

March 30, 2021

Mr. Kaleed Rasheed, Chair
Standing Committee on the Legislative Assembly
Ontario Legislative Assembly
kaleed.rasheed@pc.ola.org

Re: Bill 254, *Protecting Ontario Elections Act, 2021*

To Mr. Kaleed and Members of the Standing Committee,

Thank you for inviting us to speak to Bill 254 at your hearings this morning. It was a pleasure to speak with the committee. We are writing to follow up on the issues we raised regarding the impact of Bill 254 and existing election finance rules on Ontario public benefit nonprofits.

The Ontario Nonprofit Network (ONN) is the independent network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

Summary of recommendations

1. Raise the threshold for registration as a “third-party advertiser” for the proposed extended pre-election period to ensure that small community-based nonprofits can undertake their regular non-partisan policy dialogue, and are not required to keep complex separate accounts if their work becomes an election issue.
2. Clarify the proposed rules around “collusion” so they explicitly do not apply to third-party advertisers whose combined spending remains below the maximum spending limit. This is consistent with the intent of the collusion provisions which is to prevent third parties circumventing spending limits.
3. Remove the prohibition (established in 2016) on charities’ ability to donate to pre-election advocacy campaigns in line with a 2018 court ruling¹ that eliminates caps on charities’ participation in nonpartisan public policy advocacy.
4. Reduce the administrative burden for nonprofits that do have to register as third-party advertisers by enabling the Chief Electoral Officer to accept 1) a separate budget line in the nonprofit’s accounts for election-related advocacy revenue and election-related expenses, and 2) their annual audited financial statements- with revenue/expenditure lines

¹ See Government of Canada. “Resources for charities about political activities.” Jan. 23, 2019.
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/resources-charities-donors/resources-charities-about-political-activities.html>

for election advocacy- in lieu of separate accounting statements that will often cost more than the election expenditure.

Charities and other public benefit nonprofits² in Ontario are at work every day in local communities. They undertake policy advocacy on behalf of and with local communities and play a valuable role in bringing attention to emerging issues and community needs. In doing so, they help citizens play a role in shaping our democracy.

Nonprofit advocacy has been responsible for many of the public policies we take for granted, whether laws concerning human trafficking, anti-smoking, or privacy. Even those nonprofits that primarily deliver services play a key role in public policy debate. In addition to providing food relief, food banks advocate for greater attention to policy measures that reduce hunger. Women's shelters advocate for public policies that support women's equality as well as ensure they have a safe place to sleep.

When these groups engage broader audiences before elections to rally support for their cause, they are playing a foundational role as civil society. Their issue-based advocacy is legal, nonpartisan, and critical to improving our democracy as well as government programs and services. These community voices should be nurtured and protected.

The Ontario government's objective in changing the third-party advertising rules via Bill 254, according to the Minister's speech in the Legislature, is to "provide responsible guardrails" so that third-party advertisers "don't drown out the voices of individuals who are willing to stand behind their convictions openly and transparently."³

Regrettably, there are aspects of Bill 254 that will not only drown out but risk silencing those local voices the Minister wants to enable. While we are supportive of limiting the undue influence of big money third-party advertisers in Ontario elections, this must be done in a way that does not muffle the voices of smaller, community-based nonprofit voices. Public benefit nonprofits are the bridge between our communities and government. They play a key role in public policy advocacy, sharing valuable feedback about the experiences of communities with government policies and programs. Without an engaged nonprofit sector, government would have a more difficult time hearing those local voices.

² Public benefit nonprofits include charities, nonprofit co-operatives, and nonprofits that have a public benefit mission/purpose and reinvest any surpluses back into that mission. For further information, see ONN "Introducing the Public Benefit Nonprofit Sector." 2017. <http://theonnc.ca/wp-content/uploads/2017/12/Introducing-the-Public-Benefit-Nonprofit-Sector-July-2017.pdf>

³ The Hon. Doug Downey, Attorney General. Ontario Legislative Assembly, March 3, 2021. Hansard. https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2021-03-03/hansard#P199_11287

There is considerable legal opinion that limiting issue advertising in a lengthy pre-election period (one year) is unconstitutional⁴. While we are sympathetic with the government's goal of limiting large, partisan third-party advertisers, a regulatory regime that stifles and unduly burdens nonprofit organizations in our local communities *one out of every four years* is not supportive of a fair and open democracy. We therefore ask that Bill 254 be amended to allow public benefit nonprofits to undertake their issue-based, nonpartisan advocacy work on behalf of their communities and keep the focus of legislation on the big spenders engaged in partisan advertising.

