



Submission
to the
Standing Committee
of the Legislative Assembly
relating to
Bill 254, Protecting Ontario Elections Act, 2021

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The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 270,000 members in every riding in Ontario. CUPE members provide services that help make Ontario a great place to live. CUPE members are employed in five basic sectors of our economy to deliver public services: health care, municipalities; school boards, social services, and post-secondary education.

Our members do all this work in our communities every day, and as a collective experience it equips us to make a positive and informed contribution to the discussions around the provincial finances, and the priorities of Ontarians. We support the development of vibrant, healthy communities and strong local economies, and part of this can be realized through investments in people and public services. This experience makes us uniquely qualified to comment on the electoral system, and the voices it is established to hear. Our interest includes rules governing financing of elections, and 3rd party advertising during elections, which are addressed in Bill 254. We are committed to the principle of electoral fairness, including creating a level playing field for everyone who stands for public office.

Political parties are not the only organizations that have an interest in shaping public discourse during elections. We believe strongly that a vibrant and thriving democracy requires input from workers' organizations. It is only through robust participation in public debate that workers' interests can be articulated and made relevant. Other civil society and grassroots organizations have an important role to play in advancing issues of public interest and importance. By making the rules around engagement too restrictive and confusing, the government risks discouraging not-for-profit and community groups from participating in our democratic system, while wealthy corporations and corporately-funded lobbyists can afford to pay for legal advice to help them navigate the rules or to pay the penalty if they run afoul of the law. This effectively creates two categories of third parties, rather than levelling the playing field for everyone.

Our position can be described in four points and focus on Schedule 2 of the Bill:

1. Higher contribution limits create a greater likelihood of cash for influence. The wealthy – persons and corporations alike – can give more and can influence policy by doing so. This establishes a position where a small minority can amplify their voices disproportionality. Each vote is equal in our society therefore, contributions to political parties should not tilt the scale in favour of the wealthy few. Spending limits have been raised unchecked, first from \$1,200 to \$1,600 in 2018 and then in 2021 from \$1,650 to \$3,300, without an intervening election. This is clearly a self-serving decision – Conservatives have almost tripled the donation limit amount since coming to power. It is also the Conservative party who receives the greatest number of maximum donations, while other parties depend on smaller donations from a larger number of donors.
2. Extending the election period for third party advertising from six months to twelve months places undue restrictions on political activities. Political advertising is broadly defined to include issues-based advocacy. The new restriction on this

form of speech means for one of every four years, third parties would be further constrained from articulating positions by this election law on any number of issues.

3. The definitions around collusion are confusing and poorly constructed. This could have the real consequence to capture innocent actors or cause citizens to limit their actions in fear of being charged. In fact, the laws are so restrictive and poorly defined one is left to wonder if the real aim isn't to create a chill on public debate. This is more profound when penalties are being increased. It is clear this is mostly aimed at, under-resourced grass roots organizations who work in coalition to push a common message or who cannot afford legal advice to ensure that their advocacy efforts fall within the rules. The new rules would also place an undue hardship on the administration of election spending.
4. The front loading of political party funding is nothing short of a cash grab. There is no rationale for this loading the distribution of funds unless the government is contemplating an early election and wants to skew the financing in favour of the governing party. Extending government funding for two more years does not go far enough. CUPE believes in public funding for political parties combined with a reduced individual contribution limit because it creates a level playing field for all political parties. This should be continued indefinitely and reduce the contribution limits (look at BC or Quebec).

This country has had major problems with wealthy people and corporations funnelling money to political decision makers. Ontario has a particularly egregious history of this activity, in particular with the past governments cash for access scandal, which the Conservative Party (PCPO) enthusiastically showcased as poor behaviour. Some standout examples include:

- *In Ontario, lobbyists sold tickets for Premier Ford's recent fundraising dinner and, in 2016, executives at a bank involved in bidding on a government contract organized a fundraising event for the ruling party that was attended by Liberal Cabinet ministers.*
- *A 2019 analysis of donations to candidates in Ottawa's city council elections found some property developers claiming donations were made by their wives in order to avoid prosecution, and another analysis of Ottawa donations released May 2020 found that 58% of donations to councillors on the city's Planning Committee came from people associated with the property development industry, and that 11 of 24 councillors received more 50% of their donations from people associated with the property development industry.*

- *An analysis in spring 2019 found that the Trudeau Liberals have received almost \$1.5 million in donations from staff, executives and lobbyists at more than 110 companies, law and accounting firms and interest groups since 2015.*¹

This legislation would impose onerous and unclear new rules on third party election advertisers, including CUPE, and applies those rules over an extended period of time. Bill 254 also significantly increases the caps for individual financial contributions, while reducing or lifting the fundraising reporting obligations of parties and their constituency associations.

If Bill 254 is passed, the individual contribution limit will be raised from \$1600 + \$25 per year since January 1, 2020 to \$2200 + \$25 per year beginning January 1, 2022. This cap will apply separately to each of:

- Donations to any one registered party;
- Donations to all constituency associations and registered nomination contestants of any one registered party;
- Donations to all candidates of any one registered party;
- Donations to any one independent candidate; and
- Any one registered leadership contestant.

The current effective maximum donation is \$4,950 if a given donor maximized their donations to a party, to the constituency associations of that party, and to the candidates of that party. With the changes in Schedule 2, that will rise to \$9,900 per year. Note that these donation limits could be multiplied if a donor chose to donate the maximum amount to multiple parties, for example both the PCPO and the Liberal Party of Ontario. There are only a small privileged select number of persons that could provide funding at these levels, and virtually all of them would have some specific interest or business with the government.

