most voters are paying attention to the most important issues. If their voices cannot be heard in that time then the legislation is grossly infringing on their rights.

There has been some discussion today about levelling the playing field, but in the scenario where you have these big groups from all parties spending willy-nilly before an election you are getting a level playing field but you are getting grossly unequal starting points. You are going to have some groups that are so far ahead of the others that the other guys think they are in first place.

Another problem is, as we have seen in the most recent election and in other elections provincially, municipally, federally, campaign platforms are not often known until the election period starts. If a party, incumbent or otherwise, comes up with a policy that no one has heard of prior to the election call, the people that are going to be most affected by that policy might not be able to educate the public on it. The public are going to be left with the media, which are in some cases biased, and the political parties to fight the issue for them and to educate them on the issue by themselves. It is our submission that is not in the best interests of Manitobans.

In short and with respect, MARL finds it scandalous that the Legislature would propose to muzzle free speech so dramatically and on an issue so important to Manitobans. The practical effect of these changes is going to be to chill and eliminate all advocacy by citizens during free elections, and we are asking the Legislature to re-evaluate these proposed changes.

The *Pacific Press* case in British Columbia, in all likelihood, is going to the Court of Appeal

in British Columbia and very possibly the Supreme Court after that. Given that we are not going to see an election for possibly three years or more, MARL has the following suggestions to make: First, just remove the restrictions on third-party spending during election periods; the alternative, reduce the infringement on the freedom of speech by substantially raising the limits. Five thousand dollars is not going to get anybody's message across, individual or otherwise.

Finally, just wait until the *Pacific Press* case has made its way through the courts. See what the British Columbia Court of Appeal says. See what the Supreme Court of Canada might say. Save the taxpayers of the province the legal expenses of defending the challenge that the many groups that you saw here today will make on this legislation. Thank you.

**Mr. Chairperson:** The members of the Committee thank you, Mr. Mandzuik, for your presentation. Do members of the Committee have any questions they wish to address to the presenter?

**Mr. Doer:** I want to thank MARL for their presentation and Mr. Mandzuik for your presence here today at the Committee. Does MARL support or oppose the prohibition in the proposed Bill 4 to ban union and corporate donations?

**Mr. Mandzuik:** As I mentioned, our committee was not able to come to a consensus on that point.

**Mr. Doer:** If there were a banning on union and corporate donations and there was no limitation on third parties, would it be possible then for unions and corporations to have partisan ads as third parties and therefore circumvent the banning on union and corporate donations?

**Mr. Mandzuik:** Sure. Even if you do not limit the third-party advertisements, I think all advocacy groups from the left to the right will find their own ways around the legislation.

**Mr. Doer:** I note one of the examples you use is the polling example. This legislation does not prohibit the publication of polls, as I understand it, in either this act or Bill 17. Is that not correct?

**Mr. Mandzuik:** Yes. I do not think I was suggesting that it did, but if I left that impression, I apologize.

**Mr. Doer:** There have been studies in the United States on advertising and its impact on political decision making, some famous studies on these American cases. Has MARL studied some of the research on the experience of advertising money and the impact on political campaigns?

**Mr. Mandzuik:** Not specifically, no, but I might point out that the American experience is going to be very different from the Canadian experience. I want to repeat the point that just the idea that advertising is going to sway the alleged feeble minds of voters to such an extent that it is not them making a decision, it is the people who are advertising, is offensive to Manitobans.

**Mr. Doer:** I think Manitobans are certainly capable of making decisions, but we also know that—I mean people do not advertise not to increase their sales or their products, they have a pretty specific reason. I have to admit to you, when we advertise we try to increase the support of our political party when we do so, and we spend money to do so.

At this point in time in the different court decisions, there is one Supreme Court decision on the balance, the *Libman* case at the Supreme Court and then there is the two court decisions, one in Alberta and in British Columbia. The *Libman* case, then, would be because it is the Supreme Court of Canada that would be the superior decision for purposes of Manitoba's jurisdiction, would it not?

**Mr. Mandzuik:** Well, the analysis that Chief Justice Brenner did in the *Pacific Press* case goes through the role of *stare decisis* and when exactly Lower Court is going to be compelled to follow superior court jurisdiction. If the circumstances that underlay *Libman* had not changed, then yes, Chief Justice Brenner and the courts in Manitoba would be compelled to follow the *Libman* case. However, because the court found as a fact, it was not challenged by the Attorney-General for B.C., that the very premises on which the Lortie Commission made its recommendations or made its finding was flawed and

was no longer correct, the Supreme Court's decision was based on a faulty foundation.

**Mr. Doer:** Does MARL support the limitations of political parties in their spending during an election campaign?

**Mr. Mandzuik:** Again, this is not an issue that we came to a consensus on.

**Mr. Doer:** This law has been in Manitoba for—it has been redistributed and raised, but this law has been in Manitoba since the mid-'80s, the responsibility to disclose contributions and live within reasonable or within an established legislated limit. Has MARL not taken a position over the last 15 years on this issue?

**Mr. Mandzuik:** It very well could have, but I have not been around for 15 years so I am not able to answer that.

**Mr. Doer:** Thank you very much.

**Mr. Chairperson:** We need some leave to extend the answer period.

**An Honourable Member:** Leave.

**Mr. Chairperson:** Leave has been granted.

**Mr. Cummings:** Just one brief question. I did not hear whether or not you had addressed the question, and I will ask the question. Would you be interested in seeing this going to an all-party committee for review rather than put through at this time?

**Mr. Mandzuik:** Ideally I would like to see the things we are complaining about not make it to a third-party committee. Rather than just being passed, if it were to go to a third-party committee, yes that is something we would support. Would we support the public being involved, the broadcasters, the media, human rights, union groups, business groups, being able to give input? Absolutely.

**Mr. Cummings:** Yes, when I mentioned all-party, I was implying it would be extended.

**Mr. Loewen:** Thank you very much for your well-thought-out presentation. The Committee

and I appreciate it. Part of your premise, I believe, is that, in a number of your premises, I believe you are saying that under this new legislation in fact the election process will not be as fair if this legislation passes as it is today. Is that accurate?

**Mr. Mandzuik:** That is one interpretation, yes.

\* (18:20)

**Mr. Loewen:** Go to page 3 in your presentation, where you are indicating that one of the difficulties is that certainly third parties that have access to significant funds could play very, very significant over the long haul in elections by the fact that there is unlimited and unfettered spending in the build up to an election. One would only assume that would also have the potential of giving the Government the power as they have the right to call an election when they see fit, to use their association with different groups who share similar views to mount very, very significant campaigns, at a time, say six, seven weeks before an election. Is that a concern of yours?

**Mr. Mandzuik:** I think it is probably common knowledge that election rumours are among the worst kept secrets around. I do not think anyone is going to be caught unawares as to an election coming up. Every group, incumbent parties and opposing parties will be able to get the wheels spinning well before the election period is called. I would say it is not a concern just for the incumbent government.

**Mr. Loewen:** Thank you. I guess one other point which is well taken is that certainly the public will not have the same opportunity to be educated on issues when they are at their most attentive as a result of this legislation. So I think that is an important point that you have raised as well.

**Mr. Gerrard:** In your presentation, you comment that it is scandalous that the Legislature would propose to muzzle free speech so dramatically on an issue so important to Manitobans. That is a very, very strong statement, coming from an organization like yours with the kind of credibility that you have. I would just like you to sort of expand on why you feel that it has to be put so strongly.

**Mr. Mandzuik:** The reason that MARL is taking such a strong stance in this, the same reason that the other presenters today are taking such a strong stance on this, is in a free and democratic society the right to have fair elections underlies our whole entire system. If people are going to be informed enough to take part in those elections, they have to be able to have their points of view expressed. They are going to have to have the right to educate people about issues that affect them. To take away that right is chipping away at the foundation that underlies our democracy.

**Mr. Gerrard:** One of the issues which has come up, I believe, in Supreme Court rulings which relate to election finances, is an acknowledgement that disclosure is important at some level. I would like to get your comment on disclosure of support to political parties, for example, how you see this issue of disclosure of spending as a critical component of the democratic process.

**Mr. Mandzuik:** Again, while MARL has not looked at this, I think it is safe to say that disclosure is necessary at a certain level. At the same time, too low a level of disclosure might prevent poor individuals who want their privacy respected, other individuals from expressing their rights by donating money into a party. So, off the cuff, too low a level of disclosure is going to dissuade people from exercising their expression, but I think that we can all agree that some level of disclosure is necessary.

**Mr. Gerrard:** I would like to follow that up in the case of during an election period. One of the concerns that I have expressed is the ability to define what is an election communication expense, and the differing points of view as to whether issue advertising will or will not be an election communication expense.

As an example, in the Act it says that advertising which relates to the policies or platform of a political party is an election communication expense. It does not mean that it has to mention the name of the political party, it would seem to me. Now there are several issues here. One is the ability to define what is advertising as an election communication expense, and secondly, since there is a grey area here when we are dealing with disclosure, you might

have third parties spending just outside the grey area; (a) I would ask you to comment on this grey area in general and the wording in the Act and, second, whether it would be important to make sure that parties which are spending outside the grey area on issues in the election actually disclose the amount of spending.

**Mr. Chairperson:** Before you answer, Mr. Mandzuik, may I ask the Committee if there is leave to extend the question period? *[Agreed]*

**Mr. Mandzuik:** I will do the best I can to remember the questions and to respond to them. I think the Honourable Premier mentioned that the Government had planned to make amendments on the definitions of what third-party communications or election communications would be. I would argue that, as they are currently drafted, they are very ambiguous. They are vague enough that groups are going to be prevented from expressing their rights as freely as they might otherwise. As for third-party groups or individuals spending over that \$5,000 and having to disclose and whether it is or is not going to be something that they have to disclose to the election finance types or the electoral officer, I think that could have the same effect, the same chilling effects. Rather than worrying about not reporting or going through the expense of reporting, they just will not make the expression that they would have otherwise.

**Mr. Gerrard:** I just want to carry this forward. I mean, you could have a circumstance where, if this bill was enacted as it is now, a third party which mentions a name of a political party having to disclose if it spends \$5,001 or if it spends—what is it?—\$501, but an organization or a group, whatever the nature of that organization may be or individual third party, being able to spend \$1 million on an issue that is critically important to the election but doing it in such a way which is just outside the criteria of an election campaign expense, and that is never recorded anywhere even though it might be having major impact on the election. Would it not be important, if this legislation becomes law, that you are at least able to track that so that you have an understanding of what sort of advertising is out there which is attempting to have an influence on the election even though it does not

necessarily mention specifically the name of a political party?

**Mr. Mandzuik:** I think, as the bill is currently drafted, you can still infringe the spending limits by not mentioning a party, but I do not know that. If the Bill were to stay as it was and there were groups that could spend \$1 million and not infringe the Bill, is it anybody's business what they spent on advertising? No. We do not care what McDonald's spends in Manitoba for a month to advertise their Big Macs. If something is not going to be found to be an election expense, then it is the shareholders' business or the group's members' business, but no one else's.

\* (18:30)

**Mrs. Mitchelson:** Thank you for your presentation. I noted, in one of your answers to the Premier, you talked about the *Libman* case, and I just want to seek a little bit of clarification because we did hear that, because of the *Libman* case, when British Columbia introduced their elections finances limits, they used that case as the basis for them being able to introduce legislation and that it would be constitutional. It was subsequently struck down in British Columbia as unconstitutional by the British Columbia court. The Premier has cited the *Libman* case as the rationale for introducing this legislation and having a sense that it would be constitutional.

I just wanted you to clarify for me because I was not quite sure what I heard. Are you indicating that the *Libman* case was flawed? Did I hear that correctly? Maybe you could just try to explain to me because I do not understand the law really well, so I would like you to just in sort of simple terms, if you could do that for me.

**Mr. Mandzuik:** My understanding of the *Libman* case and the *Pacific Press* case in British Columbia—and I have not seen the evidence that was used in either. I have looked at the Lortie report, but I have not read it in any detail. The British Columbia court found that the Supreme Court relied on the Lortie Commission's findings that third-party advertising can influence or affect the outcome of an election. The Lortie Commission was studying the free trade debates and heavy media cam-

paigns in the '88 election, and one of the people who testified or presented a report to the Lortie Commission was Professor Richard Johnston, and his preliminary findings were that the third-party advertising did have an effect. That is what found its way into the Lortie report and that is what the Lortie report based their recommendations on.

All I am going on here is the reports from the *Pacific Press* case. In the *Pacific Press* case, Chief Justice Brenner goes through the Lortie Commission, the *Libman* case. Professor Johnston testified in front of the *Pacific Press* case and trotted out his book which many Canadians feel is the most comprehensive study of third-party financing expenditures. His conclusion in that book that was not challenged at *Pacific Press* was that third-party advertising had no effect or had no measurable effects or there is no evidence of any effects.

If that is the real conclusion to be drawn from the data that he analyzed for his initial report from the Lortie Commission, everything that the Supreme Court relied on in *Libman* was flawed because to define that it was a reasonably justified infringement, there had to be some justification, there had to be an overriding goal to be served. That goal would be to protect the public from being influenced so horribly by these third parties. If the public is not horribly influenced or is not influenced at all, then there is nothing to protect, the infringement cannot be justified in the democratic society, and therefore the *Libman* case was flawed on that ground.

**Mrs. Mitchelson:** Mr. Chairperson, I think I am understanding where you are coming from. So that leads me, then, to the B.C. case, the legislation in British Columbia that was struck down as being unconstitutional. I do not know if you have had a chance to look at that or whether you have looked at that. My understanding is that it is very similar to the legislation, Bill 4, that we see in front of us today. Using the *Libman* case as the rationale or reasoning for this legislation being constitutional would be a flawed assumption then?

**Mr. Mandzuik:** As a lawyer, I know you can always find two good arguments for every case. You can make a very good argument based on Supreme Court authority that these kinds of

amendments will be constitutional, but at the same time you can make very strong arguments that persuaded Chief Justice Brenner in British Columbia that the *Libman* case is not good authority because the foundation upon which it relied was flawed.

**Mr. Chairperson:** Thank you, Mr. Mandzuik, for your presentation.

The next presenter is Mr. Dan Overall representing the Manitoba Chambers of Commerce. Do you have written copies of your brief for distribution to the committee members? Mr. Overall, please proceed with your presentation.

**Mr. Dan Overall (Manitoba Chambers of Commerce):** Yes, on behalf of the Manitoba Chambers of Commerce, I would like to thank this committee for the opportunity to take part in this very important discussion. By way of background, representing 77 local chambers and 9700 businesses from across the province, the Manitoba Chambers of Commerce is the umbrella organization for Manitoba's chamber movement.

The Manitoba Chambers of Commerce will direct its comments to its opposition to sections 55.1 and 55.2 of Bill 4, the so-called third-party advertising clauses.

However, we wish to make it clear that does not mean we approve of the other sections of Bill 4. We have had the opportunity of discussing these issues with groups such as the Broadcasters Association of Manitoba and the Manitoba Community Newspapers Association. We would like to take this opportunity to endorse their concerns, particularly as they relate to the limit on the proportion of election expenditures that parties and candidates may devote to advertising and the \$50,000 limit on annual advertising expenditure outside of election periods.

We are opposed to Bill 4's third-party advertising clauses as we feel they violate the Canadian Charter of Rights and Freedoms, particularly as it relates to freedom of expression.

Like the unfortunate tendency to only give tribute to someone after they have passed on, we must confess that we were only compelled to

seek out words that did justice to the importance of freedom of speech after we felt Bill 4 spelled its demise. In this regard, we could not find any words more appropriate than those of Judge Cory of the Supreme Court of Canada who, in *Edmonton Journal v. Alberta*, eloquently espouses the sanctity of freedom of speech, particularly as it relates to political discourse. These words should serve as a rallying cry to all citizens as well as a warning to all of Canada's lawmakers. I quote:

It is difficult to imagine a more guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized. No doubt, that was the reason why the framers of the Charter set forth section 2(b) in absolute terms which distinguishes it, for example, from section 8 of the Charter which guarantees the qualified right to be secure from unreasonable search. It seems that the rights enshrined in section 2(b) should therefore only be restricted in the clearest of circumstances.

We find it ironic that we can offer no better indictment of Bill 4's third-party advertising clauses than the decision of Judge Brenner of the British Columbia Supreme Court in *Pacific Press v. British Columbia*. This well-reasoned decision struck down as unconstitutional British Columbia legislation that restricted third-party advertising to \$5,000. That legislation was almost exactly the same as Bill 4's third-party advertising clauses. The irony is made complete when one realizes that the decision was rendered on February 9, 2000, some four months before our government saw fit to introduce Bill 4.

The *Pacific Press* decision provides such a compelling analysis of why the third-party advertising clauses offend the Charter that we have attached it to this brief. We will now take the liberty of drawing some of the key points of the *Pacific Press* decision to the law amendments review committee. One of the disadvantages of proceeding fairly late in the evening is, though there is a lot that is not really new that

has been said, hopefully a positive spin on this situation is that we will simply be clarifying the points raised by the previous presenter.

