

New Zealand Parliament — Battles over Election Campaign Financing

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Since shortly before the 2005 election the New Zealand Parliament and parties represented within it have wrestled with the rules governing election campaign spending. How much, if any, of the funds allocated to MPs and parties for parliamentary work can be used for what amounts to electioneering and when? And what rules should there be around donations to political parties for election campaigning and activities by non-parties which support or attack parties?

In June 2005 the Auditor-General issued a report on government and parliamentary publicity, including the use for electioneering of funds available through the Parliamentary Service to parties and MPs for 'parliamentary purposes'. The election was called shortly afterwards and Parliamentary Service's governing body, the Parliamentary Service Commission, headed by the Speaker and with all parties represented on it, deferred action until after the election. The Commission took its cue from a reference in the Auditor-General's report that that would be an appropriate time to review the rules. After the election the Auditor-General launched an official inquiry and concluded that almost all parties represented in the House before the election had used parliamentary funding for campaign material and that that was a misuse of parliamentary funds and the Parliamentary Service had erred. Acting in his capacity as Controller, which requires Parliament to respond, the Auditor-General in October 2006 demanded action.

At the heart of the inquiry was the Labour party's 'pledge card', a credit-card-sized card containing a short list of 'pledges'. The party had issued such a card in the 1999 and 2002 election campaigns. The Auditor-General concluded that this — and a range of other activities by all except one very small party, the Progressive party — were electioneering and therefore a misuse of funding intended for parliamentary activities. According to the Auditor-General, Labour was the biggest offender, at \$NZ452489, but some smaller parties had proportionately commensurate overruns.

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All the parties hotly contested the findings. All insisted they had cleared all expenditure with the Parliamentary Service and that therefore it was above board: the Parliamentary Service's reading of the rules excluded advertising material that explicitly asked for funding or votes or party membership but included material that contained information about policies and promises. Moreover, similar spending in earlier elections had not been queried by the Auditor-General. An opinion commissioned by the Speaker from an eminent QC and legal commentator, Jack Hodder, essentially supported the parties' interpretation, thus running counter to the Crown Law Office opinion on which the Auditor-General relied: Hodder in essence said it was extremely difficult to distil political and electoral activity out of an MP's activities because MPs are by their very nature political every bit as much as they are parliamentary and noted that the parliamentary rules did not have a different application in the official three-month campaigning period in which campaign spending was controlled and limited under the Electoral Act, which was a focus of the Auditor-General's approach.

To no avail. In the court of media and public opinion, the Auditor-General carried great authority as an independent watchdog and the parties were judged to have had their snouts in the trough. Whatever the rules said, they had misused taxpayers' money for personal and party advantage. While Parliament passed legislation validating the expenditure, in order to remove issues of lawfulness, it did so on the understanding that the parties would pay the money back. They did, except for New Zealand First, which donated the money to the children's hospital in Auckland, only to have it returned because the hospital's governing body considered it a publicity stunt.

The result was a revision by the Parliamentary Service Commission of the funding rules to exclude 'electioneering', defined as 'explicitly' seeking support for a candidate or party, encouraging someone to join a party or soliciting subscriptions. The rules published on 25 October 2007 and brought into effect on 1 December 2007, now spell out at length what 'parliamentary business' is and is not. Parties and MPs report that the Parliamentary Service is taking a very cautious approach to approvals. Nevertheless, the Speaker said when promulgating the new rules that they 'largely confirm the status quo for funding and services'.

The Auditor-General's report caused the Labour party considerable embarrassment with voters. But Labour was to get itself into much worse odium with its attempts to tighten the Electoral Act rules on campaign spending.

Late in the 2005 campaign it was revealed that the reclusive sect, the Exclusive Brethren, was anonymously pamphleteering and telephone canvassing against Labour and the Greens and that it had had prior discussions with the National leader, Dr Don Brash. The Brethren were said to have spent \$NZ1 million, a considerable addition, in effect, to National's campaign effort.

