

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Official Report
of Debates
(Hansard)**

M-28

**Journal
des débats
(Hansard)**

M-28

**Standing Committee on
the Legislative Assembly**

Protecting Ontario Elections
Act, 2021

1st Session
42nd Parliament

Tuesday 30 March 2021

**Comité permanent de
l'Assemblée législative**

Loi de 2021 sur la protection
des élections en Ontario

1^{re} session
42^e législature

Mardi 30 mars 2021

Chair: Kaleed Rasheed
Clerk: Tonia Grannum

Président : Kaleed Rasheed
Greffière : Tonia Grannum

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<https://www.ola.org/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

House Publications and Language Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service linguistique et des publications parlementaires
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1180-436X

CONTENTS

Tuesday 30 March 2021

Protecting Ontario Elections Act, 2021, Bill 254, Mr. Downey / Loi de 2021 sur la protection des élections en Ontario, projet de loi 254, M. Downey.....	M-451
Ontario Nonprofit Network; Democracy Watch.....	M-451
Ms. Cathy Taylor	
Mr. Duff Conacher	

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Tuesday 30 March 2021

Mardi 30 mars 2021

The committee met at 0901 in committee room 1 and by video conference.

PROTECTING ONTARIO ELECTIONS
ACT, 2021LOI DE 2021 SUR LA PROTECTION
DES ÉLECTIONS EN ONTARIO

Consideration of the following bill:

Bill 254, An Act to amend various Acts with respect to elections and members of the Assembly / Projet de loi 254, Loi modifiant diverses lois en ce qui concerne les élections et les députés à l'Assemblée.

The Chair (Mr. Kaleed Rasheed): Good morning, everyone. I call this meeting to order. We are meeting to conduct our second day of public hearings on Bill 254, An Act to amend various Acts with respect to elections and members of the Assembly. Are there any questions before we begin?

Seeing none, this morning we have two presenters for our 9 a.m. time slot. Each presenter will have seven minutes for their presentation, and after we have heard from the two presenters, we will have 39 minutes of questioning, divided into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition members and two rounds of four and a half minutes for the independent member. During the presentation, I will be giving a two-minute time warning and then a one-minute time warning.

ONTARIO NONPROFIT NETWORK
DEMOCRACY WATCH

The Chair (Mr. Kaleed Rasheed): I'm going to request the Ontario Nonprofit Network to please state your name, and you can start your presentation. Thank you.

Ms. Cathy Taylor: Good morning. My name is Cathy Taylor. I'm the executive director of the Ontario Nonprofit Network, and my colleague Liz Sutherland, director of policy, is also with me this morning. I've been working from the town of Erin, Ontario, which is located on Treaty 19. This is part of the treaty lands and territory of the Mississaugas of the Credit. ONN is the network for the 58,000 non-profits and charities in Ontario. We engage our network of diverse voices across Ontario to bring their perspectives to government and other stakeholders.

I don't need to tell you all how vital non-profits are to our communities in terms of the public benefit they generate. Many of you have been involved in non-profits through volunteer work, so you know that communities could not function without the supportive web of non-profits that contribute to our quality of life. This has never been more true than in the pandemic. Non-profits have stepped up and have been the glue that have been keeping communities together. Today we are here to talk about non-profits as part of our democracy, as critical voices in public policy debates, especially in the time leading up to provincial elections.

Public benefit non-profits are the bridge between our communities and government. They play a key role in public policy advocacy, sharing valuable feedback about the experiences of citizens with government policies and programs. Without an engaged non-profit sector, government would have a more difficult time hearing those local voices. We use the term "public benefit non-profits" to talk about charities and other non-profits that have a public-oriented mission, rather than solely serving their own members. When they advocate, public benefit non-profits engage in what federal elections rules call "issue advocacy." It is non-partisan, and our sector takes great care with that line. This distinction is important, and it's why in most jurisdictions in Canada, there are different rules for issue-based advertising versus partisan advertising around elections.

Non-profit advocacy has been responsible for many of the public policies that we all count on and take for granted, such as seat belt laws, anti-human trafficking laws, anti-smoking laws and privacy laws. Even those non-profits that primarily deliver services such as food banks advocate for better policies to reduce hunger. Women's shelters advocate for an end to violence against women, as well as ensuring that they have a safe place to sleep. These groups naturally seize the opportunity when elections are held and people are paying attention to policy issues, so they can get their issue on the agenda. That's part of their job as public benefit non-profits. All that to say, issue-based advocacy is legal, non-partisan and critical to improving our democracy as well as government programs and services, and it should be protected.