To survive a Charter challenge, it is well settled that any legislation that restricts the right of freedom of speech, as Bill 4 clearly does, must show that the objective it seeks to support responds to pressing and substantial concerns within a democratic society. Now, it cannot be enough to simply say: We are ensuring that individual citizens have the right to fully participate in the democratic process, or we are stopping big money from controlling the democratic process. These sentiments are noble and make good headlines, but a restriction in our freedom of speech, particularly in a political realm, demands a deeper analysis.

\* (18:40)

Specifically, it must be established that unlimited third-party advertising is disrupting, is somehow harming the democratic process. Here the following comments of Judge Brenner, in *Pacific Press*, are particularly interesting. "In this case the government has responded to theoretical abstractions and to unproved hypotheses about what might occur if third-party spending is unregulated. In determining whether this is in fact a pressing and substantial concern it must be remembered that prior to 1996 there were no restrictions in British Columbia on third-party election spending. There is no evidence that third-party spending has been a problem of any significance in this province."

Do not think that *Pacific Press* considered this issue lightly. A review of the decision in the case heard testimony from the eminent experts in the field as to the effects of third-party advertising. Now, one may argue, and quite rightly so, that a government need not wait until evil befalls us before it acts. It can and should anticipate such misfortune and prevent it before it happens.

Once again, we return to *Pacific Press*, where the Government of British Columbia made that very argument. Once again, we cannot offer a more pointed rebuttal than the comments of Judge Brenner. Again: "In my view the implicit assumption . . . in the position of the AGBC (Attorney General of British Columbia)

is that the people of British Columbia are unable to qualitatively assess third-party communications in election campaigns and to decide what weight, if any, to attach to them. The evidence does not support that proposition."

And I quote further: "In my view it is not open to the AGBC in light of the scientific evidence to the contrary to rely on a reasonable apprehension of harm as justification for the impugned legislation. The apprehension is not reasonable when there is scientific evidence contrary to the basis of the apprehended belief."

Indeed, with the greatest respect, we suggest it is strange that any new government will see the need to create such legislation. Is our new government suggesting that they were elected as a result of third-party advertising that duped the will of voting Manitobans? Some have suggested that Bill 4 is necessary to prevent Americanization of Manitoba's politics. Again, a similar concern was raised and dismissed in the *Pacific Press* case. Professor Fletcher provided expert testimony in *Pacific Press* as to the extensive institutional differences between the United States and Canada. Six such differences are set out at page 279 of the decision.

Judge Brenner concluded: "I accept Professor Fletcher's evidence of the profound institutional differences between the political systems in the two countries and I conclude that there is no evidence to suggest that such importation has or is likely to occur."

While we are greatly troubled by Bill 4's attempt to curtail the cherished freedom of political expression for the sake of a phantom, the big-buck boogeyman, words cannot convey our horror in response to the arbitrary standard, the \$5,000 limit, which is proposed to protect that freedom.

Again, the British Columbia legislation imposed a \$5,000 limit on third-party advertising and, once again, we can think of no better articulation of our concerns than Judge Brenner's analysis in *Pacific Press*. Certainly there will be some financial differences between Manitoba and British Columbia, however, we feel the comments are still germane.

I quote: "Ms. Graham testified that the cost of a one-page advertisement in the *Vancouver*

*Sun* is \$20,000 to \$25,000 depending upon the day of publication. The *Province* charges \$10,000 to \$13,000 for a similar one-page advertisement. These prices do not include any camera or production costs advertisers must incur prior to delivering the copy to the newspapers.

"Mr. Gordon testified that it would cost between \$2,000 and \$3,000 for a reasonably low budget radio production which included voice-overs and studio time. This excludes the airtime costs.

"Mr. Gordon testified that television advertising requires significant production costs. These can include creative costs, writing costs, cameramen costs, voice-over costs, the costs of producing graphics, actors' salaries, the payment of music royalties, and post production costs. He says that a low-budget, 30-second TV advertisement involving a still photograph, voice-over, and some graphics without any actors or music could well cost \$5,000. The production costs for a simple commercial with one or two actors and some music would cost between \$10,000 and \$15,000.

"I conclude that the \$5,000 limit precludes any effective province-wide advertising. It effectively limits individuals or groups to putting out pamphlets, posters, and other advertising in individual constituencies."

One full-page Saturday ad in the *Winnipeg Free Press*, excluding production costs, will cost a not-for-profit organization in the range of \$14,500 plus GST. A \$5,000 limit does not regulate, it eliminates. It is the death of free speech when the only commentary one can really afford is to purchase it in the obituaries.

Of late much has been made of the *Libman* case, a case of the Supreme Court of Canada, as the saviour for the third-party advertising clause in Bill 4. It is true that *Libman* did suggest that restrictions on third-party advertising would be laudable as well as constitutionally valid. However, what no one seems to be mentioning is that the *Pacific Press* specifically considered and declined to follow *Libman*. Indeed, when *Pacific Press* began the Government of British Columbia went to the courts and said: We do not

need to have a trial on this issue. Our legislation must be constitutional, given *Libman*." It is interesting that each level of court in British Columbia rejected this argument and ordered the trial to proceed.

*Pacific Press* has two fundamental reasons for rejecting *Libman*. Here particularly is where I follow on the previous presenter.

Number 1, the evidence before *Pacific Press* was markedly different than the evidence before *Libman*. This is perhaps the most intriguing part of *Pacific Press*. *Libman* substantially relied on recommendations made by the Lortie Commission on the influence of third-party advertising on public opinion. The Lortie Commission, in turn, relied on the preliminary findings of a Professor Johnston to the effect that third-party advertising did affect public opinion. At the *Pacific Press* trial, and indeed in publications after *Libman*, Professor Johnston confirmed that he no longer stood by his preliminary findings and now maintained that third-party advertising has no effect on voter intention.

Number 2, in *Libman* the party contesting the constitutionality of the legislation conceded that the objective of the legislation was indeed pressing and substantial. As can be seen by the analysis in *Pacific Press* this is a crucial issue and by no means a given for those advocating Bill 4.

These two points, separately as well as collectively, all but eliminate the authority of *Libman* on the point of third-party advertising.

Everyone wants democracy to be healthy, to be vital. In fact, we need it to be so. But we must be ever vigilant that we do not kill it in our attempts to protect it. *Libman* stated that third-party advertising "must be restricted to preserve a balance in the promotion of the options and favour an informed and truly free exercise of the right to vote." Certainly that seems to be the rationale offered for Bill 4, but aside from the important points raised by *Pacific Press*, we wonder if Bill 4 would actually accomplish that goal. Indeed, we wonder if it would not subvert that very goal.

For example, if three separate groups come forward and separately spend \$5,000 in adver-

tising support for a given issue and only one individual comes forward and spends \$5,000 in opposition to it, have we attained a balance? What if one view is unpopular or is not common knowledge? Would not that view need more money spent on it to convey it to the public? What if someone spends \$5,000 on a given view and I miss the ad? Am I then informed or misinformed because of this proposed legislation? Indeed, does not the bulk of advertising currently go to repeating a message so more people can have access to that point of view?

With the greatest respect, Bill 4's provisions relating to third-party advertising are misguided. They are misguided in believing that a problem exists, they are misguided in how they seek to address that problem, and they are certainly misguided in failing to understand their own impact upon the democratic process.

The Manitoba Chambers of Commerce is strongly opposed to the third-party advertising clauses of Bill 4.

**Mr. Chairperson:** The members of the Committee thank you, Mr. Overall, for your presentation. Are there members of the Committee who have any questions they want to address to the presenter?

**Mr. Doer:** Thank you very much for your patience. I think I saw you at the start of the Committee, Mr. Overall. Thank you for bearing with us. The presentation before us deals, as you say, with the matter raised by the previous presenter, a lot with the *Pacific Press* case versus the *Libman* case. There are a lot of other issues also in Bill 4 that is before the Legislature. Is the Manitoba Chambers of Commerce supporting the proposals to ban union and corporate donations here in this province?

**Mr. Overall:** Technically our focus has been as indicated in the presentation on the issues before the presentation. I believe, having not fully canvassed that specific issue with our board, that indeed we would be opposed to that. Perhaps one rationale I can offer for being opposed to that at this junction again—please bear with me; I am simply thinking off the top of my head—is the current system of taxation requires people and

corporations to pay in accordance with their ability to pay. We cannot understand why we would not be allowed to participate in a debate in accordance with our ability to pay. We confront a government in accordance with our ability to pay, but we cannot participate in the base relating to that government in accordance with our ability to pay if this legislation comes through.

\* (18:50)

**Mr. Doer:** The Canadian Federation of Independent Business, when we first announced our election promise, stated publicly they were opposed to it, and then they surveyed their members and the small businesses that were represented in that organization were supporting the banning on union and corporate donations. Have you canvassed your individual membership on this issue of banning union and corporate donations in the meetings that are held? I have had an opportunity to speak to some business organizations on this issue, and they have generally supported it in the sense that they felt it was taking away a compulsion to ensure that donations were being made in terms of a democracy. If everybody was banned, then it was a level playing field not only for business but also for political parties.

**Mr. Overall:** As I indicated, we have not formally done scientific polling. We certainly advised our members of the issues and the aspects of the legislation. What came back to us was the message to focus on these provisions.

**Mr. Jack Penner:** Well, thank you, Mr. Overall. I would like to ask whether you believe that this current government has been influenced by third-party advertising in so much as when one drove into the legislative grounds over the last couple of years, almost everyday one saw the billboards and ads about frozen food. It was interesting that the Minister of Health, virtually as soon as he was appointed, bought the company? I think, Mr Overall, that I would have to question the ruling in that regard, because I truly believe he saw the signs so often that he was so impressed and influenced by those signs that he in fact went out and spent \$20-some-odd million and bought the company, as some other shaver companies did as well. I think there is a

matter to be considered when one talks about influence.

I wonder though, in all seriousness, whether the limitation on spending that is addressed in this bill and the limitation of—not spending but the limitation of a contribution by individuals and/or corporations would be deemed constitutional aside from the fact of the two rulings that you discussed? Do you know of any other cases that have dealt with these matters that would lead one to believe there might in fact be validity in this legislation?

**Mr. Overall:** It is certainly an interesting question, but I have no information as to law that would address the issue that you are raising.

**Mr. Gerrard:** I would like to ask you about one of the issues here that I think is important in terms of the Bill. You are representing the Manitoba Chambers of Commerce. You have 77 local chambers. You talk about having an ad in the *Free Press* and how it would be impossible. As one chamber, as one third party, it would clearly be impossible, but do you see that the Bill would restrict several of the chambers getting together and being able to, in some fashion, pool their efforts and each spend \$5,000 so that you could have a full ad in the *Free Press*?

**Mr. Chairperson:** Before Mr. Overall can answer, we need some leave to extend the question period.

**Some Honourable Members:** Leave.

**Mr. Chairperson:** Is there leave granted?  
*[Agreed]*

**Mr. Overall:** Yes, in answer to your question, my recollection of the reading of other sections of the legislation state quite specifically that that would not be allowed to occur.

**Mr. Gerrard:** So what you are saying is that in your case the Manitoba Chamber and the 77 local chambers would have to be looked at as one organization in the interpretation of this act. Clearly, given the number of organizations that you represent, it would seem to me that that would create a major problem in terms of

freedom of expression. Maybe you want to comment.

**Mr. Overall:** Well, I do not think there is any doubt about it that any organization that has entities either through local chambers or just people working together, there is going to be a great difficulty interpreting, whether in fact they are bona fide or people individually doing their own thing, whether in fact there is some type of pooling. It would be profoundly difficult to actually enforce this legislation when you are dealing with groups like ours.

**Mr. Gerrard:** It would seem to me, for instance, if you had the Winkler Chamber of Commerce wanting to advertise in their local paper and somebody else in The Pas and somebody else in Flin Flon and somebody in Brandon and so on, that you would have a lot of difficulty in making sure that all the chambers collectively did not spend more than \$5,000. Is that correct?

**Mr. Overall:** I think the reading of the Act suggests that you can have a group, but if there is no communication between the individuals and they just happen to go on their own to express views and advertising, there should not be a problem. Again, in terms of the enforcement of that, whether you are going to be able to convince the authorities that no communication has occurred and whether you are going to actually get bogged down in debate as to whether these types of communication occurred is certainly another issue. The problem is really most organizations are going to communicate on issues and to somehow have the authorities divine that no so-called pooling has occurred is going to be, again, profoundly difficult in terms of enforcing this legislation.

**Mr. Gerrard:** So, on the one hand, if you take one interpretation, that is that you cannot pool the cumulative advertising, knowing that you are a part of one body and you do communicate with one another, you may be limited to \$5,000 for all your 78 organizations. If you went the other interpretation with one Manitoba Chamber and 77 local chambers, that would be 78 organizations and you could spend \$390,000. Clearly it would be very important to establish what is a separate entity and what is communication between these and so on and so forth so that this

would be manageable in terms of how this act was implemented.

**Mr. Overall:** Yes, that is correct.

**Mr. Gerrard:** One Manitoba Chamber or 77 local chambers and you have 9700 individual businesses. I mean, if, on the one hand, everybody was collectively restricted to \$5,000, it would be an extraordinary clamp on free speech. If, on the other hand, you could work cumulatively, the cumulative 9700 businesses would be able to spend together \$48.5 million. Clearly there needs to be some clarification here as to what the situation is going to be and what is independent and what is together. Maybe you could just comment.

**Mr. Overall:** With respect, I do not see your interpretation of the legislation holding forth in terms of you being able to pool and create excess funds to within the million-dollar mark that you had quoted. I think more realistically the interpretation will come from the statutes as your first interpretation, which is you are going to have problems with organizations who communicate together now being confined to the 5000 on issues of common concern even though there may not technically be some type of intentional pooling going on.

**Mr. Doer:** I just want to make the case that the Chamber of Commerce is a nonpartisan organization, is it not?

**Mr. Overall:** Yes.

**Mr. Doer:** Your organization includes memberships such as Manitoba Hydro, which is a public Crown corporation, that would not normally take a political partisan position in an election campaign, would it not?

**Mr. Overall:** Correct.

**Mr. Doer:** Every individual company in the Manitoba Chamber of Commerce that is not bound by being nonpartisan, such as school boards, Hydro, MPI, a number of other organizations—you have a number of public entities in your individual chapters. Every individual company could participate in the 5000 limit as an individual company, could it not?

\* (19:00)

**Mr. Overall:** It is the difficulty you have with the legislation. If you have a group and they are talking about a certain policy issue, and the lead organization decides to do some advertising and there is a vote on that issue or a discussion on that issue, I think respectfully that could well lead to interpretation that some type of pooling is going on to trigger the Act.

**Mr. Loewen:** I must say I find it a little strange that, for the last two presenters, we have had the Premier asking them to interpret the legislation. I would have assumed that he would know it.

In your analysis of these two clauses, you have obviously come to the belief that they will not stand a Supreme Court challenge, and you have done a lot of that research on the case in British Columbia with *Pacific Press*, where it was ruled that clauses similar to this were unconstitutional. Are you satisfied in your analysis that the clauses that you have identified are close enough to the case ruled on in B.C., that the result would be the same?

**Mr. Overall:** Well, I think there is no doubt in my mind. In fact, I think you can make the argument that the Manitoba legislation is more pervasive than the B.C. one, because the B.C. one simply talked about talking about the parties directly or indirectly whereas our legislation talks about not only dealing with the parties but dealing with any issue that the parties may espouse or be involved with.

**Mr. Loewen:** Did you have any opportunity, as the Manitoba Chamber of Commerce, to consult with the Government prior to the introduction of this bill?

**Mr. Overall:** Not to my knowledge, no.

**Mr. Loewen:** I notice that you have focused your attention on these particular clauses, but you have also identified in your report that you do not approve of other sections of Bill 4. I guess I would ask: If it was not summer and if you had more time, do you feel there would be other clauses in the Bill that you would be able to identify and bring to committee your discomfort with?

**Mr. Overall:** Yes.

**Mr. Loewen:** Thank you. I am just going back to the Broadcasters Association of Manitoba and the Canadian Association of Broadcasters who recommend that we take a step back, establish an all-party committee, look at some public consultations and possibly publish a white paper, given that there really is not an urgency to moving ahead with this legislation that anybody has been able to identify before this committee. Would you be in agreement with their recommendation?

**Mr. Overall:** Bearing in mind my focus is the third-party advertising clause, I would think that, again with the greatest respect to the parties involved, the key is going to be the court's interpretation of what is going on. I would suggest that would be key. I tried to get some information as to whether the B.C. case in fact is under appeal. The information I have is that it is not, which is strange, given the time that has elapsed and the importance of the issue.

Obviously, if the case goes to appeal, I would strongly recommend that, related to these specific issues, we simply see ultimately what the Supreme Court of Canada has to say. If in fact the case in British Columbia is not appealed, I would suggest a more rational way of proceeding on the third-party advertising issue is to simply have the courts in Manitoba rule on this issue.

