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March 30, 2021

The Honourable Doug Downey, Attorney General
Ontario Government
MinisterAG@ontario.ca

Kaleed Rasheed, Chair
Standing Committee on the Legislative Assembly
Ontario Legislative Assembly
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Re: Bill 254, *Protecting Ontario Elections Act, 2021*

To the Honourable Attorney General and to the Chair and Members of the Standing Committee on the Legislative Assembly:

Environment Funders Canada (formerly Canadian Environmental Grantmakers Network – CEGN) is a national network of philanthropic foundations and other organizations that support efforts to transition toward a more sustainable world. Our members work with non-government organizations, community groups and other charitable organizations to develop and deliver programs that can make our communities healthier and more resilient, while protecting vital ecosystem services and the natural world.

We join with the Ontario Nonprofit Network (ONN) to raise critical issues regarding the impact that Bill 254 and the election finance rules will have on Ontario public benefit nonprofits and charities.

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."

Regrettably there are aspects of Bill 254 that will not only drown out but risk silencing those local voices that 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 community-based nonprofit voices. Public benefit organizations 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.

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There is considerable opinion, that limiting *issue advertising* in a lengthy pre-election period (1 year) is unconstitutional and, while we are sympathetic with the governments' goal of limiting partisan big third party advertisers, a regime that stifles and unduly burdens nonprofit organizations working for public benefit 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 the public benefit sector to continue to undertake their *issue advocacy* work on behalf of their communities and keep the focus of legislation on the big spenders engaged in partisan advertising.

Our key requests are as follows:

- **Significantly 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 issue based, policy dialogue, and are not required to keep complex separate accounts if their work becomes an election issue.

- **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 big third parties circumventing spending limits.

- **Remove the prohibition (established in 2016) on charities' ability to donate to pre-election advocacy campaigns** in line with a 2018 court ruling that eliminates caps on charities' participation in nonpartisan, issue based, public policy advocacy.

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

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.

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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), but 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, current election advocacy rules constitute an unfair playing field for charities. Section 37.10 of the Election Finances Act prohibits them from donating to nonpartisan pre-election campaigns. 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. With the revision of charitable rules in the Income Tax Act that followed the court ruling, there is now a consensus across Canada that charitable activities include nonpartisan public policy advocacy.

Fourth, the administrative burden is a serious concern. Nonprofits are diligent in transparency and accountability, but the cumulative effect of administrative burdens ("red tape") takes valuable time and energy away from their public benefit missions.

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 for community-based nonprofits by providing a greatly simplified reporting system that is designed with nonprofit financial accounting practises in mind. In the interim enable them to use their existing audited financial statements for reporting purposes with a dedicated expenditure/revenue line for election advertising. 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 issue based public policy debate for the pre-election period (one out of every four years) if the rules are not fair, simple and clear. This would do serious harm to the communities and public interests they serve. Do not underestimate the "advocacy chill" caused by limiting participation, and unnecessarily 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 an enabling environment is provided for public benefit nonprofit issue advocacy in the pre-election period.

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Sincerely,

Devika Shah
Executive Director

c.c. Tonia Grannum, Committee Clerk via the Legislative Portal
Ontario Nonprofit Network via info@theonn.ca