Labour and the Greens were understandably annoyed and Labour in due course developed legislation to control such interventions in the future. It produced the bill in May 2007 — and ran into a barrage of accusations that it was trying to limit free speech. Included in the bill was a clause defining election advertising as ‘any form of words or graphics that can reasonably be regarded as’, among other things, ‘taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated’. The last part of this clause was removed by the Justice and Electoral Law Committee — which was expanded from its usual nine to 13 members for the bill — but the committee inserted another, almost equally extraordinary, clause, defining ‘publication’ as to ‘bring to the notice of the public in any other manner’. That clause, too, was eventually dropped late in the passage of the bill but by then the government had essentially lost its case in a cacophony of protests and media frenzy.

The legislation as it finally passed — with the support of Labour, the Greens, New Zealand First and the Progressive party (who in total amount to only a bare majority of Parliament) — covers three main areas and applies the new rules from 1 January in a year in which an election is due — 2008 is such a year and the election must be held no later than 15 November. One is to drastically limit anonymous donations to political parties and ‘third parties’ (groups other than political parties which take public political positions) by requiring them to be made through the Electoral Commission if they exceed \$NZ1000 in a year and requiring disclosure of the names if they exceed \$NZ1000 for a candidate, \$NZ10,000 for a political party and \$NZ5000 for a ‘third party’. Foreigners and foreign companies are limited to \$NZ1000. The second is to require ‘third parties’ wanting to spend more than \$NZ12,000 in a year to ‘encourage or persuade voters’ to vote for or against a candidate or political party to register with the Electoral Commission, including full name and home address of the authorising agent. They are limited to \$NZ120000 spending. The third is to widen the definition of election spending to include donations in kind.

This will be a constant irritant through election year 2008 as opponents, including the National party, make life difficult for the rather small Electoral Commission which has the unenviable task of working out what falls inside and outside the definitions and administering the system. Critics reckon that the new law will greatly increase post-election litigation, now mercifully rare, and that that might well delay the result, given New Zealand’s highly proportional voting system and many parties.

One thing is certain: the legislation will not stand as it is. A government of a different complexion will want to rewrite it. Labour and its allies opened a can of worms. And, for its pains, Labour lost support: the polls widened steeply in the lead opposition National party’s favour with the passing of the legislation. It may turn out to have been the Labour party’s most self-damaging initiative in its nine years in office.

Live on the Web and on Digital Television

On a more positive note, Parliament widened its potential audience by going live on the web on 17 July 2007. Eight remote-controlled cameras film the proceedings on sitting days from question time at 2pm till the House rises, usually at 10pm. In all, 17.5 hours a week are webcast (<http://www.parliament.nz/en-NZ/Visiting/Live/Broadcast>). It is also broadcast on two digital television channels, Freeview 22 and TelstraClear and on Sky Television's pay channel, which had been carrying question time since 2000. It is intended to widen the coverage over time to cover select committee hearings.

Meanwhile, radio has not been forgotten. Live radio broadcasts were introduced by the first Labour government in the 1930s — a world first — to counter what it felt was a heavy anti-Labour bias in the then dominant print media. But until February 2007 only 70% of the population could receive the broadcast. At that point more stations were added to the AM network which carries the broadcast, bringing the coverage up to 81% of the population.

Sound broadcasts have been streamed live on the state-owned Radio New Zealand's website, <http://www.radionz.co.nz>.

But what will Web Surfers See and Hear? Time for a Code?

The New Zealand Parliament is a rowdy and rambunctious place often degenerating into cacophony during the one-and-a-half-hour daily question time, which, according to Speaker Margaret Wilson speaking at a conference of Speakers in London on 3 January 2008, is often 'acrimonious and personal and difficult to control'.

Speaker Wilson told the conference that 'the New Zealand Parliament has a high level of tolerance for what in any other environment would be unacceptable behaviour. The contesting of ideas and policies is conducted in a vigorous manner with little regard or respect for others. Tempers fray and verbal abuse is exchanged in an attempt to score a political advantage over one's opponent in the debate. There was a recent example of members in a physical altercation in the lobby.' A minister punched an opposition member who had impugned a woman of the minister's acquaintance and refused to retract.

Speaker Wilson put this behaviour down partly to two factors: 'a correlation between the level of misconduct and Standing Orders' (which, she noted, do not have rules to ensure a 'fair go') and a reflection of 'the culture within the wider society'.