Again, if we are dealing with a provision that fundamentally violates the Charter and is going to be struck down by the courts, again, with the greatest respect, I think it would be a waste of resources to simply have people come together and reach a consensus on a legislation that is ultimately going to be struck down anyway.

**Mr. Loewen:** I agree with you, and I note that you are also in agreement with the recommendations of the Chief Electoral Officer, who has advised the Government not to proceed until the final outcome of the court case in B.C. has been determined. It seems to me a little strange that they are moving ahead. Assuming that somehow we come to agreement to stop this bill, is your organization willing to participate in a consultative process regarding changes to The Elections Act?

**Mr. Overall:** As a matter of policy, the Manitoba Chambers of Commerce are always

willing to participate with the Government in any consultation on the issues that are vital in Manitoba. I must echo the sentiments of one of the presenters as well, that the previous government as well as this government have, on many occasions, had a laudable record in terms of consultation with the public.

**Mr. Chairperson:** The members of the Committee thank you, Mr. Overall, for your presentation. The next presenter is Paul Moist, President, Canadian Union of Public Employees.

Please proceed with your presentation, Mr. Moist.

**Mr. Paul Moist (President, Canadian Union of Public Employees):** Mr. Chairman, Mr. Premier, members of the Committee, it is my privilege to speak to you tonight on Bill 4, and one comment on Bill 17 on behalf of CUPE representing 23 000 women and men working in the public sector and the not-for-profit sector in our province.

Before I go to a couple of points in our written submission, just a couple of opening comments. I think the Bill before the Legislature is an important one. I think the integrity of our political system has taken a couple of hits in recent years, and I think the Bill is designed to restore integrity to all aspects of elections and election financing.

With respect to some specifics, the banning of corporation and union direct contributions to political parties, we support that provision. It goes hand in hand, in our view, with the banning of third-party spending, setting limits on that during election periods. We also support from Bill 17 the provisions to grant unpaid leave of absences to workers to participate fully in the electoral process. We also, Mr. Chairman, support fully the direction to the Chief Electoral Officer to review potential cost savings due to elimination of the tax deductible union and corporate donations, with a view towards a revenue-neutral redistribution of savings to political parties. We will speak to that. I understand that process is to be done within six months of the enactment of this legislation.

I think it is also important to state right up front that all citizens subsidize election spending through our tax system. This is the primary

reason, in our view, on the need for limits, regulations and a solid legislative framework. Unions and workers have been and will continue to be politically active. The ban on donations is something that we are prepared to live with. We live with it in the province of Québec and workers in other countries live with it as well.

With respect to the body of our presentation, near the bottom of page 1 we talk about trends with respect to redistribution of wealth in our society, and that has been extended to political contributions in our society. There is a real fear that the balance will be in favour of corporations and wealthy individuals without a legislative framework like this. We cite, like a previous delegation, an extreme example from the U.S. but an example that we ought to take note of.

On page 2, we give you some Canadian statistics from an analysis conducted by a University of British Columbia professor who has examined finances of federal political parties and candidates in Canada in the 1990s. He found that almost 60 percent of corporate donations to the federal Progressive Conservative Party in 1998 came in the form of donations of \$10,000 or more dollars. Only the most naive observer would not agree that those corporations donating sums of more than \$10,000 are expecting something in return.

CUPE Manitoba supports the aims of Bill 4, which will eliminate corporate political donations and limit individual donations to \$3,000 or less. As a labour union, we are also subject to Bill 4's restrictions, and we are prepared to abide by them.

The proposed restrictions on third-party spending are also laudable. A loophole would exist without tight restrictions on the amount that third parties can spend on election communications as political parties or candidates could attempt to bypass restrictions on their spending by channelling funds to or through third parties. The requirement that third parties spending \$500 or more be required to register with the Chief Electoral Officer is also reasonable given the Bill's goals of making electoral financing more open and transparent.

We also support, Mr. Chairman, the proposal to increase fines for infractions under the

Act by up to 150 percent. We hope it will give some teeth to The Elections Finances Act, and should any infractions occur, we hope maximum fines will be sought to hammer home the message that elections in Manitoba are not for sale.

\* (19:10)

Finally, on the last page of our presentation, Mr. Chairman, it is very important not to lose sight of the fact that ultimately it is taxpayers who subsidize election expenses as 50 percent of authorized election expenses are reimbursed by the province. Though we do not have access to provincial figures at this point, the B.C. study I referred to earlier cites some federal figures. During the 1990s, in non-election years, between \$10 million and \$11 million a year in tax credits were claimed by corporations and individuals. The amount doubles in the election year of 1993, and the data from 1997 is not available yet. That election year also saw \$8 million reimbursed to political parties and almost \$15 million to candidates. In total, almost \$44 million in federal election financing was subsidized by the Canadian taxpayer. That speaks to the need for, and I think widespread public support for, a strong legislative framework here in our province.

Obviously, we are talking about large sums of money, and it is imperative that caps on spending be implemented before we find ourselves with American-style election financing and the problems that that brings with it. Bill 4 goes a long way towards eliminating the influence of money on elections and it merits our support and the support of all working people.

**Mr. Chairperson:** The members of the Committee thank you, Mr. Moist, for your presentation. Do members of the Committee have any questions they wish to address to the presenter?

**Mr. Doer:** I would like to thank Mr. Moist again for being patient through the presentations here this afternoon and early evening. You mentioned the issue of Québec in your opening comments, and you obviously know that Québec has banned union and corporate donations. There was a lot of controversy in the '70s. As I understand it now, it is so popular in Québec that the Liberal

Party that opposed it in Québec in the '70s have campaigned in successive elections that they will not change it because the public feels it is, on balance, creditable.

Comments have been made that people will get around a banning of union and corporate donations. In your experience or your advice from your organization in Québec: Is it not against the law to try to get around it? Are there any violations or a lot of violations of these prohibitions that have been put in place by the Québec legislature?

**Mr. Moist:** Through the Chair, I understand that was one of the first pieces of legislation brought in in Québec by the first PQ government in 1976, 1977, and it was opposed vigorously by the Liberal Party of the day. It was brought in to put a stop to the controlling influences over the provincial Liberal Party in Québec. I understand, as you said in your question, that the Liberal Party has completely reversed their position after almost a generation of this type of law. It is against the law to try to circumvent the legislation. CUPE Québec, our counterpart that represents almost 100 000 workers in Québec, well understands the law. We have spoken to them since this was first announced on the hustings in September during the election campaign, and I am led to believe that all parties respect that. Democracy is well alive in the province of Québec, perhaps more so than elsewhere in this country.

**Mr. Doer:** I understand from an article I just read from Graham Fraser that the result in Québec has been less cheques being written and more people being energized and requiring more participation in their own political parties, conventions being more democratic, councils being more democratic, leadership races being more democratic and more democratic engagement at the doorstep, as opposed to just relying totally on messaging through electronic means. Is that again the experience or feedback you are getting from your organization in the province of Québec?

**Mr. Moist:** Again through the Chair, it is my understanding through direct observation while visiting Québec and through discussions with our counterparts there that there is a very active

and democratic political process in Québec that we could all learn from. It is much closer to what I would consider to be a European model with direct citizen participation and massive amounts of participation from people across the range of the political spectrum.

There is discourse on politics during and between elections to an extent in Québec that I believe does not exist elsewhere. I believe that is one of the fundamentally good features of the province of Québec that we could all learn from.

**Mrs. Mitchelson:** Thanks, Mr. Moist, for your presentation. I guess I would ask a question. It seems to be an understanding, at least I understand it and I think I am right, that outside of the election writ period there are no limitations on third parties and the ability they have to spend, or what kind of political advertising they might do. I look to the Premier for his nod of consent; that outside of the writ period there are no limitations on third parties around political advertising. Yet political parties outside of the writ period have a limitation of \$50,000 for political advertising. Would you consider that to be a level playing field, a balance?

**Mr. Moist:** Through the Chair, compared to the absence of framework that exists now, I would answer that question: Yes. I have no problem with limiting the playing field amongst political parties. With respect to third-party advertising during the writ or election period, as you put it, we fully support a framework with limits on expenses. We do so because we do not want a repetition of what exists in the United States.

There is a banning of corporate and union donations in the United States. Just June 29 of this year, the Senate in the U.S. passed legislation outing a little over 500 stealth political action committees where people funnel their money during election periods and between election periods. This legislation, which is probably not perfect, provides more framework than exists down there. We need it.

**Mr. Chairperson:** Before we proceed, we need some leave to extend the question period. Is leave granted? *[Agreed]*

**Mrs. Mitchelson:** I guess I will just use an example and again ask whether you might think

it is a balance, Mr. Moist. Should your union determine that it might be important to take a certain stand on a certain policy issue, say that the Conservative Party put forward as a policy, not during an election writ period but at some point in time in between elections, and they wanted to communicate and had a budget of \$50,000 and spent that \$50,000 communicating, but you had as a union an opportunity to say mount a campaign of some \$300,000—I know that during 1996, there was a significant union campaign that cost about \$300,000 to speak about an opposing view—I guess, my question would be, and it could work the other way around, if someone like the National Citizens' Coalition was taking a stand against a certain policy position that was taken by the New Democratic government and they chose to spend \$300,000, but the New Democratic Party could only counteract that with their position or point of view with \$50,000, do you consider that a fair balance and a fair approach to democracy and freedom of speech?

**Mr. Moist:** Through the Chair, in terms of access to the public and to media and to all avenues to communicate with the electorate, I would not count political parties of any stripe as being disadvantaged in relation to other groups in society. Secondly, with respect to third-party spending outside of election periods, the trade union movement would be treated like other third parties save for the fact that we have not got the financial resources of many other third parties. I do not think there is anything wrong with levelling the playing field amongst political parties and limiting third-party spending during the period of elections. Outside of elections, I guess it is debatable whether or not that playing field ought to be levelled as well.

\* (19:20)

**Mrs. Mitchelson:** I just wanted to ask the question, too, because I know that again, would CUPE be part of the union organization that would participate in the political process, the New Democratic Party, by being elected to possibly one of the positions on the Provincial Council?

**Mr. Moist:** Through the Chair, CUPE Manitoba, the umbrella group for CUPE members in

Manitoba is not directly aligned with any political party.

**Mrs. Mitchelson:** So my questions would be then, as a representative of CUPE, you have never sat on the Provincial Council of the New Democratic Party?

**Mr. Moist:** Through the Chair, no.

**Mr. Loewen:** Thank you, Mr. Moist, for your presentation. As with all of them, full of good information for this committee, and some good recommendations. I must, in all honesty, though, say right off the top that I do take some issue with some of the rhetoric which is within this presentation, so maybe, we will have to disagree. For one, I do not think that the primary driving force of every action, whether it is charitable, benevolent, or political is necessarily self-serving, and so, I guess I would have to disagree with you there. I also disagree with your premise, and it seems to match the Premier's premise that somehow the legislation introduced in Québec to limit donations has altered the course of political discourse in Québec. I think that is more of a cultural and historical fact than anything else. We have all known for a long time that politics and religion in Québec are something that is well discussed by all members of the population. I would agree that we would maybe benefit if we got more political discourse in this province. I do not think passing legislation such as this, which restricts the rights of individuals, will accomplish that, but maybe we differ there as well.

I am wondering if in light of the question the Premier (Mr. Doer) asked our previous presenter, has CUPE polled its membership on this issue.

**Mr. Moist:** Through the Chair, no. Our executive and our provincial leadership have discussed all legislation relevant to us before this Legislature and formed our positions that way.

**Mr. Loewen:** Thank you. I appreciate that. I also just would note for you, because again it I think counters some of the arguments that you have had, but Raymond Garneau, who is a former member of the Québec National Assembly and the House of Commons, com-

mented to the Royal Commission that, and I will quote: As for excluding those other than electors, it seems to me, and I have lived in this milieu for quite a while, it is much more a smoke screen than a restraint or a true solution to the issue of morality that it is so often raised. Everyone knows how easy it is for a political party or anyone else to evade that restriction.

I am certainly not condoning that anybody in the province of Manitoba evade this legislation if it is passed, but I think we all would be naive not to believe that with some of the loopholes in this legislation, particularly as it applies to what is and is not an election campaign expense, that we do so at our own peril.

I gather from your analysis of the legislation that you have no problem with sections that allow unions to communicate freely with their membership and advise them on the union's opinion on how they should vote as often as they see fit and not have that count as an election expense. Are you in agreement with that amendment?

**Mr. Moist:** Through the Chair, I believe the Member is referring to section 55.1 of the Act, and I just want to read two sentences. "It does not include the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be. It also does not include an editorial, debate, speech, interview, column, letter, commentary or news normally published without charge."

So, Mr. Chairman, this is not the clause that applies solely to the trade union movement, but trade unions, like companies and others, will have open to them mailing opportunities directly to their employees if they comply with the provisions of the section that I just wrote out. I have no problem with corporations, unions or other groups having those restrictions placed upon them.

**Mr. Loewen:** Thank you. You do not feel that this clause provides an unfair advantage to organizations, whether they are business or unions that are well established, and puts at a disadvantage individual citizens who might want to form a new political party because of their dissatisfaction with the policies of the existing

parties or in fact might have a negative consequence on individuals and independent candidates.

**Mr. Moist:** Through the Chair, I think whether you are organizing a union, a community group or a political party, you have a lot of organizing work to do. I do not think this legislation will serve as a bar to the hard work required to do that. Secondly, there are many groups in our society. We all belong to many groups. I am here on behalf of one group in society, a certified trade union. All groups have opportunities to speak with another, whether it is the United Way that I belong to, the library foundation, the Historical Society of Manitoba, and I do not think there are going to be impediments to people who want to participate in the political process from speaking with other Manitobans. CUPE is able to garner a fair amount of public presence in this province without purchasing it because we work hard at it, and other groups have similar opportunities open to them.

**Mr. Loewen:** Again, I guess we will have to disagree on a couple of points. I cannot quite understand why you would in any way want to draw the United Way into this discussion. As we both know, they are apolitical. I would also suggest to you that individuals who want to become politically active certainly are at a disadvantage to established unions who have already a large, and in your case a substantial captive audience, and in particular with the repeal of section 76, no longer give their members the opportunity to advise them how they want to spend their money or not. So I find it a little surprising that you have taken that position. Any comments about the unlimited and unfettered spending power allowed in between elections to groups, whether they be business or union or any other organizations? Do you have any problem with that?

**Mr. Moist:** Through the Chair, a similar question to the one asked by the Member's Leader, and I think the framework that is here that restricts third-party spending during election periods is one we support. It will prevent sort of the Americanization of what could happen through banning corporate and union donations if you do not have those limitations. Whether or not this Legislature should ban third-party

spending between election periods or not, I guess, is up to the Legislature but I expect will be treated like all other groups in society including business.

**Mr. Loewen:** Just in closing, then, with regard to the point you make on page 3 regarding the tax credits, are you then in favour of removing all tax credits as they pertain to political deductions?

**Mr. Moist:** Through the Chair, we will be looking forward to the Chief Electoral Officer who, as I understand it, has six months after this legislation is proclaimed to look at an option for reimbursement through the tax savings that will be garnered by this legislation, and I do not think CUPE wants to end the tax credit system. We make this point in this submission to say there is a large public stake beyond that of interest groups to put a framework in place for elections and election financing, and we will participate fully in the Chief Electoral Officer's deliberations on that point.

\* (19:30)

**Mr. Loewen:** Is it your belief that the Government is better able to spend that money than the individuals who donated it in the first place? Is the Government better able to make decisions for them?

**Mr. Moist:** I think we see countless examples, Mr. Chairman, of societies wherein those with the deepest pockets speak with the loudest voice. We ought to be considering going in another direction. and I think this legislation does that and deserves the support of the entire Legislature.

**Mr. Cummings:** Would you be interested in seeing this legislation referred to an all-party committee to go to further public consultation? It does have a broad base of interest out there beyond just those of us who are around this table. I wondered if CUPE would participate on that basis as well.

**Mr. Moist:** Well, through the Chair, this process we are into tonight is part of that public consultation. I have sat and listened to every presentation to date, and they come from a wide

number of perspectives. If, in fact, it is the will of this Legislature to create an all-party committee, we would obviously participate in that. I think the legislation, the main principles of it, speak for itself, and we are supportive of it, save for the provision instructing the Chief Electoral Officer to look at that question in the six-month period, and we will certainly participate in whatever group you set up for that question.

Manitoba is lucky. We have and I do not know if it is a practice or a law that requires public discourse and presentations such as I am doing now on all legislation. That there are only nine groups that have come forward, with all the publicity around this, is lamentable, but I think the legislation should proceed and that other piece should be discussed in due course.

**Mr. Gerrard:** I take it that you are in support of the provisions which would provide in some fashion increased public financing to produce the incentive to circumvent the provisions of the amendments. Is that correct?