By lengthening the "pre-election" period to twelve months without raising the registration threshold, Bill 254 imposes new administrative burdens on "small spenders" who engage in issue-based (nonpartisan) pre-election advocacy. Nonprofits that spend as little as \$42 a month would have to register and report spending separately (with a separate bank account) for advocacy on issues on which a candidate or political party has taken a position. We believe this administrative burden can only be justified with a much higher registration threshold.

With Bill 254, Ontario would have by far the lowest registration threshold and the longest pre-election period in Canada. In fact, most jurisdictions (including the Government of Canada) do not impose such regulations on nonpartisan third parties until the writ drops.

Second, with respect to the new rules against "collusion," we are concerned that these provisions will cause a new advocacy chill among small nonprofits who otherwise provide an avenue for community members to participate in public policy debate. In Schedule 2, section 3 ("No combination to exceed limit"), there are new measures against third-parties using the same vendors and sharing information, strategies, and donors with others advocating on the same cause. It is very common for nonprofits to collaborate on advocacy campaigns. Likely the intention of the bill was to focus on those attempting to circumvent the maximum spending rules (in the hundreds of thousands of dollars). However, the language could unintentionally disadvantage "small spender" nonprofits by cutting them off from community partners or commonly-used vendors -- or even put them off entirely if there is a lack of clarity.

Third, It is inappropriate and possibly unconstitutional in the wake of the 2018 "Canada Without Poverty" ruling for the Ontario government to constrain charities in their participation in nonpartisan advocacy.⁵ Section 37.10 of the Election Finances Act currently prohibits charities from donating to nonpartisan pre-election campaigns. This must be changed. With the revision of charitable rules in the Income Tax that followed the court ruling, there is now a consensus across Canada that charitable activities include *nonpartisan* public policy advocacy.

⁴ Court of Appeal for British Columbia. Reference re Election Act (BC), 2012 BCCA 394. Oct. 4, 2012. <https://www.canlii.org/en/bc/bcca/doc/2012/2012bcca394/2012bcca394.html>

⁵ For more on the implications of the ruling, see ONN's blog post, "I am charity, hear me roar." July 19, 2018. <https://theonnc.ca/i-am-charity-hear-me-roar/>

Fourth, the administrative burden is a serious concern. Public benefit nonprofits are diligent in transparency and accountability, but the cumulative effect of administrative burdens (“red tape”) takes valuable time and energy away from their mission to serve and amplify the voices of their communities.

Many public benefit nonprofits already publish their annual audited financial statements showing how they spend their money and their major donors. The rules under the Election Finances Act were created for political action groups, while the work of nonprofits continues year-round for communities. A level playing field can be created by enabling nonprofits to use their existing audited financial statements for reporting purposes with dedicated expenditure/revenue lines for election advertising. Public benefit nonprofits’ accounting already uses budget lines instead of separate bank accounts for their multiple programs and sources of revenue, and this should be no different for pre-election advertising.

There is a very real possibility that thousands of nonprofits will refrain from participation in public policy debate around elections if the rules are not simple and clear -- and this would do a disservice to the communities they serve and whose voices they amplify. We must not underestimate the “advocacy chill” effect of onerous registration, banking, and reporting requirements.

We encourage the Standing Committee to recognize the critical role played by Ontario’s nonprofit sector in the democratic process and to ensure that legislation governing nonprofits’ advocacy before elections supports an enabling environment for us to serve our communities.

Sincerely,



Cathy Taylor, Executive Director

c.c. The Honourable Doug Downey, Attorney General via MinisterAG@ontario.ca
Tonia Grannum, Committee Clerk via the [Legislative portal](#)
Gurratan Singh, Official Opposition critic, Attorney General via GSingh-QP@ndp.on.ca
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