We know that the third-party advertising rules in Bill 254 are well-intentioned, and we fully support the principle of regulating well-funded third parties. Unfortunately, though, there are aspects of Bill 254 that risk silencing

those local voices that are critical to our democracy. We are recommending changes to Bill 254 to allow public benefit non-profits to undertake their issue-based, non-partisan advocacy work on behalf of their communities and keep the focus of the legislation on the big spenders.

Firstly, raise the threshold for registration as a third-party advertiser for the proposed extended pre-election period. By lengthening the pre-election period to 12 months without raising the \$500 registration threshold, Bill 254 imposes new administrative burdens on small spenders who engage in issue-based pre-election advocacy. Non-profits 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 that a candidate or political party has taken a position on, even if this is an issue that that non-profit has been working on for years. 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 non-partisan third parties until the writ is dropped.

Secondly, clarify the rules around collusion so they explicitly do not apply to third-party advertisers whose combined spending limit remains below the maximum spending limit. These new measures against a third party using the same vendors and sharing information, strategies and donors with others advocating on the same cause could cause concern and confusion if they are not clarified. It is common for non-profits to collaborate on issue advocacy campaigns and even use the same vendors, such as donor software. We don't want non-profits thinking that this counts as collusion. Our proposal is to make it clear in the bill that collusion provisions do not apply if the combined spending of the groups does not approach the spending limits, which are currently set at \$600,000. This is consistent with the intent of the collusion provisions, which is to prevent third parties from getting around spending limits.

Thirdly, remove the prohibition on charities donating to non-partisan campaigns. There is a clause in the Election Finances Act that prohibits charities from donating to non-partisan, issue-based campaigns, even though they are permitted to run them in-house. In our view, it is completely inappropriate, and possibly unconstitutional in the wake of the Canada Without Poverty 2018 ruling, for the Ontario government to constrain charities in their participation in non-profit advocacy. With the revision of charitable rules in the Income Tax Act that followed that court ruling, there is now a consensus across Canada that charitable activities include non-partisan public policy advocacy. While you are revisiting the Election Finances Act, it's timely to fix this problem.

The Chair (Mr. Kaleed Rasheed): One minute.

Ms. Cathy Taylor: Finally, enable the Chief Electoral Officer to accept non-profits' regular audited financial statements and use one bank account for their operations, including issue-based advertising. As I mentioned, the

admin burden for non-profits that have to register as third parties is a serious concern. Our sector on the whole is committed to transparency and accountability, but the cumulative effect of the administrative and red tape from this and other legislation takes valuable time and energy away from their mission to serve and amplify their voices and their communities. We have a solution: Many public benefit non-profits already publish their annual audited financial statements showing how they spend their money, so we are asking for the election finance rules to enable non-profits to use their existing audited financial statements for reporting purposes, with explicit expenditure and revenue lines for election advertising.

In conclusion, there is a real possibility that thousands of non-profits would refrain from participation in public policy debate around elections if these rules are not simple and clear, and this would do a disservice to our communities that they serve and whose voices—

The Chair (Mr. Kaleed Rasheed): Thank you very much. Apologies to cut you off.

Ms. Cathy Taylor: No, perfect timing.

The Chair (Mr. Kaleed Rasheed): Thank you.

Next, I'm going to request Democracy Watch to please start your presentation. Please just state your name for Hansard. You may begin. Thank you.

Mr. Duff Conacher: Thank you, Chair, and thank you to the committee for this opportunity to speak on Bill 254. My name is Duff Conacher. I am a co-founder of Democracy Watch, chairperson of the 50-member group Money in Politics Coalition, and I am also a PhD student at the faculty of law at the University of Ottawa. My PhD thesis focuses on developing a model democratic, ethical, egalitarian and constitutional political finance system.

I welcome the opportunity to present on Bill 254 although, at the same time, I am filled with regret based on the contents of the bill. Bill 254 is undemocratic, unethical, parts of it are likely unconstitutional, and it will make Ontario elections unfair.

0910

Let me start at one of the focal points of where my colleagues at the Ontario Nonprofit Network focused, and this is the rules concerning third parties. You have heard from many people testifying yesterday representing organizations, and I'm not going to go into detail, because I agree with their comments generally in terms of these limits. They are very likely unconstitutional. I'd be very interested to hear from the lawyers at the Ministry of the Attorney General in the constitutional policy division what their thoughts are on these provisions, and would call on the Attorney General to disclose the opinions that he received from those lawyers, because I cannot believe that they would have signed off on this as a constitutional measure.