**Mr. Moist:** In principle, yes.

**Mr. Gerrard:** One of the significant issues here is how to do this fairly that will not jeopardize the position of political parties which are starting up. What is your view on this as to how it can be done in a fair way?

**Mr. Moist:** I think any form of electoral rebate has to be based on something. It is a bit of a blunt instrument but it is often based upon popular support achieved in the previous election and that makes it a long road to hoe for third or new parties. Notwithstanding those hurdles that people have to leap over, I am not sure of any way to fully fund all interests who want to participate through non-mainstream parties. So I do not have an adequate answer for that question.

**Mr. Chairperson:** Any more questions? We thank you, Mr. Moist, for your presentation.

The next presenter is Victor Vrsnik, representing the Canadian Taxpayers Federation. Do you have copies, Mr. Vrsnik? Mr. Vrsnik, please proceed with your presentation.

**Mr. Victor Vrsnik (Provincial Director, Canadian Taxpayers Federation):** Mr. Chair, it is Victor Vrsnik, and I would like to thank the Committee for the opportunity to present on Bill 4, The Elections Finances Amendment Act. Given that I tend to stray from my presentation on occasion, I ask the Chair if my oral presentation will be recorded for the Hansard as opposed to strictly the written presentation.

**Mr. Chairperson:** Is that the will of the Committee? *[Agreed]*

**Mr. Vrsnik:** Mr. Chair, members of the Committee, the position of the Canadian Taxpayers Federation on The Elections Finances Act is informed first and foremost by our mission statement. The organization was conceived to act not only as a watchdog on government spending and to press for responsible and efficient taxation but also to promote responsible democratic reforms. The CTF is opposed to amendments in Bill 4 that if passed would unreasonably restrict freedom of speech and freedom of association. The Bill could also have a chilling impact on the taxpayer protection provisions of the balanced budget law.

We take exception to provisions in Bill 4 that place spending limits and regulations on citizen groups during an election period. Sections 52.2(1) through 55.11(6) should be completely erased from Bill 4. We do not believe that the Government's laudable goal of fairness in election spending requires restrictions on citizen group spending. Simply put, there is no evidence to support the contention that there has ever been any unfair effect by citizen group advertising during elections in Manitoba that requires legislative action. It seems like déjà vu. Whenever governments in the past tried to sideline citizen groups from participating in elections, the courts always ruled against them. In '83, the Trudeau government passed a law threatening Canadians with up to five years in prison if they spent any money independently during a federal election. It was struck down by the Alberta Court of Queen's Bench because it violated the right of freedom of speech.

In '93, the Mulroney government tried to limit citizen group spending to \$1,000 with up to five years in jail. Again, the Alberta court this

time ruled it violated the Charter of Rights. In '97, the *Libman* case was heard. The Premier of Manitoba has used the *Libman* case as a crutch to justify his own gag law, the spending restrictions on citizen groups. In the *Libman* case, the Supreme Court struck down Québec's referendum legislation which gave an advertising monopoly to the yes and no committee. The point is that the Québec government lost the case. The court ruled it was unreasonable to restrict individuals from advertising outside these two committees. Citizen group spending was never actually considered by the court, only if citizen groups were entitled to participate in the referendum. This was the purpose of the Supreme Court ruling. Fast forward to 2000 and the B.C. Supreme Court considered the *Libman* case and found the gag law provisions in The B.C. Election Act contravened the Charter.

Other presenters have already commented on what happened in the *Libman* case, and basically they say the jig is up here. There is no point discussing the *Libman* case, because it was based on faulty evidence. The Lortie Commission used evidence data presented by Mr. Richard Johnston, which he later concluded was invalid in the B.C. court challenge this year. In all these cases, the courts ruled that the governments infringed on Charter rights without reasonable justification, and it looks like Manitoba's election law amendments are heading in the same direction.

The Manitoba Government is dressing up Bill 4 in the name of equality and a level playing field. Again, these are laudable goals. The changes are stacked in favour of well-heeled political parties and candidates who can freely express their views with a virtual monopoly on issues and ideas. Election campaigns are not an exclusive club. All should be able to participate.

So-called third-party citizen groups or individuals will be limited to spend only \$5,000 and be forced to comply with a new set of owners, rules and regulations or face fines up to \$50,000. This is one part of the legislation that has been neglected is the impact on individuals who may have to retain lawyers and accountants just to be in compliance with the new law. That is unfair and that infringes on their freedom of assembly and freedom of speech. Citizens will

be expected, during elections, to keep silent and like good little drones queue up to the election box every four years. With this legislation, the Government is reinforcing lazy democracy.

The only available option for citizens now if this law is passed is to join a political party or keep their opinions to themselves, because the new law will not tolerate a challenge to the conventional wisdom of the registered parties and candidates. Meanwhile, political parties can lay out a million dollars in an election campaign. That is 200 times more than what a citizen group or individual would be entitled to spend. The political parties will have access to 21st century media technologies, mass media, while citizen group advertising will be reduced to shouting from rooftops, to quote a recent opinion editorial from yesterday's *Free Press*.

A spending limit of \$5,000 actually works out to only \$87 of advertising in each of the province's 57 ridings. So that will buy you about one 4-inch ad in a weekly newspaper. That is the extent of your ability to spend during an election. That infringes on freedom of speech. Conveniently, the new rules apply for everyone but government. Government can still spend unlimited tax dollars on advertising throughout the course of the year, while parties and citizens face unreasonable spending limits and tough fines for overspending.

Citizen group advertising complements the electoral process by presenting new policy goals or ideas outside the limited confines of the three-party system in Manitoba. The passage of the balanced budget law was introduced in this way in the 1995 election. The advertising was done by the Canadian Taxpayers Federation and has since become a landmark decision once it was passed, one endorsed by all the parties.

\* (19:40)

The CTF is also concerned that Bill 4 would end-run the taxpayer protection provisions of the balanced budget law. Amendments to The Elections Act that limit citizen group advertising could also apply to advertising for referendums on tax increases.

As it stands, the balanced budget law requires approval by voters in a referendum before

taxes can be raised. Opponents of tax hikes would be restricted to \$5,000 in advertising while the Government could spend a fortune promoting it. So much for a level playing field.

Citizen group advertising is an important line of defence against referendums on tax hikes. But the spending restrictions could effectively silence any protest.

Section 11(1) of the balanced budget law states that referendums are conducted and managed by the Chief Electoral Officer and The Elections Act.

Section 11(3) provides the authority of the provincial cabinet to make regulations related to the procedures of a referendum.

Mr. Chair, the question that the Premier (Mr. Doer) needs to answer is this: Given that the Government is using The Elections Act as the guidelines for holding the referendum and the Chief Electoral Officer is mandated to conduct and manage this process, will the amendments to The Elections Finances Act become the guidelines that the provincial cabinet will use in determining the regulations under the balanced budget legislation? Two, will the provisions of The Elections Finances Act related to citizen groups' spending be used in a referendum process?

The point here is that, although the balanced budget legislation does not make reference to The Elections Finances Act, it is the most obvious scheme which the provincial government can look to in order to determine how the rules surrounding contributions and expenses by participants in a referendum will be determined.

Premier Doer recently countered in the media saying the ad restrictions only apply to election communications that single out parties or candidates. I also saw the same argument made in a press release that came out today signed off by MLA Daryl Reid.

The wording of Bill 4 clearly states that the \$5,000 advertising cap also applies to the programs or policies of the parties and candidates. But it would be virtually impossible to find and publicize an issue that no party or candidate holds a position on. In the last elec-

tion, or just prior to the last election, we took out ads that said: Vote for income tax cuts. At the time, one party was not supporting an immediate income tax cut, another party was supporting an income tax cut. If this bill existed or if this bill was law back in '99, then our billboard, had we spent more than \$5,000, would have been ineligible. We would not have been entitled to raise that billboard simply because it referred specifically to a program or policy of a political party.

Another example, hypothetically, a party could say during an election that they oppose income tax cuts. That could be their declared policy. If we were to take out a billboard over \$5,000 saying we support income tax cuts, we would be referring specifically to the policies of the party's platform and therefore would be deemed ineligible.

A legal opinion solicited by the CTF from Crease Harmon and Company in Victoria concluded: "In our opinion, the citizen group provisions of Bill 4 are contrary to the Charter of Rights and Freedoms and will most likely be struck down if challenged."

The legal opinion noted that several provisions in Bill 4 are similar if not identical to sections of the British Columbia Election Act that were struck down as unconstitutional by the B.C. Supreme Court in the *Pacific Press* case.

Mr. Chair, for clarification, how much time do I have remaining in my presentation?

**Mr. Chairperson:** Four and a half.

**Mr. Vrsnik:** Four and a half. Thank you.

We are mystified why the Manitoba Government is now trying to pass near-identical legislation that was struck down as unconstitutional by the British Columbia Supreme Court this year.

I am just going to skip along here on account of the time limit.

### Point of Order

**Mr. Loewen:** We have been kind enough to give leave to all other presenters. I do not think we should ask this presenter to rush through, but he

is under the impression that he has only two and a half minutes. Maybe we could give leave now.

**Mr. Chairperson:** There is no issue yet on the floor. Proceed please.

\* \* \*

**Mr. Vrsnik:** Okay. Well, the B.C. Court made the following observations this year, that, first, the \$5,000 spending limit was not enough to get even modest attention on a province-wide basis in the middle of an election campaign. It was not even enough to get modest attention in many ridings, particularly those in urban areas. Two, there was no evidence that major citizen group advertising has or is likely to play a role in Canadian elections in the absence of these restrictions, and we believe the same holds for Manitoba's electoral experience. Therefore, legislative action in Bill 4 is unwarranted. Thirdly, the case of *Libman v. Québec*, the Supreme Court of Canada stated that spending limits were acceptable provided they were reasonable, is now in doubt. We have already covered that ground.

So the B.C. Court ultimately concluded that, while the Province made an interesting philosophical argument about the potential for citizen group advertising to affect election results, it actually presented no evidence.

Crease Harman, our legal counsel, wrote: "There is no doubt that an election gag law is a violation of the Charter."

To override the Charter rights, the government must prove with hard evidence that a gag law is a justified restriction on free speech and free association. The lesson from Nixon, *Pacific Press* is that, in order to successfully prosecute anyone under a gag provision, they will have to establish that the citizen group would have had an undue effect on the election in the absence of the gag provision. Crease Harman believed that nothing in the proposed Manitoba gag law distinguishes itself significantly from the B.C. elections act, nor is there anything in the Manitoba bill which deals with criticisms of the B.C. legislation made by the B.C. courts.

Mr. Chair, will the Premier explain what pressing and substantial circumstances warrant

the gag law provision in this bill? What is the motivating factor? The onus is on the Government to explain why it is reasonable to infringe on Charter rights in this case. Without a pressing reason, without any other evidence, hard evidence, the gag law provisions in Bill 4 are an unwarranted infringement on Manitoba's Charter rights.

Mr. Chair, will the Premier persuade us here today the pressing and substantial justification for treading over freedom of expression in Manitoba? Otherwise, we are forced to settle this matter in the courts, but there is a simpler and more efficient way to settle the issue in the courts without having to endure a costly and drawn-out legal battle. The Attorney General can easily refer this matter to the Manitoba Court of Appeal for a constitutional assessment. We requested the Government take this route in a correspondence to the Attorney General and copied to the Premier on July 20. To date, we have had no response from the Government.

Such a move is in the best interests of constitutional freedoms and, more practically, in the interests of mitigating any future costly legal challenges that could result should Bill 4 proceed through the Legislature in its current form.

Mr. Chair, if the Government is so confident their election amendments are lawful and constitutional, will they not confirm it in the Manitoba courts to satisfy all Manitobans that they are not acting outside the law? Incidentally, in *Libman* and *Pacific*, both the Québec government and the B.C. government lost their case to restrict citizen group advertising, and in both cases, the courts awarded costs in favour of the plaintiffs, meaning government and therefore taxpayers had to foot the legal bills. In the event of a court challenge to the Manitoba gag law proposal, the Manitoba Government will, in all likelihood, find itself covering our legal costs after the court strikes down their new election law as unconstitutional.

I table in the appendix at the back of this presentation the headnote and the awarding of costs for both *Libman* and *Pacific*.

\* (19:50)

So I, in conclusion, recommend that all sections that refer to third-party advertising in Bill 4

be deleted. Just to anticipate any questions and save a bit of time here, as far as the question of election financing and spending by political parties outlined in this bill, that falls outside the scope of our presentation strictly on third-party spending. Thank you for your time and patience.

**Mr. Doer:** Thank you very much, Mr. Vrsnik. Thank you very much for the presentation. Again, it has been a long day, so thank you for being patient to present to us. *[interjection]* What was that? I know we are getting warmed up, but I am just talking about the public.

Do you support the provisions to ban union and corporate donations that are a very big part of this bill?

**Mr. Vrsnik:** The issue of corporate and union donations falls outside the scope of our presentation, so I am afraid I do not have an answer to that question. Our focus is on the third-party spending provisions of the bill.

**Mr. Doer:** You could understand that there could be an argument made that if you had a ban in one area and did not have a ban in another area, you could have a potential loophole on the banning of union and corporate donations, could you not?

**Mr. Vrsnik:** I am not entirely sure what the loophole is. Perhaps you could clarify that for me, please.

**Mr. Doer:** Well, the loophole is you can go around the intent of the law to have a level playing field.

A further question. You mentioned in your brief the balanced budget law for purposes of referendums. Did the Taxpayers Association of Manitoba oppose this section of the balanced budget legislation when it was introduced in the Legislature?

**Mr. Vrsnik:** No, we did not oppose the provision if you are referring to section 10(1). No, we did not oppose it because we did not anticipate that a change to The Elections Finances Act would have the impact that it potentially has now should Bill 4 pass through.

**Mr. Doer:** Well, the sections of the balanced budget law give full power to completely elimi-

nate all election spending by any third party. It gives the Lieutenant-Governor-in-Council the ability to provide limitations which seems to me to be even more limiting, if you will, in its potential than the limited areas that are in this bill. Would it not?

**Mr. Vrsnik:** When that bill was drafted, there was no framework to determine how a referendum would unfold. Right now, the amendments to The Elections Finances Act are ushering in a new framework that could be used. Now that we have identified that new framework as harmful to a fair unfolding of a referendum, for that reason we are opposed to these amendments.

**Mr. Doer:** You used the word "could" be used, as I recall. The other ability or "scheme"—I think you used the word "scheme" in there—the other "scheme" that could be used could be the unlimited provisions outside of an electoral period, and therefore there would not be any limitations at all for a "scheme" on third-party limitations in a referendum period. Could there not?

**Mr. Vrsnik:** For clarification. You are saying outside an election campaign there would be unlimited spending by any party, or no, I guess in this case third parties during a referendum.

**Mr. Doer:** Right now, there are no limitations on third parties' ability to speak and express and advertise, et cetera, outside of an election writ period. Given the fact that that is the scheme in place for well over a thousand days out of perhaps 32 days a writ period, that also could be a "scheme" that could be used by cabinet for purposes of a referendum; in other words, the framework is also there to have absolutely no limitation on spending of third parties in a referendum. Is that not true?

**Mr. Vrsnik:** I would just like to get back to principles here, and we support the idea that there should be no limitation on freedom of speech, and advertising is a form of communication which is a form of freedom of speech. So whether it is the writ period or it is that thousand days of the year that you are referring to, we do not believe there should be any caps on our ability to communicate a message during whether it be a referendum or an election.

**Mr. Doer:** Yes, this limitation on third parties and the banning of union and corporate donations, this promise was made during the election campaign, and I believe it was opposed by you at that time in the election campaign, if I recall correctly. Is that not true?

**Mr. Chairperson:** Before we proceed, we need some leave to extend the question period.

**An Honourable Member:** Leave.

**Mr. Vrsnik:** Did the Premier say that we did oppose it or we did agree with it?

**Mr. Doer:** I recall you opposed it. I would be very surprised if you did not. I just wanted you to confirm whether you opposed it or not during the campaign.

**Mr. Vrsnik:** In all honesty, I do not remember the exact occasion that we discussed that, but if I was to hazard a guess, I am confident that we would definitely have opposed it, but I do not remember the circumstances when we actually discussed that.

**Mr. Doer:** The matter was before the public in the campaign, and certainly there was the ability of the public and organizations to contest this during the campaign as vigorously as they would choose. Just by way of clarification, are you, as the provincial director, elected or appointed by the Taxpayers Association?

**Mr. Vrsnik:** I was hired by the Chief Operating Officer of the Canadian Taxpayers Federation.

**Mr. Doer:** Okay. Thank you very much.

**Mrs. Mitchelson:** Thanks very much, Mr. Vrsnik, for your presentation, and I guess my question would be were you in any way in any discussion with the Government today around this legislation before it was introduced. Did you have any discussions or were you consulted?

**Mr. Vrsnik:** I cannot recall at any meetings with any government officials discussing the introduction of a bill that restricted third-party advertising.

