SOCIETY *of*
UNITED PROFESSIONALS
IFPTE 160

ONTARIO GOVERNMENT BILL 254:
PROTECTING ONTARIO ELECTIONS ACT 2021

Submission to the Standing Committee of the Ontario Legislative Assembly by the Society of United Professionals

March 2021

INTRODUCTION

The Society of United Professionals ("the Society"), Local 160 of the International Federation of Professional and Technical Engineers, is a nonpartisan union of more than 8,500 professionals working in the public, private, regulatory and not-for-profit sectors. Our members are engineers, legal aid lawyers, scientists, accountants and more.

RECOMMENDATION

The Society is profoundly concerned that Bill 254 will suppress our — and by extension our members' — *Charter*-protected freedoms of expression and association. We urge the government to abandon Bill 254's changes to third-party advertising regulations.

BACKGROUND

The Society is a nonpartisan union that strictly limits our involvement in electoral politics to elections in which our members' jobs and/or rights are directly at stake. We have never endorsed or aligned ourselves with a specific party in any election. In the 2018 election, for example, the Society made no recommendation on how to vote but did provide members with the verbatim responses to the issues and policy survey the Society sent to each of the major political parties.

One of our core organizational values is to pursue evidence-based public policy in the public interest. The Society does this even when that policy does not necessarily directly advance our members' economic interests. In that spirit, the Society often engages in nonpartisan, issue-based education and advocacy campaigns related to our areas of expertise, including energy, justice and labour relations policy.

In the 2015 Sudbury by-election, for example, the Society registered as a third-party to raise awareness about the risks of the previous Liberal government's Hydro One privatization plans. While that position happened to align with the two opposition parties of the day, that is not always the case. We are also, by way of a further example, committed advocates for nuclear energy's role as a clean, affordable source of baseload power. In the current legislature, that position broadly aligns to the Progressive Conservative government and the Liberal Party's perspectives.

As a democratic organization, the Society also participates in public policy debates to amplify our members' voices. Our collective participation gives members the opportunity to advance their shared interests in a way that they could not possibly do as individuals. This participation is important as a counterbalance to the power and influence of wealthy businesses and individuals in and beyond elections.

Collective bargaining is often a trigger point for engagement in public discourse around the value of workers to both their employer and the public. As a union with members working under more than a dozen collective agreements, the Society is always in and/or preparing for collective bargaining. If a collective bargaining-related public awareness campaign were to be required during the regulated 12-month pre-election period (referred to as the "non-election period" in Bill 254 and the *Election Finances Act*), a union without intention to be involved in election-related communication could be accused of not registering as a third party or could exceed the spending limit for third parties. However, collective bargaining is protected under the Charter's right to freedom of association. The Society asserts — and will vigorously defend — the principle that our members' freedom of association cannot be curtailed by registration requirements or spending limitations because collective bargaining happens to fall in the regulated pre-election period.

With this context in mind, we will address the specific changes proposed through Bill 254 that give rise to our opposition to this legislation.

EXCESSIVE REGULATED PRE-ELECTION PERIOD

Bill 254 seeks to double the regulated pre-election period to 12 months. The existing six-month limitation is already a major encroachment on Ontarians' rights. However, an extension to 12 months means that Ontario would suppress freedom of expression in one out of every four years. As the expression relates to citizens' ability to comment on what their government is doing, has done, will do or should do, this is an extremely serious and unjustifiable violation of Ontarians' *Charter* rights.

Compounding the danger of an excessive regulated pre-election period is the unnecessarily broad definition of "political advertising" that already exists in the *Election Finances Act* (EFA). The definition of political advertising "includes advertising that takes a position on an issue that can reasonably be regarded as closely associated with a registered party or its leader or a registered candidate." This means that even advertising related to a bill before the Ontario legislature that has no direct impact on an election within 12 months of an election could be subject to EFA regulation.