Currently, Ontario is in the mid-range of allowed total contributions, with British Columbia, Alberta, New Brunswick, Prince Edward Island, and the federal jurisdiction providing for lower limits, and limits only slightly higher in Manitoba and Nova Scotia (both \$5,000). After the changes, Ontario will have the highest limit among provinces that provide for a limit (Saskatchewan and Newfoundland and Labrador do not provide for a limit).

Additionally, the amount that a candidate may donate to their own campaign would increase from \$5,000 to \$10,000 and the amount that a leadership contestant may donate to their own campaign would increase from \$25,000 to \$50,000.

¹ Democracy Watch. List of sham political donation systems across Canada that don't stop big money in politics. <https://democracywatch.ca/wp-content/uploads/ListOfShamCanPoliticalDonationSystems-1-1.pdf>.

Schedule 2 would also limit reporting requirements for fundraising in the following fashion:

- A party would be permitted to deem the first \$30 of the cost for accessing a fundraising event not to be a contribution and thus not subject to tracking or reporting.
- The required notice period for fundraising events outside of the writ period would be reduced from seven days to three days.
- The individual or aggregate amount that can be donated by a single source without records being kept or disclosure being made would be increased from \$100 to \$200; and
- The period of time in which a donation must be reported would be extended from ten (10) to fifteen (15) days.

These changes obscure donations and literally set up the scenario of passing cash at political events with no oversight.

Most notably, Schedule 2 imposes significant new rules of third-party election advertisers.

First, the period of time in which rules apply to such advertisers would be extended from six months before the issuance of the writ of election to twelve months prior. This is a significant increase in the period of time in which the ability of third parties to engage in public political speech will be curtailed and regulated. The limitation is also harsher because the spending limit has not been increased. The same cap will now apply to double the period of time.

Second, Schedule 2 would impose a series of new prohibitions on the way that third parties conduct themselves.

- There would be a prohibition on “collusion” between two or more third parties such that their combined spending exceeds the allowable limit.
- There would be a prohibition on splitting into multiple third parties such that the combined spending exceeded the allowed limit.
- There would be a prohibition on “collusion” between a third party and the agents or employees of a registered party, candidate, constituency association, etc. for the purposes of circumventing the spending limit.
- There would be a prohibition on third parties “sharing a common “vendor” with one or more other third parties “sharing a common advocacy, cause or goal” to circumvent the spending limit.

- There would be a prohibition on third parties sharing a common set of “political contributors or donors” with another third party “sharing a common advocacy, cause or goal” in order to circumvent the spending limit.
- There would be a prohibition on sharing “information” with one or more other third party “sharing a common advocacy, cause or goal” in order to circumvent the spending limit; and
- There would be a prohibition on using funds obtained from a foreign source prior to the issuance of the writs of election.

The meaning of some of these prohibitions is not clear. For example, what it means to share a common vendor or to share a common set of contributors. It is also unclear what would make a given contributor or donor a “political” rather than non-political contributor or donor. Additionally, it is unclear what type of “information” cannot be shared with other third parties. Given the lack of clarity in these provisions, it is difficult to determine how a third-party advertiser would document its compliance with these prohibitions or ensure that it has not violated them.

The lack of clarity risks creating a chill where community groups and not-for-profits are afraid to speak up and participate in public debates because, they can’t be sure they are in compliance with the law, can’t afford to seek a legal opinion to help them ensure compliance, and can’t afford the penalty if it turns out they inadvertently contravened the Elections Act. With the extension of the pre-writ period to one year, this means that the Act would essentially muzzle smaller community groups and not-for-profits for a full quarter of a normal four-year election cycle.

Finally, Schedule 2 would create an administrative penalty scheme to “promote compliance” with the *Election Act* and the *Election Finances Act*. These administrative penalties would have maxima as follows:

- \$100,000 for a corporation or organization that breaches the requirement to attribute advertising to the sponsor(s) of the ad, or that breaches the prohibition on political advertising during the “blackout period” (that is polling day and the day before polling day);
- \$10,000 for a corporation or organization that breaches the requirement for a third party to register immediately after having incurred expenses greater than \$500 for advertising, to provide a copy of the resolution authorizing the organization to incur third party political advertising expenses, or to certify that it did not coordinate with any registered party, candidate, etc....
- The maximum penalty for an organization in all other cases is \$5,000.

Additional changes made by Schedule 2 are, an increase in the per-vote subsidy for political parties in 2021, changes to the schedule of payments of the subsidy in 2022 and 2023 and changes consistent with the creation of constituency associations for individual MPPs. The change in the schedule of the subsidy in 2022 and 2023 will effectively “front-load” the payments, so that two years of payments are received in the first half of 2022. It is unclear how the payments for 2023 could be calculated as there will be a provincial election in 2022 which would result in a change to the amount to be paid.

This schedule seeks to tilt the playing field in favour of the PCPO by increasing the amount of money that the PCPO can receive from its well-heeled donors, while at the same time limiting the ability of organizations like CUPE which represent workers to participate in public debate. There is no evidence of any problem in need of solving that is addressed by this legislation, except for the political problem that the PCPO has repeatedly faced of effective criticism from third party groups. Schedule 2 will also significantly increase the difficulty and uncertainty involved with, CUPE’s third-party political advertising activity, and will create a significant internal burden to ensure compliance with the broad and poorly defined new rules.

CUPE hopes that the government will take the challenges with this legislation seriously and not rush through these changes in advance of an election. Governing Parties already have an upper hand in elections with incumbency and these changes will further advantage them in fundraising. In order to maintain an appropriate balance, we ask you to reject these changes.