The main problem with it is not that there are limits; there should be limits on big spending. There should be limits all the time on big spending, but they have to be realistic limits. This is a feature of this bill, that all of the limits and all of the public funding for the parties is all being set totally arbitrarily. There needs to be an independent commission struck to study the costs of actually

reaching voters and the costs of running parties and running riding associations and campaigns for parties and candidates. That has never been done, and so all of these figures have been picked out of the air.

The \$600,000 limit that the Liberals set was picked out of the air. Now it has been essentially extended to 12 months, so that limit is in effect being doubled in terms of its effect on issue advertising—again, totally arbitrarily—and it's going to likely be struck down, so it's a complete waste of time of the Legislature, of the lawyers at the Ministry of the Attorney General, of the lawyers who are going to be defending those lawsuits, and a waste of the time of the courts. It should be withdrawn or, before it's enacted, referred to the Court of Appeal for a ruling on its constitutionality, as the BC government did back in 2011. The BC Court of Appeal ruled that similar provisions that applied for a much shorter period of time were unconstitutional.

Secondly, doubling the donation limit will allow wealthy donors to buy even more influence, and likely will help the ruling party, the Progressive Conservatives, the most. To give you a couple of figures you haven't heard: Democracy Watch's analysis found that the PC Party received half of its donations above \$100 from just 20% of its donors, far more than any other party, and these donations were donations of \$1,000 or more. The PC Party is supported by wealthy donors; doubling the donation limit is going to allow those wealthy donors to give even more, and that's tilting the rules overall—and not just this rule, but overall—in favour of the PC Party. To not consult with the public, to not consult with opposition parties before changing an election law which is a major part of the infrastructure of our democracy, is simply undemocratic, and by doubling the donation limit, you're making the system more unethical.

The median donation, we also calculated—and this is, again, for donations over \$100, because those are the only donations disclosed in terms of knowing the number of donors that gave them—for the PCs was \$200 in 2020. For the other parties: for the Liberals, \$50; for the Greens, \$30; and for the NDP, \$25. That shows that the average person cannot afford, on average, more than \$100 as a donation. If you want to make the system democratic and actually in favour of voters, which the Attorney General is claiming this bill is in favour of, then you would lower the donation limit to \$100.

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Duff Conacher: What would happen then? Well, first, again, we need a study of what it costs to run a party, a riding association, a campaign for both as a candidate. Then we'd be able to figure out how much public funding should be provided to the parties. The per-vote funding is currently providing half to two thirds of the annual amount that the parties are receiving, for no good reason. Voters didn't say they wanted this. Why should parties be subsidized and not other charities who have just as many public service goals? And so, we need a study done of every aspect of the system.

Let me just highlight one other feature that is kind of slipping through in this bill, and that is that you're saying

in this bill that nomination contestants will no longer have to file a financial return, let alone an audited return. This is a bad move. All the dirty money is going to flow now to nomination contestants because it can essentially be spent in secret, with no disclosure of the spending or the contributions.

The Chair (Mr. Kaleed Rasheed): One minute.

Mr. Duff Conacher: It's an undemocratic, unethical move and likely unconstitutional, as are other aspects of the bill, which I'm happy to take your questions about. Thank you very much, again, for the opportunity to present on this bill that hopefully will be changed before it makes Ontario elections very unfair.

The Chair (Mr. Kaleed Rasheed): Thank you very much.

Before I go to the government side to start the first round of Q&A, I believe MPP Piccini has joined us. I just want to make sure I have the attendance check. MPP Piccini, are you there?

Interjection.

The Chair (Mr. Kaleed Rasheed): Awesome. If you can just please confirm that you're MPP Piccini, joining us from Ontario.

Mr. David Piccini: Yes, Chair. I'm in my office in Port Hope.

The Chair (Mr. Kaleed Rasheed): Thank you very much, MPP Piccini.

From the government side, MPP Miller, please go ahead.

Mr. Norman Miller: Thank you, Chair, and thank you to both groups for your presentations this morning. I would like to ask some questions of Mr. Conacher, if I may. Mr. Conacher, back in 2016, I guess the Liberal government at that point changed the rules, banning corporate and union donations. Is that something that you agree with? Your perspective on that?

Mr. Duff Conacher: Yes, very much so. The entire political finance system should match the fundamental democratic principle of one person, one vote, meaning that no one person would be able to use money as a means of having influence over a party or a politician or a candidate. Corporations and unions making those large donations were not checking with their members or shareholders before doing it; it was just a few executives giving away other people's money, and that was not representative. It did not uphold the fundamental principle of one person, one vote.