**Mrs. Mitchelson:** There have been many presentations tonight that have indicated sort of

an all-party process or committee to take a look at elections finances. I am not sure, but maybe you do have an opinion. I might ask whether you have any position as an organization on sort of a common-sense approach to elections finances, and whether in fact you would have any opposition to all parties within the Legislature taking a look at what might be good elections finances law and developing some sort of a public discussion paper so there would be some input. Would you have any objection to that, and would your organization participate in that kind of a public process?

**Mr. Vrsnik:** In the event there was an all-party committee open to the public to discuss amendments to The Elections Act, in the event that the agenda included a provision to limit third-party spending, then, no, we would not support the idea of holding a committee because we believe that this provision is an infringement on our Charter rights and has no place in the grand scheme of things in a committee. If the committee is strictly to look at election financing for the political parties and election spending for the political parties, I have no objection to that going forward, but I am not entirely sure there would be a role for us in that committee.

\* (20:00)

**Mrs. Mitchelson:** I guess I know that you had an attachment to your presentation that talked about in the B.C. instance that the costs were directed to be borne by the Government of British Columbia as a result of the decision that came down, but I do not think it indicates anywhere, unless I am missing it, what the cost of that would have been to the taxpayers of the Province of British Columbia. Do you have any idea? Has that been public information?

**Mr. Vrsnik:** I do not know the answer to the question. On occasion they do settle outside of court. I am not sure if that happened, in which case it would not be disclosed necessarily, but I will endeavour to research that issue for the Committee.

**Mr. Loewen:** Thank you, Mr. Vrsnik, for your presentation. Just to go back to the Premier's (Mr. Doer) line of questioning, I took a little different slant from your presentation. On page 7 of your presentation you are referring to the part of the Act as it exists now and you have quoted.

I assume it is from the Act. "A referendum under 10(1) shall be conducted and managed by the Chief Electoral Officer in the same manner, to the extent possible, as a general election under The Elections Act, and the provisions of The Elections Act apply with necessary modifications to a referendum."

**Mr. Vrsnik:** That is verbatim from the balanced budget law.

**Mr. Loewen:** I guess my question would be, then, if under the Act as it exists now a referendum were called and cabinet were to make regulations which differed substantially from the election laws as they are today, i.e., they were to say, well, we are going to have a referendum but we are not going to allow any third-party advertising, would you be inclined to look for a legal opinion on the validity of that type of action by cabinet, given the previous clause?

**Mr. Vrsnik:** Yes, we would seek a legal opinion. In the event there was a scenario where a referendum was proposed and third parties or citizen groups were told they could not advertise or that their advertising would be limited, we would certainly challenge that decision in the courts and refer to the *Libman* case, where the Supreme Court ruled that it was unconstitutional to restrict third parties from participating in the Québec referendums outside of the yes/no committees. There is a great precedent to show that no government should move to restrict third parties from advertising not only during elections but referendums as well.

**Mr. Loewen:** Thank you for that clarification. Listening to the questioning from the Premier (Mr. Doer), I guess my understanding of his line of questioning was basically to the effect of wondering why you would not have objected to the fact that cabinet could have created any rules it wanted for a referendum. I believe you stated clearly that you were not concerned about that because of the clause that was in The Elections Act which prescribed that referendums would be held in the same manner to the extent possible as a general election.

Your concern now is that with the passing of this legislation that the same clause will still apply and that in fact it would change the nature of the balanced budget legislation so that in

effect the same limits that are proposed to apply to a general election would now apply to a referendum on the balanced budget, which would severely limit your organization's opportunity to present your views to the public. Is that accurate?

**Mr. Vrsnik:** Our interpretation of the balanced budget law was that in the event there was a referendum the guidelines of the referendum would be determined by The Elections Act, because, as stated in section 10(1), we did not anticipate that The Elections Act would be amended to restrict third parties, so obviously, therefore, we had no objection to the section, but it would stand to reason that The Elections Act would stand as the guideline for running the referendum as well.

**Mr. Doer:** This is the amendments to The Elections Finances Act and there is another act called The Elections Act. The law speaks to The Elections Act, the balanced budget legislation passed by the previous government. It does not speak to The Elections Finances Act. Having said that, you asked the question: What scheme would be used? (a) we are not going to have a referendum because we are not going to raise taxes, and (b), given the fact that cabinet has the power to deal with these regulations under this act, we certainly would have no difficulty with the provisions in The Elections Finances Act that do not limit third parties. Just to answer your question.

**Mr. Chairperson:** Who has the floor this time?

**Mr. Doer:** I just was clarifying. There are two different acts we are talking about.

**Mr. Vrsnik:** On page 8, I make that point. Although the balanced budget legislation does not make reference to The Elections Finances Act, it is the most obvious scheme which the provincial government can look to in order to determine how the rules surrounding contributions and expenses by participants in a referendum will be determined. So I acknowledge that it does not reference it, but it stands to reason that they would fall back on The Elections Finances Act for a referendum as well.

**Mr. Gerrard:** I want to pick up on your comment in terms of the restrictions as they would

apply to election communications expenses and your belief that Premier Doer is mistaken in reading his own gag law as it would apply to what would and would not be an election communication expense.

There likely is to be some grey area here in terms of the extent to which people could comment on issues without their being considered election expenses, but I take your point that a lot of what would be said and might be said on issues in fact would really have to come under the election communication expense rule and therefore would be restricted.

**Mr. Vrsnik:** There seem to be a lot of questions concerning the amendments in the Bill that deal with what is an election communication, but in our opinion, even if you took out the section in the Bill that referred to policies and programs of the candidate or a political party, we would still object to the fact that we cannot even comment on parties or candidates.

We believe that any individual or any group should be entitled to comment on the actions of a party or an individual candidate. We think this is totally appropriate in the context of a democratic society, and to be told that you cannot comment on a candidate or a party, but you are entitled to vote for them, you are responsible enough to vote for them, but you are somehow a menace to society when it comes to expressing your opinion about them, we consider that is an infringement on freedom of speech, so yes, there is grey area in the section that you are citing, but we think the whole part should be stripped right out of the Bill.

**Mr. Gerrard:** If this were to be enacted as it is currently, then because there is that grey area and uncertainty, it would be my sense it would make it very difficult during an election campaign to feel comfortable in what you said and how you said it, and really being able to get your message across. Is that right?

**Mr. Vrsnik:** Well, not only would we be uncomfortable but we would probably be financially strapped because we would probably have to, in order to comply with the new regulations, hire lawyers and accountants just to be in compliance with the Act. Your question is

whether we would be able to proceed with advertising. I have already, in my presentation, put forth an example where a past advertising expense or in the last election could have been construed as an infringement or as a breach to this bill if it were passed as law.

\* (20:10)

**Mr. Loewen:** I just want to preface this by saying I think it is unfortunate that a member on the government side has chosen to use language in a press release today which I think is very unfortunate, and certainly language that we would not be allowed to use against each other in our debate within the House. I am not quite sure why he decided to use that type of language in a public release.

You would think he would know better, but I think in particular I would like your opinion because he states in his newsletter that "the provision in question allows unlimited third party advertising on any issue they wish. The \$5,000 limit applies only to ads which are explicitly partisan, those which specifically endorse or oppose a party or candidate." I certainly disagree with Mr. Reid's interpretation, particularly when in the Act the language also includes "program, or policies, or actions, or proposed actions of a candidate or a registered political party." I am just wondering if you are of the same view as Mr. Harper on the National Citizens' Coalition in terms of the restrictiveness in this act.

**Mr. Vrsnik:** I disagree with Mr. Reid's interpretation of the Bill. We believe that there is not one policy that we could come up with that would not somehow affect a policy of a political party as a taxpayer advocacy organization. I have already cited an example. The National Citizens' Coalition is also opposed to third-party provisions, and in that sense, we agree with the fact that they oppose them.

**Mr. Loewen:** One other issue with regard to the press release, because it goes on to refer to the *Libman* decision, and just to confirm that from the significant legal work that you and other presenters have done, but to you specifically in your view and the view of your organization given the recent decisions in B.C., the *Libman* decision and the reversal of Mr. Johnston, the

*Libman* decision has no bearing on this issue whatsoever.

**Mr. Vrsnik:** The *Libman* case does not have any bearing, only insofar as it demonstrates that a government imposed election law which restricts third parties from participating in elections was struck down and that is meaningful because it is not the first time, and I do not believe it will be the last.

To respond to your comment about the restriction on advertising, whether it be a candidate or a policy, I just want to reiterate the point that as far as we are concerned, it is moot whether this is grey area or not. Whether it is a \$5,000 restriction or a \$10,000 restriction, and you have set up the parameters of what is considered a political or partisan ad, again, to us, it is still a violation of free speech. So for us to discuss the mechanics of this bill is a lost cause because first you have to get past the test of whether this is a reasonable infringement on free speech, and there are enough precedent cases out there that should caution the Government not to proceed any further with this bill as well.

**Mr. Loewen:** Just one final question. Has your organization taken a position on whether the Government should continue giving tax credits to those who make contributions to political parties?

**Mr. Vrsnik:** We have commented in the past on contributions to political parties and the tax credit portion of it and found that they were far more generous than contributions to charities and that there is an imbalance there that should be straightened out.

**Mr. Jack Penner:** During the past federal election and the past provincial election, there was a significant effort put on to at least clearly identify federal government policy, in other words, on Bill 68, the gun control legislation, and there were numerous organizations that embarked upon significant advertising campaigns that took issue with this. During the last provincial election, there were numerous organizations that were involved in advertising, as a matter of fact, in significant campaigns, and whether unions were involved in it or not I do know, but there were significant campaigns

mounted to deal with the health care issues, to deal with frozen food issues, and many other issues.

The Manitoba Pork Producers during the 1995 election took significant issue with the single desk selling issue and did a significant campaign on that. The Keystone Agriculture Producers, and the latter ones are both agricultural organizations, have advertised on numerous occasions during election campaigns their positions or taken issue with government on policy positions. Now, Mr. Vrsnik, according to what you have indicated, all these organizations would be eliminated from making their views known on policy positions of government and/or programs of government. Is that correct?

**Mr. Vrsnik:** The ads that I can recall during those two elections that you cited, under this bill, should it become law, providing they spent more than \$5,000, they would not be entitled to proceed with that kind of advertising. The trouble with this debate that we are having right now is that when you talk about these spending limits, it is built upon the premise that the more money you spend, the more impact you are going to have on citizens.

I am not convinced that that is a valid premise, and it has never been borne out by any scientific evidence. I start from the point that individuals think for themselves. They are not automatons that are influenced by advertising. Advertising during an election helps frame the debate, it advances ideas, and whether those ideas comment on a government policy or not is beside the point. The fact is it creates a debate and a dialogue, and individuals will decide themselves. There have been cases where more money was spent in favour of a certain position, for instance, the Charlottetown Accord where the "yes" side outspent the "no" side. I believe it was by a factor of 7 to 1 or something like this. The "no" side prevailed. It goes to show that not all advertising will determine the results of an election or referendum. So let Manitobans figure it out for themselves and let the debate proceed because elections should be open to everybody and not restricted to simply the political parties.

**Mr. Jack Penner:** Thank you very much, Mr. Vrsnik. I think you just touched on a very key

and important issue in election campaigns. You said it caused the debate, and you brought forward issues. Whether it actually influenced the outcome of given elections is questionable, as you indicated in the two court cases that have been tried on this.

\* (20:20)

What I find most significant about this is that the groups that normally influence the thinking and the debate will now be prohibited from bringing forward the debate, in other words, raising the issue during the campaign. Those debates, I have found during my tenure in government, very often lead towards significant discussions after elections which cause government to take action to resolve the issues that have been brought forward during a campaign.

Can you tell me how your organization, the Taxpayers Association, would be limited from bringing forward the idea that significant changes in tax policy should be made under this legislation, or would you be entirely prohibited from bringing forward those debatable issues during a campaign?

**Mr. Vrsnik:** Well, we are afraid that this bill would leave some individuals who are in control of the Act with a conclusion that certain advertising is politically partisan even though the public may not believe it is politically partisan. There does not seem to be a clear, definitive way of establishing one way or the other. There is room for ambiguity, but beyond that, we do not believe in any kind of limits to freedom of speech or any kind of limits to advertising.

Back in '95, there is an example where our organization spent about \$37 in advertising supporting balanced budget law which was at the time debated and opposed by some MLAs from some political parties and supported by MLAs from another political party. It could be construed that, had this bill been the law back in '95, our advertising would never have gotten off the ground, in which case there may not have been a debate around debts and deficits, in which case the elimination of our deficit may have been delayed considerably. I believe that our advertising campaign had a positive impact on the political landscape.

In more recent years, we have taken out advertising in support of tax relief. Now that

also seems to have become an issue that has been embraced by all political parties as well. They choose their different types of tax relief, but tax relief in principle has been embraced. It is a public policy idea that we do not take exclusive credit for it but that we helped usher it along, and we are afraid that the provisions in this bill would prevent us from ushering these issues along in the future which would have a positive impact on the political landscape and the financial status of the provincial government.

**Mr. Jack Penner:** Mr. Vrsnik, thank you very much. I think you have just made the case that I was going to raise, and that is that I believe that political involvement by an organized effort certainly did raise the debate on tax reduction and in fact, I believe, without question, influenced the Government to bring forward balanced budget legislation. It is going to be interesting to see what kind of limitation on debates we are going to have under this new law unless it is challenged in the courts regarding its validity. But truly I believe that we would not have discussed today balanced budget legislation at this table had it not been for the issues having been brought forward by organizations such as yours and others during campaign doing the kind of advertising that I thought allowed it to bring forward.

I think quite frankly that the determinations on elections are largely based on policies and actions of government. But the influence of government to take those actions is very often brought forward by groups in their advertising campaigns during elections.

Thank you for your presentation.

**Mr. Chairperson:** Committee thanks you, Mr. Vrsnik, for your presentation.

The last presenter on my list is Brian Hanslip, President of the Manitoba Party.

**Mr. Brian Hanslip (President, Manitoba Party):** My name is Brian Hanslip. I am the President of the Manitoba Party. I do not know what else I can add tonight. You certainly have a lot of documentation in front of you. I hope that you will read over the documentation. It is imperative that you do so, objectively read it over, consider, weigh all the options that we

have here. We are talking about democracy, share representation and objectiveness in our democratic society.

As far as some of the comments that were made this evening, it is kind of ironic that I am the last speaker because we are the new kid on the block, the Manitoba Party. We are just over two years old now, so it is quite good that I have this opportunity now. I thank the Committee for lending an ear, and I hope you will lend an ear, because I know you have listened to a lot today. Please listen up because this concerns mainly the Manitoba Party, and we are very concerned with this.

We are made up of a growing membership of concerned Manitoba taxpayers and like-minded organizations and groups. I say like-minded not partisan, like-minded organizations and groups that are very concerned with Bill 4, because we feel that it undermines democracy, undermines freedom of speech, undermines freedom of association. You have heard this tune already over and over today, and I want to be emphatic on that point because we believe that.

*Mr. Vice-Chairperson in the Chair*

It especially undermines the Manitoba Party's financial base, of which we need to get our information out to the public, our policies and principles and our platform. That is imperative for us. The public, let it be known, has a right to hear from the Manitoba Party our policies, our principles and our platform, and that is the major concern of our political group.

I am all in favour of having an all-party committee set up. I would like to be involved in that. The Manitoba Party is a legitimate, registered, political party in Manitoba, and I would like to be involved in that, but I am all for an open debate within all parties in the Manitoba Legislature to discuss this and come up with the best solution.

You have already heard the case in B.C. on third-party advertising, ambiguous, open to interpretation, not democratic. Any business, any political group, any social group has the free public domain to advertise when they want, how much they want and where they want. That is

called democracy. If I am standing here tonight and listening to a bill that is going to undermine that right of not just political parties because it sends a loud message to the business community, Bill 4 should be trashed. That is my personal opinion. It is not democratic.

Mr. Doer, with your rhetoric about what would you like to do, would you like to see corporate sponsorship from the union, the labour forces continue. You know what? I do not know if that would make a difference at this point. It is very convenient for the NDP right now, since they are in power, to all of a sudden announce amendments to The Elections Finances Act that is going to restrict people in associations, the political party, the Manitoba Party.

I take offence to that, sir. I do not think that is fair. I think it is easy to say that because you are in a position now to take that away from us, our democratic right. I do not think that is fair. It is easy to say that right now because you are in power. As far as whether we want to allow labour unions to sponsor or advocate or get behind the NDP, I believe in my own opinion that is going to happen anyway with different PAC groups, in new advocacy issue groups, which, when we talk about that again, is open to interpretation, which is ambiguous, because right now if this bill went through, my question is: How are you going to differentiate between a group that is suddenly out there right now or that is going to be created in the future that espouses the same or similar political, social views as the Manitoba Party policies and principles? Can you please explain that to me? That does not make sense. We all have a right to advertise. We all have a right to espouse our political views. Everyone has a right to get behind a candidate or political group and say, I agree with this, and not be afraid to be intimidated with bills like Bill 4. Thank you.

