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The Standing Committee on the Legislative Assembly
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
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March 27, 2021

Re: Bill 254, Protecting Ontario Elections Act, 2021

Dear Chair Rasheed and committee members,

A little background information about myself. I am a Chartered Professional Accountant who has served as riding president and CFO, as well as campaign CFO, at both the federal and provincial levels. In addition, I worked at Elections Ontario and managed the election finances branch during the 2003 general election and I spent almost nine years at CPA Ontario where I led the publication of two versions of the Ontario election auditors' guidelines. In 2016 I presented, in person, to the Standing Committee on General Government on the Election Finances Statute Law Amendment Act, 2016. My comments will be informed by these experiences and will focused on Schedule 2 of the bill relating to the Election Finances Act.

I would like to bring to your attention the following opportunities for clarification and improvement:

Nomination Contests

From the Backgrounder/Press Release accompanying Bill 254:

Protecting Ontario Elections Act | Ontario Newsroom

Require people vying for party nominations to only submit candidate registration papers and not the additional financial reports introduced in 2017

However, in Bill 254, under subsection 40 (1.1), 40(2), 40(3), 40(4) and 40(5), all that has been done is the elimination of the need for an auditor. The requirements for filing the financial reports under 41.1 (among many other sections) remain and have not been struck.

If it is the intention of the Bill to only eliminate the need for an audit, then this should be communicated clearly. If it is the intention of the bill to eliminate all financial filing requirements for nomination candidates, then a number of the other sections of the Act, including 41.1 must be amended/struck.

Eliminating the requirement to file nomination contest financial returns, however, creates a compliance problem under subsection18 (1.1) of the Act since:

Constituency associations, nomination contestants

(1.1) The contributions that a person makes to registered constituency associations and registered nomination contestants of any one registered party shall not exceed, in a calendar year, $1,600 plus $25 for each calendar year that has begun on or after January 1, 2020. 2018, c. 17, Sched. 13, s. 1 (1).

The contribution limit for the constituency association is directly linked to the nomination contestants. How can you ensure compliance with the overall contribution limit if there is no financial reporting of the nomination contest?

I do not have a recommendation on this issue since I am unclear as to the intention of the proposed changes.

Returns not to be re-examined

2 (2) (1.1)

(1.1) For the purposes of clause (1) (c), where the Chief Electoral Officer has examined the financial return of a registered candidate, registered leadership contestant, registered constituency association or registered party and provided an approval letter, the Chief Electoral Officer shall not subsequently re-examine that return.

I find this proposed change to be quite problematic. It appears to be a solution seeking a problem. Speaking as a CPA, auditor, and having written two guidelines on election auditing, allow me to point out that the audited financial returns only attest to the accounting, not the compliance of a return, nor can it. For example, an auditor cannot attest to residency of a contributor or whether a contributor has exceeded the total limits contributed to all campaigns/constituency associations or that the contributor contributed his/her own funds. Subsequent events (e.g., whistleblower) may provide new details that need to be examined.

Under the proposed change, Elections Ontario will not be allowed to re-examine returns that have been "approved". I fail to see how this proposed change will further the public interest. The CRA can go back and re-examine previously assessed tax returns for a number of years.

Recommendation:

Eliminate 2 (2) (1.1)

Constituency association campaign period financial return (CR-3)

In the Backgrounder:

Requiring constituency associations to submit only an annual report. Associations currently must submit campaign and annual reports. Any campaign period information that occurred during the year will now be included in the annual report.

In Bill 254

41(2)

Same, constituency association

(2) The chief financial officer of every constituency association registered under this Act shall, on or before May 31 in each year, file with the Chief Electoral Officer a financial statement,

(a) of assets and liabilities as at the end of the previous year;

(b) of income and expenses for the previous year, including, with respect to election and by-election campaign expenses incurred in that period,

(i) all income and expenses received or incurred in the campaign period,

(ii) all campaign expenses, paid and outstanding, incurred in the campaign period and a statement of all disputed claims, and

(iii) all the information required to be recorded under subsection 34 (1) that relates to the campaign period; and

(c) setting out all the information required to be recorded under subsection 34 (1) for the previous year,

of the constituency association for which the chief financial officer acts, together with the auditor's report as required by subsection 40 (4).

While I am in agreement that eliminating the constituency association campaign period return (CR-3) makes administrative sense, there is a significant problem with the proposed change as currently written.

Currently, the candidate campaign period return (CR-1) is due six months after election day. The constituency association annual return (AR-1) is due five months after year end (i.e., May 31st of the following year). By eliminating the filing of the constituency association campaign period return (CR-3), which is currently filed at the same time as the CR-1 (i.e., six months after election day) and putting the constituency association campaign period expenses in the annual return (AR-1) means that this information will not be available for review until months after the campaign return is filed. For example, if the next election goes ahead on June 2, 2022, then the candidate campaign period return (CR-1) will be due on December 2, 2022 but the constituency association's annual return (AR-1) will not be due until May 31, 2023. This is important because the overall campaign spending limit is the total of the candidate's campaign period spending and the constituency association's campaign period spending. Having two deadlines, months apart, greatly hinders compliance.

If the genesis of this proposed change is to mirror the Elections Canada federal filing requirements, then we ought to follow it fully.

Under the federal system, either you ensure that the constituency association does not incur expenses on behalf of the campaign (which I did when I was the financial agent for a federal candidate in the 2008 election) or you must include the constituency association campaign period expenses on the candidate campaign period return. This way, all of the campaign period expenditures will be readily available to be examined at the same time.

Recommendation:

Follow the federal system fully. Require the constituency association campaign period expenses be included in the candidate campaign period return (CR-1) so they can be totalled and assessed.

In conclusion, I wish to repeat what I said during my presentation in 2016. My hope is that when this legislation is passed, it will further promote the public interest by ensuring an equal playing field for both the public and the active participants in the political process. Years from now, when a new campaign or riding CFO is reading the Election Finances Act for the very first time, it will not be readily apparent to him or her what the makeup of the Legislature was or what party was in power when the act was passed.

Cordially,

Louis Kan