SPENDING LIMIT

The current spending limit for the regulated pre-election period is at best modest. Yet maintaining that same spending limit of $637,200 while doubling the period in which it applies is further infringement on the right to free expression. The breadth of provincial issues that any group may want to raise in the public domain is vast. These could be issues that are already on the provincial agenda or an almost limitless number of issues that Ontarians may be interested in getting onto the policy agenda. A third party could begin with a proactive campaign to raise a new issue only to learn almost a year later of a new issue they must respond to. By doubling the regulated pre-election period, the odds that new issues arise increases, potentially rendering a third party muzzled if they have reached their spending limit on a different issue.

Given Ontario's vast size and the cost of advertising in a world-class media market like Toronto's or a highly competitive market like Ottawa's, the previous spending limit of $637,200 for six months was already highly restrictive.

The government's approach to third party spending limits is especially notable given the opposite approach taken to campaign contribution limits. Bill 254 doubles contribution limits, making it easier for politicians to run their campaigns on a smaller number of large contributions. This, combined with the limitations on third parties, makes it much harder for the average Ontarian to have their voice heard through freely associating with likeminded individuals, pooling resources, and collective action.

VAGUE RULES ON ANTI-CIRCUMVENTION/COLLUSION

New rules to prevent third parties from colluding or circumventing the spirit of the Election Finances Act are so vague that a third party working in good faith could easily contravene the rules and not know it.

Bill 254 would presume that two groups that "share a common advocacy, cause or goal" are colluding and therefore subject to a single spending limit. It would not matter whether the two groups had ever communicated, let alone collaborated or colluded, in an effort to circumvent the spending limit. Additionally, Bill 254 restricts third parties from "information sharing," having common contributors and using common vendors.

Placing such extraordinary burdens on third parties seeking to participate in the democratic process is patently unreasonable. Take, for example, climate action. The Society is among hundreds if not thousands of interest groups keen on seeing action to reduce greenhouse gas emissions in Ontario to slow and reverse climate change. Ranging from industry to labour to environmental groups, the central issue and ultimate outcome each group is seeking is quite similar. They may even attract similar contributors to their third-party entities. Yet how to get to that common goal can be extremely contentious even among those that agree that urgent action is necessary. Bill 254 would subject all of these divergent interests to a single spending limit.

Beyond the unfairness of groups talking about more popular issues having less to spend, there is no coordinating mechanism between groups to determine how much money has been spent at any given time within a common "advocacy, cause or goal". Were groups to try to share information around their total collective expenditures, or coordinate their expenditures to stay within limits, that would, in itself, be further grounds to consider their behaviour collusive. Groups sharing common interests or objectives, are thus presented with a Kafkaesque situation in which they face substantial penalties for collectively exceeding a set expenditure limit, but are not allowed to communicate with each other in order to avoid surpassing the set limit.

ADMINISTRATIVE MONETARY PENALTY

Bill 254 would create administrative monetary penalties that can be applied by the Chief Electoral Officer (CEO) without due process. These monetary penalties are not subject to an independent appeal process. As the CEO is a political appointment, it is important that their power to punish interest groups has appropriate checks and balances. Levying potentially seven-figure penalties without a hearing does not afford those accused of wrongdoing with appropriate opportunity to present exculpatory evidence and argument. Even more concerning is that the appeal process involves the same CEO reviewing their own decision. This is not a transparent or accountable process and we do not believe it will stand up to scrutiny if tested in the courts.

CONCLUSION

In the Supreme Court of Canada's 2004 Harper v. Canada (Attorney General) decision, the court found at paragraph 84 that "election advertising of third parties lies at the core of the expression guaranteed by the Charter and warrants a high degree of constitutional protection." Rather than protect this important form of expression, Bill 254 is a grave and unjustified attack on Ontarians' Charter rights.

The current six-month regulated pre-election period limitations are already undergoing a Charter challenge and may yet be struck down. There has been no evidence to suggest that expanding the regulated pre-election period to 12 months is justified or will have a particular benefit to democracy or the electoral process as a whole. In the absence of compelling justification, this is nothing more than a government seeking to gag its critics and prevent legitimate concerns from being brought forward to the public at the most inopportune time for the government — the months leading up to an election. This gag law has no place in a free and fair democracy. We therefore urge the government to abandon its amendments to third party advertising rules in Bill 254.