\* (20:30)

**Mr. Vice-Chairperson:** Thank you for your presentation. Do members of the Committee have questions to address to the presenter?

**Mr. Loewen:** Thank you, Mr. Hanslip, for your presentation. I appreciate the fact that you sat through a number of hours of previous presenta-

tions and stuck with it. I think you are to be commended for that. I am sorry I missed the very first part of your presentation, but I think part of the thrust of it is that certainly in terms of a, if I can use the word, neophyte political party in the province of Manitoba, you certainly see this legislation as restrictive upon your ability to expand your base of support amongst like-minded individuals and certainly hampers your ability to generate enough public discourse on issues to suit your abilities to mount an effective campaign in any future elections.

*Mr. Chairperson in the Chair*

**Mr. Hanslip:** That is precisely right. That is our main concern. We have a limited financial base already, but it is going to be even more so limited if this bill comes through. How are we as a new political party going to get our message out, our principles and policies, through whatever advertising venue we choose if we are restricted? I mean, we are restricted now. This bill favours the incumbent government and the opposition. If anything I think Bill 4 should be on the shoulders of the incumbent and maybe possibly the opposition government, because they have that base already set up. They have their reputation. They have years of a head start over the Manitoba Party. If anything, if you want to have a bill, keep it and regulate that, but do not regulate a new party like the Manitoba Party. Give us a chance. You talk about a fair playing field. Well, that would be fair to me.

**Mr. Cummings:** I would just like to thank you for your presentation and tell you that I believe you have amply demonstrated what one of the concerns was that we raised early on this evening, that fledgling organizations and individuals could possibly have a much more difficult time and, very likely, if this bill is passed in its present form, have an extremely difficult time participating in the process in this province. Thank you for your presentation.

**Mr. Doer:** I want to thank you for your presentation, Mr. Hanslip.

As I understand it, the restrictions on registered political parties in this act is the amount of money they can spend between elections, the prohibition of union and corporate

donations and a comparable amount of money we can spend for advertising in a campaign in an election expense, which I would suggest the new party, the Alliance Party, will be going through similar federal laws in terms of restrictions. save the union and corporate donations, in terms of their newness in the Canadian political system, or the Reform Party did 15 years ago, or the NDP did after the '30s.

Is the union and corporate donation restriction the restriction that then limits the new parties that start. because we all have the ability to raise money from individuals up to \$3,000?

**Mr. Hanslip:** Well, the Manitoba Party constitution as it stands right now, the only funding or corporate sponsorship or advertising or partisan group supporting us, we have through our constitution at one of our assemblies a resolution was passed that we will not accept federal money, and that is it. Besides that, we feel it is the free, democratic right of any group, as I say, to support who they want and spend as much as they want.

**Mr. Doer:** The existing laws in Manitoba do restrict all political parties from advertising. You could argue that the limit is too high, but if you had unlimited advertising for established parties would even give them a greater advantage, would it not, over a new party? At least there is some ceiling under which all parties have to compete on a playing field. Is that not correct?

**Mr. Hanslip:** Well, I believe in democracy, and I am true blue to democracy. Like the last speaker said, people, if they are politically astute enough—and I hope through our campaigning strategies that the people we talk to and the response we get is that—people will vote the way they want anyway. We have seen it in politics throughout the years with the PCs federally a few years ago and Manitoba this time around, and federally we have seen it with the Liberals sweeping into power. So I think when people make up their mind, I do not think any amount of advertising—unless you are McDonald's because that kind of advertising, I think, works.

Advertising works to a certain degree, but I think our society today is inundated with info commercials constantly bombarding. I think they

editor out that. I know I do that, so I am not too concerned about who is spending what and how much. All I am concerned about is during the writ period, I want to, with the Manitoba Party and our groups, be able to advertise as much as we can to get the public's attention at that time because it is critical during the writ period. I am not so concerned about the non-writ period. Well, during the writ period this time around we will have a full slate, so we are going to get attention. So I am not worried. But during the election period, the writ period, we should be able to advertise to compete with the other political parties, and if we are restricted—

**Mr. Chairperson:** Before we proceed any further, we need some extension of time. Is there leave on the part of the Committee? *[Agreed]*

Mr. Hanslip, proceed.

**Mr. Hanslip:** Okay. I do not want to take up much more time. I think the point has been made over and over tonight, and we are all tired and want to go home and have something to eat. I do. I am hungry. Democracy, we do not really care. We want a chance, a fair playing field, that is all. Bill 4 is not going to give us that opportunity. We are not adverse to any group supporting any other group. I do not care how much money they have, the people will decide always in a democracy. That is the bottom line. Just let us be objective and rational about this, that is all I would ask. Thank you.

**Mr. Chairperson:** Thank you, Mr. Hanslip, for your presentation.

That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation? Seeing none, is it the will of the Committee to proceed with the clause-by-clause considerations of Bill 4 and then Bill 17 and, if yes, in which order do you wish to proceed?

**Mr. Doer:** I think we had indications that there was nobody presenting on Bill 17, but we were going to take all the presenters, so we should check and see if there are any presenters on Bill 17, I would suggest, before we get into the more potentially contentious discussions.

**Mr. Chairperson:** Is there any addition to the presenters listed here under Bill 17: Paul

Nielson, private citizen; Rob Hilliard, President of the Manitoba Federation of Labour? Any other additions? No.

**Mrs. Mitchelson:** I just want to indicate at the outset of my comments that I have to thank the government members and the Premier for seeing the light in showing the courtesy to all of the presenters on this legislation the opportunity to complete their presentations and the opportunity for good discussion and dialogue with the presenters from both sides. I think it was the right approach to take, and obviously there has been a lesson learned since the days of the education bills that were before this committee. So I just want to say thank you.

I would like to recommend that we take some time over the next few days to digest the presentations that have been made and ask the Premier to seriously consider the significance of the comments that have been made. I think all of the presentations were extremely professional, well presented, and there were strong points of view on many of the issues. I would encourage the Premier to think very carefully about what has been said here tonight, certainly in light of the fact that previous to the election he did indicate that there would be an all-party process for looking at changes to elections finances and that has not occurred.

\* (20:40)

We see a bill before us today that had no input from either opposition party or indeed any other Manitobans. I think it is important that he think very carefully about the presentations that were made and the presenters that provided, in most cases, an indication that they would be quite amenable to participating in some way as third parties in a process that all political parties had some input into around elections finances. I do not think there is any argument that we all agree that a thorough review is needed of elections finances, and I think the disagreement that we have would be in the unilateral heavy-handed approach that government has taken and that this Premier has taken.

Certainly I believe it is in the best interests of all Manitobans, and certainly the presenters that were here tonight spoke on behalf of a lot of Manitobans, that further discussion and dialogue is required. So I would recommend that the

Premier take some time to think about the direction he is taking with Bill 4 and possibly come forward next week with a recommendation that this bill be delayed to the next session of the Legislature and that a truly meaningful process is put in place that would allow all political parties the ability to have some input, and we could see true meaningful elections finances reform as a result.

**Mr. Chairperson:** Is it the will of the Committee to proceed with the clause-by-clause consideration of the bills, and if so, in which order do you wish to proceed?

**Mr. Doer:** I think that—*[interjection]*

**An Honourable Member:** On a point of order.

**Mr. Chairperson:** Point of order being raised.

#### Point of Order

**Mr. Loewen:** Thank you for recognizing me, Mr. Chair. I do believe I had my hand up to speak prior to moving on with this, and I think it is unfortunate that maybe I did not get on the list, but I would appreciate with the leave of the Committee the opportunity to speak.

**An Honourable Member:** He is still recognizing speakers.

**Mr. Loewen:** I am sorry. I thought we were moving on to a new—

**An Honourable Member:** No.

**Mr. Loewen:** Okay. Sorry.

**Mr. Chairperson:** There is no point of order because you can speak any time you raise your hand.

\* \* \*

**Mr. Doer:** I think that the Interim Leader of the Opposition made the point that this committee has (a) established the rules, but (b) has flexibility, and part of our flexibility is in recognizing that the public right to be heard has to be balanced with the public right to be heard with a number of presenters over a period of

time. So I think this was obviously the common-sense way to go to give leave after the rule was established, and I think the presentations as the Member opposite indicated were helpful.

Really, there were three sorts of presentations tonight. One was the presentation for the Bill. There were not as many as were against the Bill, and the opposition to the Bill for the most part was dealing with the limitations of third parties. Some dialogue in questions and answers in the Committee indicated that there was a fundamental principle that was enshrined and therefore not implementable in the sense of having wording on that. Other presenters indicated that, in the question and answer particularly, there was some concern about the Chief Electoral Officer, not the Government, but the Chief Electoral Officer's ability to—or the consistency of interpretation.

I just want to give notice to the Committee that I personally would like to propose an amendment based on the discussions. I am not going to make the exact wording, but just give notice, based on the presentations I had over the last couple of days plus tonight, to establish an advisory committee with the Chief Electoral Officer—will establish an advisory committee to deal with third parties in terms of the communications issue, in terms of election communications. This advisory committee would consist of the registered political parties, which I think are already commented on in section 4, and members representing the media, who will inevitably have to deal with this issue as they so correctly pointed out. So this is one suggestion we have to deal with the one area of concern at the public hearings.

I recognize there are other presenters that are opposed to any limitation on third parties. We promised in the election to come forward with that, but that would deal with the ability to have the other political parties involved with the Chief Electoral Officer and representatives of the media industry. There were two here tonight: the broadcast association, and the newspaper association. I think it is fair to say that, because it is new, I do not agree with all the interpretations that have been given, but I think it is important that the person who is going to interpret get advice from those who will be most

directly affected, i.e., the political parties and the media itself that has to deal with that. So we are digesting, as the Member opposite indicated, some of the ideas, and certainly they are some of the areas where we are proposing to go to deal with some of the concerns raised by members opposite and members of the public.

**Mr. Chairperson:** The Chair asks again: Is it the will of the Committee to proceed?

**Mr. Loewen:** I concur with the Interim Leader of the Opposition's comments and the Premier's. I do appreciate the fact that we had an opportunity to not only hear presenters but to ask them the questions that we felt necessary. I do think it would be advisable for this committee to take some time. While I appreciate the amendment that is being proposed by the Premier, I am not sure if he mentioned to one of the early presenters that he had an amendment prepared tonight, and if that is the same one that is fine. If there are others, I would be interested in those as well.

Again, along the lines of a number of the presenters, I do not feel that there is any big rush to pass this bill, and if in fact it is the will of the Premier and of the Government to establish a committee with the Chief Electoral Officer, I think that would be a wise move. I think it would be most wise to let that committee and let the Chief Electoral Officer deal with the whole legislation, because it is the Chief Electoral Officer who is going to have to live with some of these issues here.

I would also say that it would be my preference, if we did not close off public representations tonight. We had a situation where the Bill was presented to the House this week, committee called this week—it is summer, the week before the August long weekend. There are people who are away on holidays, a number of whom may have wanted to present to committee on this bill and who will be back early next week, and as we do not seem to have a reason for rushing this bill, if maybe we left it open, we might avail ourselves of hearing some more valuable presentations at the next sitting of this committee next week. I think, once again, in the interests of public consultation and interests of input, it would be advisable to hold open the

public hearings and take time to digest all of this.

\* (20:50)

**Mr. Doug Martindale (Burrows):** My understanding, and I guess we are open to procedural interpretation, is that based on the script that you read, we are finished with public presentations, but it has been suggested and I think agreed to by the two leaders that we deal with Bill 17 tonight, it is a noncontentious bill, and that we ask the House leader to sit on Tuesday afternoon. I believe from four to six has been suggested, and I think we need to maybe canvass the Committee and see if those arrangements can be agreed upon by the Committee.

**Mr. Chairperson:** At the initial meeting, we agreed the Committee will proceed until we are done, but the Committee may wish to proceed now with Bill 17 and do something else some other time, but only the House leader, by agreement, and only in the Chamber, in the House can we change the announced committee meetings.

**Mr. Doer:** I just discussed this with the Interim Leader of the Opposition, and we all know that any clause can be debated ad infinitum if there was no agreement, so the public presentations have completed and we have agreed with that on Bills 4 and 17. I would suggest we proceed with Bill 17. I do have one amendment on that consistent with the speeches that I was giving the other day, a compromise, actually, between the speeches on advance polls and the ability of the Electoral Officer to deal with that with a reduced period of time in the election campaign. I will be specific, going from five to six. If we go to seven it goes to Sunday, the night before the election, and if we do it any earlier, the voting lists will not be ready because the nomination date is over. So we have gone over that idea, because my goal was to get back to seven after the eloquent addresses of members opposite.

Thirdly, we would have a timed item by leave in the House from four to six to deal with the clause by clause. I have a particular—this would be an act of trust on my part, because I have the difficulty of having to chair this meeting that was scheduled a year ago, so there are a fair number—in fact, I do not have a nano-

second next week with everything going on. I will try to change some schedules and act accordingly. But, if we can do that on Tuesday, 4 to 6, by leave, I know there will be other business of the House conducting at the same time, so we can deal with 17 tonight and then have an agreed-upon time, 4 to 6. Otherwise, we should just keep going tonight.

**Mr. Chairperson:** Is it agreed that all public presentations on Bill 4 and Bill 17 are now completed? *[Agreed]*

Is it agreed that we shall proceed with the consideration clause by clause of Bill 17? *[Agreed]*

#### **Bill 17—The Elections Amendment Act**

**Mr. Chairperson:** Let us then proceed with Bill 17. Does the Minister responsible for the Bill, the Honourable First Minister, have any opening statement to make?

**Hon. Gary Doer (Premier):** Yes, I have an amendment to section 16 of the Bill, so just to alert the Committee that we amended to go from five days to six days. The Chief Electoral Officer has listened to the speeches and some of the concerns about advanced polling stations and other matters, but we are proposing in essence six days from the Monday for purposes of advanced polls.

In essence, the first bill went to five, does it not? Then we went to six, and then we are down to—*[interjection]* The former bill was seven; the new bill went to five; and we are proposing to amend it to go to six. I will just give that by way of notice. We will wait till we get to section 16.

**Mr. Chairperson:** We thank the First Minister. Does the critic for the Official Opposition have any opening statement?

**Mrs. Bonnie Mitchelson (Interim Leader of the Official Opposition):** Mr. Chairperson, I know that a lot of the amendments in Bill 17 are as a result of the Chief Electoral Officer making recommendations. I do not think we have too many issues with that.

We do have a couple of concerns. I think I did speak about them in my comments on second reading. I have some amendments to

section 11 of the Act, and it might be important right now. There were several concerns put on the record around ensuring that there was fairness and balance as we moved into allowing designated election volunteers to be appointed and ensuring that they had the opportunity to participate without employer interference. I guess we just really felt that there needed to be a time frame or a time line. There was some concern on our part that an employee might walk in one day and say: I am gone for five weeks, in writing, under the law, to be a designated volunteer for a political party or a political candidate; and there would not be any provision for an employer to have the time to think through what the alternative plans might be.

We thought it might be important to have a time frame, and a tight time frame, introduced into the legislation, that would indicate that written notice would have to be given to the employer. Do we want to wait till we get to the clause to go through this, or do you want to—

**Mr. Doer:** Why do you not let us know and then we will caucus. If we are going to really listen to you discuss it, we will get advice from political people, legal people and the Chief Electoral Officer, and then we will be able to make a more intelligent decision. But we are not throwing any good idea out before we hear it.

**Mrs. Mitchelson:** Our suggestion and our amendment will be adding to section 11 of the Bill that the employer be served notice in writing not less than seven days before the requested leave is to take effect and subsequent to that, when the request is made in writing, that the employee notify the employer that there is an ability to object or try to obtain an exemption from the Labour Board. That should be in the written notice requesting leave, but there should be then a very tight time frame around the employer appealing to the Labour Board. I think we have recommended in three days of the application being received the Labour Board would have to make a decision and get back. That would still be binding, as it is right now under the legislation. So what we are saying is that there needs to be some consideration to the employer to ensure that they have the ability to replace that staffperson should they request to leave.

I think that in many cases the employee may know considerably ahead of time or pre-writ in a significant period of time that they are either going to be a candidate or are going to be appointed as a volunteer. In the spirit of co-operation, I think an employee and an employer might have that kind of discussion. So an employer might have a heads up that an employee will be once the writ is dropped leaving and these kinds of things could be decided and an employer could be prepared for it, but I just think with fairness and balance there should be the ability for that kind of notice to be given and the employer having the opportunity to replace that person. So we did not think that seven days was an unreasonable amount of time to look at.

\* (21:00)

**Mr. Doer:** Just on this, the appeal period is supposed to be, quote, on an urgent basis. I am a little worried that I agree with the Member that if people are anticipating an election to be called, I certainly do not want them to know that an election is going to be called. We certainly never knew when the former premier was going to call an election. We just watched the staff walk around with briefing books in the summer, and then we knew when he was getting ready to call it. But having said that, the intent is to have a balance between an individual citizen's right where there are examples where the operational requirements of a company would not allow that to have some protection for the employer.

