



Legislative Assembly of Ontario
Assemblée législative de l'Ontario

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The Chief Electoral Officer's

Submission to the Standing Committee
on the Legislative Assembly

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Bill 254, Protecting Ontario Elections Act, 2021

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Introduction

Good afternoon, Chair and Committee members. My name is Greg Essensa, and I am Ontario's Chief Electoral Officer. Thank you for the opportunity to comment on Bill 254, the *Protecting Ontario Elections Act, 2021*.

As the CEO, my mandate is to administer the province's elections, by-elections and referenda. Since I was appointed to this position in 2008, Elections Ontario has successfully run three general elections and 23 by-elections for over 10 million electors in the province. The CEO's role is to ensure transparency and integrity and to administer fair and accessible elections. As part of this role, the CEO also works with the Legislature to clarify, modernize and streamline relevant legislation.

Before commenting on the bill, I take pride that Elections Ontario celebrated its 100-year anniversary last year. For more than a century, the Office of the Chief Electoral Officer has worked impartially with all political parties, constituency associations, candidates and electors to uphold democracy. It is our privilege to serve, and we remain committed to putting the needs of electors first as we look to the future of elections in this province.

COVID-19 and Administering Elections

Over the last year, many election administrators worldwide have done incredible work reacting to pandemic challenges, with some jurisdictions having received legislative amendments to help the voting process.

Elections take years to plan and execute; in fact, we have already begun preparing for next year's election by re-engaging Returning Officers to begin assignments and procuring technology, equipment, and supplies.

Due to the fact that work is already underway, and we may still see COVID-19 challenges in 2022, I submitted a special report to the Legislature¹ a few months ago to request three key amendments to Ontario's *Election Act*.

Proposed amendments to the *Election Act*

I am pleased to see that the government included one of my recommendations in this bill by allowing 10 days of flexible advance polls. This would give electors more opportunities to vote.

The COVID-19 pandemic has highlighted how important it is for election administrators to be able to quickly respond to changing circumstances. I have three additional recommendations that I will cover in my presentation. If adopted, these amendments would improve future elections and will strengthen the integrity of the election. My recommendations are:

1. Extend the election calendar to 36 days;
2. Set election day to a day when schools are not in session; and
3. Clarify who has the authority to suspend voting or move election day after the writs of election are signed.

¹ [Special report of the Chief Electoral Officer on election administration and the COVID-19 pandemic](#), dated November 30, 2020.

Aligning the election calendar with Canadian standards

Extending the election calendar from 29 to 36 days would give us more time to ship materials across the province, including personal protective equipment. It would also allow our 124 Returning Officers to identify safe voting locations and hire staff willing to work during the pandemic. As a reminder, many of our poll workers are seniors.

Ontario has one of the shortest election calendars in Canada, despite having more electors and electoral districts than any other province or territory. Due to the size and scope of our elections, the current timelines are very challenging. It puts undue pressure on our Returning Officers and head office. It also leaves little time to respond to any significant issues.

The pandemic has also increased interest in voting by mail across the world. In British Columbia, 31% of electors voted by mail in their recent election last year, an increase of 7,200% in vote by mail as compared to their previous provincial election. We believe Ontario will see a similar increase next year. With a 36-day calendar, we can provide more electors who apply to vote by mail with a tabulator ballot. This means they can simply mark their X next to the candidate of their choice, just like at a voting location and using the same style ballot as on election day.

A longer election period would also improve timelines for our staff so they can better serve electors. Giving electors more ways to vote ahead of election day would reduce line-ups at the polls and make it easier to physically distance at polling locations during the writ period.

Maintaining options for voters while preserving student safety

I am repeating my recommendation that election day be a day when schools are not in session. In the 2018 general election, roughly 45 per cent of Ontario's electors were assigned to voting locations in a school. Using schools as voting locations is essential for every provincial election. During the pandemic, this is especially important.

Schools are central, accessible and familiar to their communities. They offer enough space to physically distance. So far, all Canadian jurisdictions that have used schools as voting locations during the pandemic have set election day to a day when schools are not in session.

I have been recommending this amendment – that election day be a day when schools are not in session – in every annual and post-event report for the last 10 years. During the pandemic, this request has become even more important. It avoids putting at risk the health and safety of students, and their teachers and caregivers.

Defining certainty in changing circumstances

Lastly, I am recommending that the *Election Act* be amended to clarify who has the authority to suspend voting or move election day after the writs of election have been signed.

In Newfoundland and Labrador's recent election, in-person voting was suspended before election day because of a contagious COVID variant. Fearing for their safety, some field staff refused to work at the last minute.