That was a good move, but leaving the donation limit as high as it was left—in every jurisdiction that has done that in Canada, what you've seen is funnelling from executives, employees and their family members, where everyone is denying it's going on, but it clearly is, because when a corporation stops donating, all of a sudden, 10 executives and their spouses and their kids are suddenly donating, and they end up donating about the same amount as they were allowed to before. That's why all those systems are a sham and the Ontario system currently is a sham, and doubling the donation limit will make it even

more of a sham that will violate even more of the fundamental democratic principle of one person, one vote.

Mr. Norman Miller: My experience—I've been elected for 20 years, so six elections. I've been pleasantly surprised that money really has not come into it on a constituency basis. I think we probably spent about \$65,000 for a provincial election, with four years to raise that. With changing rules, that has not been a big deal. I used to do a golf tournament, when I was allowed to go to one, once a year, and that was about it. On a constituency level, it has really not been an impediment to running. You mentioned the nomination rules. I agree with doing away with the rules. I don't think I spent \$100 on my nomination. I think we made one little flyer, and that was about it, so money was not involved; that's for sure.

But we heard from eight different unions yesterday, all disagreeing with the third-party limit of essentially a little more than \$700,000 in the year leading up to an election. Well, that's \$5.6 million—just those eight that presented yesterday. That is significant money, and it can have a significant effect from a very specific perspective. So I'm wondering how you feel about that and whether there should be limits on that. I note that in the 2020 BC election, the total spending of all third parties—all third parties—was \$640,782, less than the limit for one organization, so it seems to me there should be some limits.

Mr. Duff Conacher: There are limits, and Democracy Watch believes there should be limits. In fact, we intervened in the 2000 case and the 2004 case and were one of the intervenors pushing for limits when the Supreme Court of Canada ruled that they were legal. At the time, the federal government set a limit of \$150,000 during an election campaign period of five or six weeks. The Supreme Court of Canada actually did a very inaccurate review of whether that was a reasonable amount, and that's what needs to be done. The limits have to be reasonable. These numbers are being picked out of the air. The 12 months has been picked out of the air, the six months was picked out of the air by the Liberals, the \$600,000—all picked out of the air with no evidence at all based on the cost of actually having an interest group or any other third party reach voters. How much does that cost in today's age of email, the Internet and social media?
0920

Do the study first. Suspend these provisions. Refer them to the Court of Appeal to see whether they're constitutional. But I would just suspend them; switch it so that the actual dollar amount will be set by regulation. And do an independent study, with no one from any of the parties or the third parties on it, and have some scholars and experts look at the actual costs of reaching voters, and then you can set a reasonable limit that will be constitutional. But just picking these numbers out of the air—that's part of why those rules are going to be ruled unconstitutional, because the government is not going to be able to show any kind of evidence to show that those limits are reasonable. You have to prove that to prove that something is constitutional.

As well, let me highlight again what the Ontario Non-profit Network said: To not have a threshold below which

you don't have to have these onerous filings and set up a separate bank account—that's another reason these rules will be ruled as unconstitutional. The threshold at the federal level is if you don't spend \$10,000, you don't have to do that detailed reporting and set up separate bank accounts. That's the kind of reasonable limit that's needed—

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Norman Miller: Well, I am just about out of time, so I just want to get your input on a couple of the other parts of this bill, some that were recommended by the Chief Electoral Officer: the administrative monetary penalties as a measure to enforce election rules, the addition of five more advance poll dates, and the advisory—

Mr. Duff Conacher: The advisory committee, yes. I hope you haven't frozen.

The Chair (Mr. Kaleed Rasheed): I think MPP Miller's screen is frozen.

Mr. Duff Conacher: I can answer those questions quickly, if you like.

The Chair (Mr. Kaleed Rasheed): Sure, please go ahead.

Mr. Duff Conacher: Sure. First of all, regarding the administrative penalties: You heard from Guy Giorno yesterday. To have the Chief Electoral Officer able to fine someone \$100,000 for a violation based only on his opinion, with no appeal to the courts—that's unconstitutional.

The Chair (Mr. Kaleed Rasheed): One minute.

Mr. Duff Conacher: I think it should be that he has a reasonable belief that there's a violation, and an appeal to the courts has to be allowed. That's going to be challenged, and it's a waste of time and a waste of the court's time, and it's going to be ruled unconstitutional as well.

More advance voting days: a great idea, especially on weekends, when lots of people are off work.

Finally, an advisory committee on social media: also a great idea.