I think the accumulation of both periods of 10 days could possibly mean that a third of the election would be gone if it was after the writ period. We will caucus on it, but I think if we agree on the principle of volunteers and we agree on the principle of the right of a person to take leave in an election campaign subject to the operational requirements of the company, I think this a major step forward. I think we would want, maybe it might be five days because seven is too long, up to five and then the urgent basis I think covers your concern, because in a northern case it could be a little different than say a southern case. So we thought that the word "urgent" was valuable. That was advice we received from the Leg. staff and the Chief Electoral Officer.

Why do I not canvass five, and let us take a five-minute recess, if that is good. Would that make sense?

**Mr. Chairperson:** Is the Committee agreed on a five-minute recess?

**Mrs. Mitchelson:** Just one more comment. I think we are flexible on that. I think all we want to do is ensure that there is notice given and there are a few working days in order for an employer to make the determination on whether alternative arrangements can be put in place. I am not caught up on whether it is seven days or five days. Maybe the time between the Labour Board sort of receiving the request by an employer and providing their decision could be tightened up, because it is critical. I do not think we want to inhibit a volunteer from participating. So I would appreciate the five-minute break, and we will come back.

**Mr. Doer:** Could we look at five and keeping "urgent"? The "urgent," I think, is pretty good. I know the language was developed by the Chief Electoral Officer on the urgent basis, with the thinking that if somebody in Concordia might be able to get it, it should be one day to find out yes or no, and somebody in The Pas it might be four days, but there is an urgency to that. There is also a provision there, I think, to have the appeal electronically so employers do not have to come down to Winnipeg, et cetera. But let me consult with the Chief Electoral Officer.

**Mr. Chairperson:** A five-minute break.

**Mr. Glen Cummings (Ste. Rose):** Just one question for clarification. I do not see it here in an obvious way. What is obvious is that leave shall be granted. But if the employer is appealing, is the leave granted automatically and then the appeal reverses it? I see heads shaking. Okay. What clause should I be looking at?

**Mr. Doer:** Clause 24.2(1).

**Mr. Cummings:** Well, I can ask the question perhaps of the council privately, but I am wondering if there is going to be an appeal, if the employee stays at work while the appeal is on. Is that understood?

**Mr. Doer:** I am certainly willing to allow you to talk to somebody—

**Mr. Chairperson:** We certainly need a break. Committee will recess five minutes.

*The Committee recessed at 9:05 p.m.*

*The Committee resumed at 9:25 p.m.*

**Mr. Chairperson:** During the Committee's consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? [*Agreed*]

Clauses 1 to 3—pass; clauses 4 and 5—pass; clauses 6 and 7—pass; clauses 8(1) to 9(2)—pass; clause 10—pass. Clause 11.

**Mrs. Mitchelson:** Mr. Chairperson, I move, in both English and French,

THAT section 11 of the Bill be amended by adding "to their employer not less than five days before the requested leave is to take effect" at the end of the proposed subsection 24.2(2).

**[French version]**

*Il est proposé que l'article 11 du projet de loi soit amendé par adjonction, à la fin du paragraphe 24.2(2), de "à leur employeur au moins cinq jours avant que le congé demandé ne prenne effet".*

**Motion presented.**

**Mr. Chairperson:** The amendment is in order.

**Mrs. Mitchelson:** Mr. Chairperson, we have had an opportunity to have a bit of a recess and discuss this. I think all members of the Committee have agreed that this amendment will put some fairness and balance to ensure that both the employer and the employee have an expeditious result to a request from an employee.

**Mr. Doer:** Yes, we thank the Member for the amendment. We think the principle of having candidates and employees and officials having the right to participate in a democracy is a solid

principle for us. We think the ability to do that within the confines of an operational requirement of a company is certainly the spirit of the Act. I think this provides greater definition. On the advice of the Chief Electoral Officer on a technical basis, not a policy basis, and legal counsel, we certainly support it.

**Mr. Chairperson:** Amendment—pass. Shall Clause 11 as amended pass?

\* (21:30)

**Mrs. Mitchelson:** We are just waiting for an additional amendment that is being printed right now.

**Mr. Doer:** Okay. That is dealing with the three days? Okay.

**Mrs. Mitchelson:** Mr. Chairperson, I move, in English and French,

THAT section 11 of the Bill be amended by adding the following after the proposed subsection 24.2(2):

**Notice of employer's right to request exemption**

**24.2(2.1)** A request for leave from an employee must contain a statement that the employer has the right to apply to the Manitoba Labour Board for an exemption to the requirement to grant leave within three days of receiving the request.

**Timing of request for leave**

**24.2(2.2)** A request for leave may be made in advance of a writ of election being issued provided that an employee meets one of the criteria contained in subsection (1).

**[French version]**

*Il est proposé que l'article 11 du projet de loi soit amendé par adjonction, après la paragraphe 24.2(2), de ce qui suit :*

**Avis du droit des employeurs de demander une exemption**

**24.2(2.1)** *Les demandes de congé que font les salariés contiennent une déclaration indiquant que les employeurs ont le droit de demander à le*

*Commission du travail du Manitoba à être soustraits à l'obligation d'accorder un congé dans les trois jours qui suivent la réception de la demande.*

**Moment de la présentation des demandes de congé**

**24.2(2.2)** *Les demandes de congé peuvent être faites avant la prise du décret de convocation des électeurs pourvu que les salariés remplissent une des conditions prévues au paragraphe (1).*

**Motion presented.**

**Mr. Chairperson:** The amendment is in order.

**Mrs. Mitchelson:** Mr. Chairperson, this just further clarifies the requirement of the employee to ask in writing that the employer understand that they have ability under the Act to appeal for an exemption. We discussed earlier also that in the spirit of co-operation, if an employee knows ahead of time, it might be something they want to discuss with their employer, knowing when the writ is dropped, although they may not know when that might be, that there has been the dialogue and discussion and quite possibly a very amicable decision between the employer and the employee when the writ is finally issued.

**Mr. Doer:** I think that again we have consulted with the Chief Electoral Officer and the legal counsel on the proposed amendment, and, again, it certainly implements the principle that we are striving to achieve in this provision. I think this is going to be like the United Way and a lot of other charitable organizations or civic duties. There is going to be 96 percent of the applications and approvals granted with great grace, and then there will be some that will be obviously disagreed with. If that happens, then we have a workplace situation that has deeper symptoms than just a request. So we support it.

**Mr. Chairperson:** Amendment—pass.

**Mrs. Mitchelson:** I move

THAT section 11 of the Bill be amended by adding "within three days after receiving a request for leave from an employee under subsection 24.2(2)" at the end of the proposed subsection 24.3(2).

**[French version]**

*Il est proposé que l'article 11 du projet de loi soit amendé par adjonction, à la fin du paragraphe 24.3(2), de "dans les trois jours après avoir reçu les demandes de congé visées par le paragraphe 24.2(2)".*

**Motion presented.**

**Mr. Chairperson:** The amendment is in order.

**Mrs. Mitchelson:** This just again is to clarify that, once the employee does apply, there is an expeditious resolve to the issue, and that the employer must move quickly to apply to the Labour Board if there is an exemption that is being requested, in fairness, in ensuring that as much time as possible is provided to the employee to participate in the electoral process.

**Mr. Chairperson:** Amendment—pass; clause 11 as amended—pass; clauses 12(1) to 14—pass; clause 15—pass. We are now considering clause 16(1).

**Mr. Doer:** I would move, seconded by the Member from Burrows (Mr. Martindale), both clauses be amended accordingly in both English and French,

THAT section 16 of the Bill be amended as follows:

- (a) in subsection (1), by striking out "five days, from the Tuesday" in the proposed subsection 65(4) and substituting "six days, from the Monday";
- (b) in subsection (2), by striking out "five" and substituting "six".

**[French version]**

*Il est proposé que l'article 16 du projet de loi soit amendé :*

- a) dans le paragraphe 65(4) figurant au paragraphe (1), par substitution, à "cinq jours, soit du mardi", de "six jours, soit du lundi";*
- b) dans le paragraphe (2), par substitution, à "cinq", de "six".*

**Motion presented.**

**Mr. Doer:** I thought the advice from members opposite was valid, and this incorporates the spirit of their suggestions.

**Mr. Chairperson:** Amendment—pass; clause 16(1) as amended—pass; clause 16(2)—pass; clauses 16(3) to 19(2)—pass; clauses 20 to 22—pass; clauses 23 and 24—pass. Shall clauses 25 and 26 pass?

**Mrs. Mitchelson:** I move

THAT section 25 of the Bill be amended by adding the following after the proposed subsection 174.2(2):

**Right of candidate to enter communities**

**174.2(2.1)** No person shall prevent a candidate or a representative of a candidate who produces identification indicating that he or she is a candidate or a representative from canvassing or distributing election campaign material in any town, village, municipality, local government district, designated community under the Northern Affairs Act or reserve as defined in the Indian Act (Canada).

**[French version]**

*Il est proposé que l'article 25 du projet de loi soit amendé par adjonction, après le paragraphe 174.2(2), de ce qui suit :*

**Droit d'accès des candidats aux communautés**

**174.2(2.1)** *Il est interdit d'empêcher des personnes qui présentent des pièces d'identité indiquant qu'elles sont soit candidats, soit représentants d'un candidat de faire de la sollicitation ou de distribuer de la documentation électorale dans les villes, les villages, les municipalités, les districts d'administration locale, les communautés désignées à ce titre en vertu de la Loi sur les Affaires du Nord et les réserves au sens qui est attribué à ce terme en vertu de la Loi sur les Indiens (Canada).*

**Motion presented.**

**Mr. Chairperson:** The amendment is in order.

**Mr. Doer:** I certainly support the amendment up until Northern Affairs Act communities. We are

still getting advice. I could not agree to this before we get advice on the whole issue of federal jurisdiction for reserves under our Elections Act.

That does not mean to say that we cannot revisit this at a later time. Certainly the jurisdiction in the communities such as the Northern Affairs communities fall completely within this legislative parameter and this act.

We are aware of one incident in a previous election, and we are following that up, but I certainly do not think we can agree to the amendment. The amendment might have to flow under federal legislation to achieve the same goal, and I am certainly willing to do some research on that with the designated authorities and look at the federal jurisdiction, whether it should be amended in the federal act, and propose it accordingly. I do not believe it can be covered under this act.

\* (21:40)

**Mrs. Mitchelson:** Then I would like to ask for some clarification. Is no other issue around voting in a provincial election on reserve covered under this Elections Act?

**Mr. Chairperson:** Anybody who wishes to answer the question?

**Mrs. Mitchelson:** Thanks, Mr. Chairperson. I will ask again. Is the Premier telling us that this act does not cover Indian reserves as defined by Canada anywhere else in this legislation? Are there no rules governing polling? Do all the clauses dealing with enumeration and polling and voting and revisions, are they not included in this act? Are they dealt with under some other piece of legislation?

**Mr. Doer:** As I understand it, obviously those communities are covered, although they are covered by general application. There is a discrepancy, for example, on things as simple as the whole issue of the census versus the band rolls in terms of purposes of counts and a number of other issues. I believe we have to get more advice on this section in terms of the authority for access to a community. The Act, in my view, there is access to those communities,

but it may be a question of the implementation of that authority. I personally as the sponsor of the bill have to do more work in this area without accepting, we can accept up to The Northern Affairs Act, but I think they are already covered, already in other sections of the act. This section I do not think we can agree to without more work to make it work as opposed to just passing an amendment.

**Mrs. Mitchelson:** Thanks, but I wonder if the Premier could undertake to do that work and whether he would entertain an amendment at third reading around this issue. I mean, I think it is extremely important, given the fact that we have polling stations on reserves and we conduct provincial elections, we have ballot boxes and we have Elections Manitoba officials providing the service on reserves, my sense is that the rest of the provisions that are in this act, especially given some of the other amendments or changes in this section that talk about the rights of candidates to enter multiple residences, correctional facilities and ensuring that individuals have the freedom and the opportunity to have direct access to candidates from every political party and every other circumstance, I think it is very important for the benefit of all of those in a democratic society that want to cast a vote that they should have the opportunity to access to all candidates of all political parties, just as every candidate should have the right to present himself. So it works both ways and it is part of the democratic process. I do not know if we want to take some time now to consult with staff from Elections Manitoba to see what would make the situation different on reserve when in fact we hold polls, we hold votes in reserve communities every election.

**Mr. Chairperson:** What is the pleasure of the Committee?

**Mr. Doer:** Yes, I certainly could not support it at this time. I think we have to look at what other provinces do under their elections act. I think this is something that we have to do some work on. It is something that I want to study how other provinces deal with this issue, because you have provincial jurisdiction with a provincial elections act dealing with the fiduciary and constitutional authority of a First Nations community.

There are provisions of this act and other acts all across the country under the electoral act

that speak to the right of people on those communities to vote. I certainly believe that the right of canvass should be a principle as part of an election campaign, but I do not know the authorities under which we have. I definitely want to look at that prior to making any recommendation to our side of the House. So I am going to suggest that we find out what other provinces do. I would argue that we should vote against this clause at this point, but certainly maybe we will have the work done before the third reading. I will certainly work at finding out more before third reading.

**Mrs. Mitchelson:** Mr. Chairperson, I guess I hear the Premier indicating that he will undertake to get the research done and ensure that, as we move into report stage on this bill, we might have the ability to include that information. I do want to indicate that we will be supporting this amendment.

**Mr. Chairperson:** Shall the amendment pass?

**Some Honourable Members:** Yes.

**Some Honourable Members:** No.

**Mr. Chairperson:** No. Okay. Clause 25—pass; clause 26—pass; preamble—pass; title—pass. Bill as amended be reported.

What is the pleasure of the Committee?

**Mr. Doer:** Well, we will need leave to set the committee date, but I think we have an agreement that at four o'clock Tuesday—

**Mr. Chairperson:** Procedurally, this committee cannot sit. We can only recommend.

**Mr. Doer:** I would like to thank the members of the Opposition for their helpful amendments and the staff that stayed here all night long and are hungry.

**Mrs. Mitchelson:** Just before we leave, I know that we cannot make a recommendation, but I know that the Premier did indicate that if we could do it a little earlier than four o'clock. I know he will check his schedule, but I just wanted to indicate that we are prepared to work around that schedule, knowing that four o'clock would be the latest.

**Mr. Doer:** Okay, fair enough.

**Mrs. Mitchelson:** Thank you.

**Mr. Chairperson:** If it is the will of the Committee, Committee rise.

**COMMITTEE ROSE AT: 9:49 p.m.**

**WRITTEN SUBMISSIONS PRESENTED  
BUT NOT READ**

Re: Bill 4—The Elections Finances Amendment Act

Introduction

The issue of political finance is central to the quality of any modern democracy. In most democracies, including Canada, wealth has become a primary determinant of which points of view will gain prominence in public electoral debate.

Manitoba's proposed new amendments to the Elections Finances Act seek to rein in the influence of money in politics. The law would ban corporate and union contributions to political parties and candidates, limit individual contributions to \$3,000, and limit the amount of partisan third-party spending during elections to \$5,000. It would also require disclosure of all third-party spending above \$500.

These measures break little new ground in Canada. The contribution limits are identical to provisions that have been in place in Québec for more than two decades. The third-party spending limits are similar to those developed by a federal Royal Commission on Electoral Reform and Party Finance, and have been approved of by the Supreme Court of Canada. And the third-party spending disclosure provisions are identical to those recently passed by the federal government.

Nonetheless, Democracy Watch supports many of these provisions, and we feel that they will provide a model for other jurisdictions.

Contribution Restrictions

Restrictions on contributions ensure that no party or candidate becomes too dependent on a

small number of high-end donors, especially those with a large stake in government decision making.

Manitoba's proposed new contribution restrictions would follow the Québec model, under which corporations, unions and other organizations may not donate to political parties, and individuals are limited to \$3,000 per year. This system prohibits non-voters (incorporated bodies) from trying to influence the democratic process through campaign contributions, a democratic objective that Democracy Watch supports. It would also serve to keep election expenses down, making entry into politics more accessible to those in middle income brackets who may not have the funds to finance their own campaigns.

It should be noted that the public already subsidizes parties and candidates by giving tax benefits for contributions. But in essence, this public money is being spent by wealthy donors, who choose which candidates and parties they want to support, and then use public subsidies to further bolster their choice, an inherently undemocratic system that the proposed spending restrictions would ameliorate.

While some point out that companies may still make donations through their executives and others, the \$3,000 cap still limits how much a corporation can give in this manner, and adds certain administrative difficulties for the corporation (e.g. it must give the executives an additional bonus, which the executives must then pay income tax on; and it must somehow make the recipient party or candidate aware that the donation is really coming from the corporation). In our extensive survey of political finance issues, we have seen no credible evidence that corporations are employing these tactics.