This shows how quickly decisions need to be made in an emergency. Providing this direction within the *Election Act* would provide certainty if we faced a similar situation in Ontario.

New Brunswick recognized the need for greater flexibility. Their provincial government introduced legislation a few weeks ago² that would make it possible for the municipal electoral officer to suspend candidate nominations and voting in a health zone should a lockdown result from a COVID-19 outbreak. They recognized that they need to have a clear process in place in the case of an emergency.

Beyond these three recommendations, Bill 254 provides greater transparency through the creation of an advisory committee that would develop voluntary guidelines for voting equipment and vote counting equipment. These standards would help preserve the integrity of and modernize our electoral process. This bipartisan advisory committee would be the first of its kind in Canada and is consistent with my previous recommendations.

Proposed amendments to the *Election Finances Act*

Elections need to be transparent and fair – not only for electors – but also for candidates and political parties. As CEO, I am committed to levelling the playing field for candidates and political parties.

² On March 19, 2021.

In 2016, I stated before Committee:

"The concept of a level playing field is central to our democracy. It is also a unifying principle of election administration. It ties together the voting process and the campaign process."

For this reason, I am pleased that Bill 254 authorizes me to levy administrative penalties for non-compliance, which would give me additional tools for enforcement. The bill also clarifies rules around collusion and places more restrictions on third-party advertisers.

In my submission to the Committee, I have outlined technical amendments and transitional provisions for Bill 254 to ensure effective implementation. In its current form, Bill 254 has a number of inconsistencies that would affect the integrity of the election finance regime if it is passed.

For example, if Bill 254 is passed in its current form, the payment of campaign expense subsidies would be delayed after the 2022 general election due to the lag in reporting of campaign expenses that would be incurred by the constituency association. This is because the bill repeals the requirement for constituency associations to file campaign period financial statements.

Conclusion

In conclusion, the Chief Electoral Officer's job is to protect the core covenants of democracy. There are many recommendations in this bill that

would enhance integrity, transparency and access to voting for Ontario's electoral system, even after the pandemic.

The technical amendments I am submitting to Committee for this bill would ensure better compliance with the election finances provisions and help to level the playing field for candidates, political parties and third parties.

Thank you for inviting me to speak on Bill 254.

Bill 254 – Protecting Ontario Elections Act, 2021 – Proposed Technical Amendments and Transitional Provisions

Area, Bill References	Proposed in Bill 254	Proposed Recommendation
Candidates Section 5, and Subsection 15(1)	Under the <i>Election Finances Act</i> , additional information will be required from candidates and the requirement to appoint an auditor will be within 30 days of receiving at least \$10,000 in contributions or incurring expenses of at least \$10,000, with respect to an election.	Amend the <i>Election Act</i> to include the additional information required to be included under the candidate nomination paper and remove the appointment of the auditor.
Powers and duties of the Chief Electoral Officer Subsection 2(2)	The CEO will no longer be able to re-examine financial returns once they are approved.	Elections Ontario would require an exception in cases where new information comes to our attention from either the CFO, auditor, or party, and in cases where a complaint is filed.
Disclosure of contributions Section 12, and Subsection 13(1)	The threshold for recording and disclosure of contributions from a single source will be increased to \$200.	This Bill will be passed during the 2021 calendar year. For consistency purposes, this should be applied to all contributions received from January 1, 2021.
Appointment of auditor and threshold for audit Subsection 15(1)	Audits will be required for campaign and leadership contest periods where at least \$10,000 in contributions are received or at least \$10,000 in expenses are incurred, with respect to an election or leadership contest.	The appointment of auditor with the threshold for audit should be applied to annual financial statements. This Bill should include a transitional provision, such as, commencing with 2021 reporting periods.
Constituency association campaign period reporting Section 16	The requirement for constituency associations to file separate financial statements for campaign periods is repealed; campaign expenses will be reported in the annual financial statements.	To ensure campaign spending limits have not been exceeded and to calculate the amount for the campaign expense reimbursements, Elections Ontario will delay the approval of the candidate financial statements and the payment of campaign expense reimbursements until after the review and approval of the constituency association annual financial statements.
Nomination contestants reporting requirements Section 17	The requirement for nomination contestants to file financial statements is repealed. However, nomination contestants are still required to register, can accept contributions, and have spending limits calculated by Elections Ontario.	With the repeal of the requirement to file financial statements, there is no mechanism for reporting this information to Elections Ontario. To ensure compliance, the financial filing requirements for nomination contestants should remain in place.
Third Party Advertising Section 14	The 6-month pre-writ regulatory period increased to 12 months; the spending limit remains the same for the 12-month period at \$637,200 for 2021.	The spending limit should be increased proportionately to reflect the additional 6 months to which the spending limit applies.