Speaker Wilson did note that 'instances of rowdy and unruly behaviour are less apparent today than they were in the past'. Even if so, some smaller parties remain unimpressed. The Greens, the Maori party, United Future and ACT (which

mustered a total of 15 members of Parliament but now have 14 members) combined to sign a code of conduct on 12 June 2007 which they urged upon the whole House. The code aims to counter organised barracking by the two major parties, constant points of order (again by the two main parties but also by Winston Peters, leader of the New Zealand First party), which are repeatedly silly and frivolous and intended to hector, bully and destabilise, and ministers indulging in flippant comments and putdowns rather than addressing the question. The code also covered wider ethical issues stressing members' responsibility to the public good rather than their personal political interests.

The code is due to be discussed by the Standing Orders Committee in 2008 but Speaker Wilson reckons it is 'unlikely the code will gain the support of the major parties'.

So the wider audience radio, television and the web are intended to reach may find themselves watching a most unedifying spectacle. The question Parliament could ask itself is whether that will raise or lower already low trust in politicians?

A Distinguished Clerk Goes

On 25 October 2007 the House farewelled its highly respected Clerk, David McGee CNZM, QC, who resigned the following month to become an Ombudsman. In his 22 years as Clerk, Mr McGee became one of the Commonwealth's most respected authorities on parliamentary procedure, described by Speaker Margaret Wilson at his farewell as the 'doyen of Clerks who serve parliamentary democracies'. He wrote and published three editions of the authoritative *Parliamentary Practice in New Zealand*, the latest in 2005. His most recent book is *The Budget Process — a Parliamentary Imperative*, which was launched at the 2007 Commonwealth Parliamentary Association conference in New Delhi.

Speaker Wilson referred to his qualities 'independence, credibility, impeccable integrity and sense of the importance of tradition and constitutional institutions', which she said he combined with a clear understanding of the need for change, demonstrated in his guidance of members during the change from the first-past-the-post voting method to proportional representation in the mid-1990s. Speaker Wilson quoted her predecessor, long-serving Speaker Jonathan Hunt (subsequently New Zealand High Commissioner in London), as saying of Mr McGee: 'Dave has acted as 'Parliament's person' all the time he served. He has a record of absolute integrity and attention to detail and he has been a loyal chief executive to many Speakers, Prime Ministers and members of Parliament.'

Mr McGee was succeeded in December by his deputy, Mary Harris who has worked in the Office of the Clerk since 1987.

The Prayer Stays

In June 2007 members of Parliament chose by a large majority to retain the opening prayer recited by the Speaker each day and to retain the current, Christian-based, wording. Seventy-four members out of 88 (of a total House of 121) who responded to a survey issued by the Speaker opted for retention and 55 of those said they wanted the current wording retained. The Standing Orders Committee said that the survey showed the prayer was considered a tradition that should be retained.

The survey of members was in response to a petition to the House by 10 people in December 2003 who asked that proceedings continue to be opened by a prayer but with different wording.

Simultaneous Translation

Maori has been an official language in New Zealand and in Parliament for nearly 30 years. The use of Maori in speeches in Parliament has increased in recent years, especially since the arrival of the Maori party, with four members, after the 2005 election. Maori is translated by an interpreter sequentially, which doubles the length of those speeches and slows proceedings.

Parliament intends to move to simultaneous translation for members and the public galleries via headsets and for radio, television and website relays of parliamentary proceedings. Money was provided for capital equipment in the 2006–07 year.

Freedom of the Press

Police barred a New Zealand-domiciled Chinese reporter, Nick Wang, from a photo opportunity with visiting Chinese vice-premier Seng Peiyan in March 2007. The reporter wrote for a New Zealand Chinese newspaper. After an approach from the Parliamentary Press Gallery, the Speaker met police to develop a protocol.

‘We are all subject to security and occasionally circumstances warrant restrictions,’ Speaker Wilson said. ‘However, that is something which is raised with the Speaker in advance, discussed and if warranted communication to all parties well in advance of the event. No such arrangement was suggested and Mr Wang correctly assumed he could cover the events.’

This was, Speaker Wilson said, ‘an incident which raised issues of freedom of expression and freedom of the press.’ ▲