Third-Party Spending Limits

Democratic measures that facilitate making electoral politics more accessible, such as contribution limits, may be rendered meaningless if so-called "third parties" are able to spend unlimited amounts to oppose or support a candidate or party. Democracy Watch therefore supports the bill's provisions that would limit third-party spending to a level that restricts the

influence of wealthy special interests, while allowing for a reasonable amount political expression.

The largest single category of election expenses for a party or candidate is often advertising. Election advertising may be used to convince voters to vote for or against a party or candidate, but it may also be used by third parties to highlight new issues that mainstream parties and candidates are neglecting. In an era where many Canadians are turning away from mainstream politics<sup>1</sup>, Democracy Watch believes that Canadians should have the right to voice opinions that are not being espoused by the major parties and candidates.

However, in a democratic society, freedom of expression must be balanced with other freedoms, including electoral fairness, which the Supreme Court of Canada considers to be a subset of the right to vote.

Nearly all jurisdictions in Canada, federal and provincial, regulate the expenses of candidates and parties. This has been effective in keeping election costs down, ensuring that politics is more accessible. If third parties are allowed to freely spend in support of or opposition to official parties and candidates, perhaps even outspending an individual candidate, the fairness goals of electoral legislation may be severely compromised. Third-party spending limits are therefore justified, although a more appropriate balance than the one proposed by the bill would allow third parties access to free broadcast time, to compensate for the restrictions placed on their ability to express themselves during an election. Such a provision exists in the Danish electoral law.

The justification for regulating third-party expenditures – as with the justification for expense limits and donations limits – is derived from the impact of wealth on elections. Critics typically counter that "money doesn't buy elections." For this reason, federal limits on third-party spending have been repeatedly struck down by Alberta courts. Key to the findings of the Alberta Court of Queen's Bench in *Somerville v. Canada (Attorney General)*, for example, was the fact that the government "never properly considered whether third party

advertising limits influenced election results, even though there were indications that there was such an effect."<sup>2</sup> The appeal court in that case was more blunt, rhetorically asking "Could third party advertising for particular candidates buy elections?"<sup>3</sup> Indeed, it is difficult to determine quantitatively whether money has determined the outcome of a particular election, since every election is different, and there is no control group example for any given election.

However, for the three reasons explained below, the question "Does money buy an election?" is inappropriate to an analysis of third-party spending limits.

#### 1) The Impact of Third-Party Limits on Candidate and Party Limits

The focus on whether money buys elections fails to take into consideration how a lack of third-party spending limits undermines the integrity of candidate and party spending limits, since candidates subject to spending restrictions may be easily outspent by third parties not subject to restrictions.

It is therefore logically inconsistent to be in favour of candidate and party spending limits, and simultaneously be opposed to third-party spending limits. Consider that after finding that third-party spending limits were unconstitutional, the trial court in *Somerville*, in an often-overlooked section of the judgment, was forced to view candidate spending limits as "additional, apparent Charter breaches."<sup>4</sup> This is a notion soundly rejected by nearly every provincial and federal government in Canada, as well as the Supreme Court in the more recent *Libman* case (see below), all of which recognize the importance of party and candidate spending limits.

Exactly how candidate and party expense limits can be circumvented by third parties was illustrated in the 1988 federal election. In that election, the battle over the proposed Free Trade Agreement with the United States was the dominant issue. While forces in favour and against the agreement spent huge sums on advertising, the pro-forces had a clear leg up, since wealthy interests tended to support their cause. The Canadian Alliance for Trade and Job

Opportunities – initially founded and financed by the Business Council on National Issues, the Canadian Federation of Independent Business, the Chamber of Commerce and the Canadian Manufacturers Association – was the biggest-spending promoter of free trade. Although the Alliance initially promised to disclose the sources of its funding, it only disclosed the source of just 72 percent of the \$52 million that it reportedly spent before the election.<sup>5</sup>

Many other free trade enthusiasts also spent heavily to influence the election. A study by the former chairman of the Ontario Commission on Election Finances, Donald MacDonald, provides a partial list of expenditures that is "by no means exhaustive"<sup>6</sup>

- The National Citizens' Coalition spent \$842,000 on a campaign reaching 800 radio stations and 90 TV stations;
- The Alberta government took out \$500,000 worth of newspaper ads;
- The Committee for Free Trade spent \$60,000 to advertise in Manitoba;
- Montréal millionaire George Petty purchased \$250,000 worth of full-page ads in 75 newspapers across the country;
- Le Regroupement pour le Libre-Echange spent up to \$350,000 on advertising in Québec; and
- Toronto-based Gallop and Gallop Advertising donated \$50,000 of advertising space on billboard and bus shelters in several cities.

MacDonald estimates that pro-free trade forces spent a total of \$10 million cash and mobilized another \$3 million worth of in-house and in-kind promotional efforts. In contrast, he estimates that opponents of free trade, mostly backed by labour groups, spent \$1 million.<sup>7</sup>

MacDonald also analyzed the timing of election advertising, concluding that the ready pile of cash pooled for the free-trade cause by the business community allowed the Tories to cut back on advertising and to concentrate their resources elsewhere. Moreover, when the free trade proposal received bad press, the Tories did not need to tap their own resources to counter it.<sup>8</sup>

As such, the business community's heavy expenditures to promote the free trade deal represented a de facto contribution to the Conservative Party that did not have to be

disclosed and that did not count toward the party's legal spending limits.

## 2) How Third-Party Spending Shapes the Electoral Agenda

Even more fundamentally than the impact of third party spending on candidate and party spending limits, the question "Does money buy an election?" itself is irrelevant. If money buys an election, electoral fairness is certainly compromised. But critics have set the bar too high, because electoral fairness is still infringed if money merely influences an election.

If "Does money influence an election?" becomes the relevant question to guide analysis of this issue, a reasonable limit on third-party spending is undoubtedly justified, since there is ample evidence of money influencing elections. Perhaps the best known example of this was Ross Perot's 1992 U.S. presidential bid. Perot spent millions of his own dollars promoting his candidacy. As noted by Queen's University professor Janet Hiebert,

While Perot ended up with only 19 percent of the vote, and therefore is a case example that even an extremely rich person may not actually buy office, Perot's "astonishing success" in shaping and influencing the presidential campaign agenda was largely attributed to his "extraordinary wealth, which enable him to deluge the media with advertisements in his favor." Whatever the power of ideas that Perot held may have had in influencing his success, those ideas would not have swayed such a large portion of the American voting electorate had Perot not been able to saturate the media.<sup>9</sup>

In this manner, wealth becomes a determinant of the matters at issue in an election, a profound form of influence.

## 3) How Third-Party Spending Influences Voter Behaviour

Intuitively, given the demonstrated effectiveness of advertising for products and services in the marketplace, it is likely that advertising to affect people's choices in other ways, such as voting,

would have a similar impact. Studies of human behaviour have shown this to be the case.

A survey published in *Canadian Legislatures*, taken just after the 1988 election indicated that advocacy advertising tied with the leaders' debates as the most important factor in deciding how citizens would vote. Twenty seven percent of voters surveyed cited advocacy advertising, the same number that cited leaders' debates; 13 percent cited party advertising; candidates' literature delivered to people's homes was the major factor for 11 percent; and 11 percent cited opinion polls. In addition, 40 percent agreed that advertising had a major impact on the vote; 29 percent said it had a minor impact; and only 18 percent said it had no impact. Thirty one percent said it had affected their own vote, half of those saying it had a major impact.<sup>10</sup>

More general studies on the impact of political advertising show that such advertising is a potent tool for influencing voter behaviour. Ansolabehere and Iyengar's sophisticated examination, *Going Negative: How Attack Ads Shrink and Polarize the Electorate*, found that campaign advertising in the United States "significantly changed viewers' electoral preferences."<sup>11</sup> The study examined six U.S. campaigns from 1990 to 1993, including mayoral, gubernatorial, Senate and presidential races, using focus groups and interviews with 3,500 people. Their data showed that "exposure to a single campaign advertisement increased support for the sponsoring candidate by nearly eight percentage points."<sup>12</sup> When one considers that elections are often won and lost in tight margins, this advantage is significant.

In analyzing their results, the authors state

Campaign advertising influences the meaning of the vote in two ways. First, advertising can change the viewers' evaluations of the candidates on specific issues and personality traits. For example, an advertisement expounding a candidate's accomplishments on crime may make people think that a politician is able to reduce crime rates. Second, advertising can influence how much weight voters give to various factors. An advertisement about crime may make viewers think that crime is

an important problem, regardless of what they think of the candidates.<sup>13</sup>

In addition to improving candidates' images on specific issues, the authors note that "advertising also changes the criteria by which voters make up their minds."<sup>14</sup>

Given that this comprehensive study focused on human behaviour rather than the particulars of the election, there is no reason to believe that the effects of election advertising would not have a similar impact on voter behaviour in Canadian elections. Indeed, U.S. consultants are increasingly being hired by Canadian political parties for their expertise in affecting voter behaviour through election advertising.

#### Possible Charter Challenges to the Proposed Spending Limits

Critics of Manitoba's proposed third-party spending restrictions allege that the provisions are unconstitutional, and one group has threatened to challenge the provisions in court. However, such a challenge would be very unlikely to succeed.

In the 1997 case *Libman v. Québec (Attorney General)*, a unanimous Supreme Court of Canada held that third-party spending limits were constitutionally valid. While the case dealt with a ban on independent expenditures in Québec's Referendum Act, the court held that the same principles underlying referendum legislation should apply to electoral legislation.<sup>15</sup>

The court recognized a "right to participate in the electoral process"<sup>16</sup> for third parties, stating the outright ban on third-party spending was unconstitutional. However, the court also held that limits on third parties are essential, and must be lower than those on official candidates, since "it is the candidates and political parties that are running for election. . . . Otherwise, owing to their numbers, the impact of such spending on one of the candidates or political parties to the detriment of the others could be disproportionate."<sup>17</sup>

The court then gave its express approval of the \$1,000 limit struck down by the lower court in *Somerville*, disagreeing with the Alberta court

with respect to the legitimacy of the fairness objective of third-party spending limits, and finding that these limits are essential to ensure the fairness of candidate limits.<sup>18</sup>

In *Libman*, the Court considered the goal of ensuring electoral fairness to be "highly laudable,"<sup>19</sup> and recognized that "expenses incurred in an election campaign – advertising for example – have a considerable impact on the outcome of the vote."<sup>20</sup> In the clearest statement by any Canadian court regarding the constitutionality of spending limits, the judges stated:

To ensure a right of equal participation in democratic government, laws limiting spending are needed to preserve the equality of democratic rights and ensure that one person's exercise of the freedom to spend does not hinder the communication opportunities of others. Owing to the competitive nature of elections, such spending limits are necessary to prevent the most affluent from monopolizing election discourse and consequently depriving their opponents of a reasonable opportunity to speak and be heard.<sup>21</sup>

Given that Manitoba's law would set a much less restrictive limit on third-party spending than the \$1,000 limit approved of in *Libman*, any challenge to the proposed third-party spending provisions would have a difficult time overcoming such a strong endorsement of the right to a democratic level playing field. The constitutional grounds for challenging such a system would mean that the Court would have to equate the ability to spend money with the ability to speak freely and associate with whomever the donor wishes. While U.S. Courts have gone this far, Canadian courts clearly have not.

The limits would not stop a third party from expressing his or her support for a candidate or party. They may shout it from the rooftops if they wish. The law would merely prevent some voices from being heard disproportionately more than others because of their wealth, a democratic objective if there ever was one.

To strengthen its legal case even further, Manitoba could provide access to free broadcast time for third parties, as a way to ensure that the

restrictive effects of the third-party spending provisions are minimized.

## Conclusion

Manitobans deserve a democratic electoral system that does not compromise the philosophy of "one person, one vote" by allowing wealthy special interests to use their money to gain privileged access to the political process.

Democracy Watch supports the contribution limits, the ban on corporate and union donations, and the provisions restricting the influence of third-party spending in the proposed amendments to the Elections Finances Act. These provisions, based solidly in constitutional legal principles, will make politics more accessible and limit the influence of money in Manitoba politics

- (1) Research conducted by the Royal Commission on Electoral Reform and Party Financing (hereinafter "the Lortie Commission") states:

interest group election spending is seen by organizations unhappy with the existing political system as a tool for offsetting the power of entrenched vested interests. Indeed, comments gleaned from the interviews indicate that this sort of spending constitutes one of the few methods whereby groups that feel they are shut out of the system can make their concerns known to politicians and the public. Thus, even if a majority of interest groups feel that third-party spending during elections ought to be banned because the practice favours more affluent groups or is open to corruption, a total prohibition on this activity would likely only add to the sense of frustration felt by those organizations most dissatisfied with the present political system:

Brian A. Tanguay and Barry J. Kay, "Political Activity of Local Interest Groups." in F. Leslie Seidle, ed., *Interest Groups and Elections in Canada*, Volume 2 of the Research Studies, Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991) at 99.

- (2) *Somerville v. Canada (Attorney General)* [1993] A.J. No. 504 (QL).  
 (3) *Somerville v. Canada (Attorney General)* [1996] A.J. No. 515 (QL) at para 65.  
 (4) *Supra* note 2 at para 25.  
 (5) Donald MacDonald, "1988 Election Expenditures: A Canadian-American Comparison" in *Canadian Legislatures* (Toronto: Global Press, 1992) 16 at 16.  
 (6) *Id.* at 21.  
 (7) *Id.* at 23-24.  
 (8) *Id.* at 22.  
 (9) J.L. Hiebert, "Money and Elections: Can Citizens Participate on Fair Terms amidst Unrestricted Spending?" (1988) 31 *Canadian Journal of Political Science* 91 at 107 (notes omitted).

(10) Michael Adams and Jordan A. Levitin, "The Impact of Advocacy Advertising: A Case Study of the 1988 Election Campaign," in *Canadian Legislatures* (Toronto: Global Press, 1992) at 3.

(11) S. Ansolabchere and S. Iyengar, *Going Negative: How Attack Ads Shrink and Polarise the Electorate* (New York: Simon & Schuster, 1995) at 68.

(12) *Id.* at 30.

(13) *Id.* at 70.

(14) *Id.* at 71-72.

(15) *Libman v. Québec (Attorney General)* [1997] S.C.J. No. 85 (QL) at para 46.

(16) *Id.* at para 50.

(17) *Id.*

(18) *Id.* at paras 48-50 and 57.

(19) *Id.* at 42 and 56.

(20) *Id.* at 47.

(21) *Id.*

Aaron Freeman,  
Democracy Watch

\* \* \*

Re: Bill 17—The Elections Amendment Act

#### Introduction

The Manitoba Federation of Labour is pleased to have this opportunity to make its views known to you about the contents of Bill 17, the Elections Amendment Act.

The Manitoba Federation of Labour is the senior central labour body in our province; chartered in 1956 by the Canadian Labour Congress to represent the interests of CLC affiliated unions in Manitoba. These affiliates have a combined membership of more than 90 thousand working men and women.

#### Bill 17

The Manitoba Federation of Labour fully supports the advice traditionally given to governments when amendments are being contemplated to the laws that govern the electoral process - the foundation of our democratic political practices. That advice is to proceed with caution and ensure that the results the amendments are meant to bring about actually occur.

The government of Manitoba is, unfortunately, faced with the need to restore public confidence in our elections - confidence that has been shaken by evidence of corrupt electoral practices in the last two provincial elections. News coverage of those incidents continue to this day.

Another growing electoral reality is that political activity is rapidly becoming something that requires wealth for an individual, and even a political party, in order to participate in effectively.

Significant changes to the methods of how political parties are financed, both during and between election, are contained in Bill 4 that is also before this committee. And important changes are also in Bill 17.

Taken together, the amendments seem designed to bring about improvements in the fairness of our elections, and to make the Act transparently fair.

Of particular interest to the Manitoba Federation of Labour is the amendment that requires employers to grant unpaid leaves of absence of up to two employees if they are candidates in an election, if they have been appointed as an election officer or enumerator or if they have been named as an election volunteer by a candidate or a registered political party.

To ensure this does not lead to undue hardship for the employer, an appeal process administered by the Manitoba Labour Board has been included.

These leave provisions are important from a number of perspectives.

They facilitate the participation in the democratic process by citizens, which supports the intent of amendments to the Elections Finances Act contained in Bill 4.

They will also make it easier to attract quality candidates to the political process by ensuring leave from employment for the election campaign period. It also allows them to be reinstated afterwards with no less pay and benefits and either the same or a comparable job if they withdraw from the election or are defeated.

In other words, these amendments ensure that citizens are not penalized in any way for participating in the democratic process.

While to some, this seems to be a minor amendment, in our experience not having these guarantees has been a major barrier for working people to participate in electoral politics.

**Conclusion**

The provincial government is to be congratulated for its efforts to bring about improvements to the electoral process and to restore the public's confidence in it.

But, the long term effects of these amendments

must be monitored closely. The government must be prepared to make further changes if it becomes apparent they are not having the desired impact or if unintended results occur.

Manitoba Federation of Labour

Mr. Rob Hilliard