Allowing independent candidates to raise money in between elections: great, but we need more disclosure requirements of their donations and their spending. Otherwise it will be essentially personal bank accounts for those people, with little accountability, and that's a bad idea.

Mr. Norman Miller: Thank you.

The Chair (Mr. Kaleed Rasheed): Thank you very much. Now we are going to move to the opposition side. MPP Natyshak, please go ahead.

Mr. Taras Natyshak: Thank you very much, Chair. Can you hear me?

The Chair (Mr. Kaleed Rasheed): Yes, I can.

Mr. Taras Natyshak: Okay, thanks.

Thanks very much, Ms. Taylor and Mr. Conacher, for appearing before us today. Ms. Taylor, you submitted some pretty practical reforms in your submission. I wonder—first of all, how many groups or entities does the Ontario Nonprofit Network represent?

Ms. Cathy Taylor: We have about 20,000 that get all of our e-newsletters and follow us on social media, and about 600 are paying members of the ONN.

Mr. Taras Natyshak: These include groups, I would assume, like the Terry Fox Foundation?

Ms. Cathy Taylor: Absolutely. From foundations, the SickKids Foundation, for example, to Rotary Clubs, small theatre groups, sports, Ontario Soccer, social service organizations, faith communities like the United Church, the Canadian Muslim association—so right across the spectrum of charities.

Mr. Taras Natyshak: Give me a scenario in which, should this bill move forward in its current form, without any amendments—what would that do to a group like the Terry Fox Foundation, which is instrumental in raising awareness about cancer and supporting families and people who have cancer? What would it do to their ability to get their messaging out and to raise funds?

Ms. Cathy Taylor: Especially in the health care field, health care non-profits and health care charities do lots of issue advocacy. Whether it was anti-smoking, whether it's around obesity, healthy eating programs that are a way to deter from cancer, whether it's getting outside for fresh air, there are a lot of issues that they work on that political parties, all of the political parties, do take positions on over time. So having them have to stop randomly a year before an election and figure out how to register as a third party, because they might spend \$500 over a whole year on maybe a social media post or an ad campaign or something like that, is just an undue burden for such a small amount of money. And then to set up a separate bank account on top of it is just quite onerous.

For some, it will not stop them from doing issue advocacy. They'll continue it. For others, it will actually stop them in their tracks and they'll be risk-averse, because of course they're worried about their accountability and making sure that they follow all legislative and regulatory guidelines, especially the small to medium-sized organizations. The bulk of non-profits and charities are what we call micro-organizations, so less than 10 staff. That will be a dramatic effect on their work.

Mr. Taras Natyshak: Now I used the example of the Terry Fox Foundation as, of course, one of the more iconic associations in Canada; Terry Fox being a Canadian hero—not only Canadian—a global icon for cancer awareness. Your position is that this bill and this legislation catches them and would essentially quell or muzzle any of their efforts to raise awareness or legitimate concerns around policy that may not support the advancement of research or support through our health care system. That's what you're saying to us, right?

Ms. Cathy Taylor: Yes, absolutely. There is really a difference between partisan advertising, which is, “We recommend you vote for this candidate,” and issue advocacy, and that's what non-profits and charities do. They advocate on good food services if they're a food bank or violence against women initiatives if they're a women's shelter. That type of issue advocacy, we don't want to quell, because it makes for better public policy.

Mr. Taras Natyshak: Would it surprise you that no one who has provided testimony, no group, association or individual who has provided testimony on this bill in the

last two days, has been in support of the bill, wholly in support of it?

Ms. Cathy Taylor: I think all legislation, when it's drafted, has lots of things to fix. We often have different perspectives on legislation and ways to fix it, so it doesn't surprise me that there are always improvements to be made.

Mr. Taras Natyshak: Thank you so much, Ms. Taylor.

Mr. Conacher, to what extent do you believe that this legislation is primarily meant to quell dissent or criticism of the government?

Mr. Duff Conacher: I think it is aimed at that, these parts with regard to third parties and having them apply to issue advocacy, issue advertising, as you were just talking about.

The federal bill has a much shorter period where there are limits on spending. The limit is really high, more than \$1 million. It only covers a 60-to-90-day period, depending on when the election is actually called. So that is a very short pre-election period, a very high limit, and the rule at the federal level only applies to partisan advertising.

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Duff Conacher: And so—

Mr. Taras Natyshak: Let me cut you off. Are you there, Mr. Conacher?

Mr. Duff Conacher: —[*inaudible*] limit on it. So trying to quell that for 12 months at such a low level of spending I think is going to be ruled unconstitutional. It's such a waste of time to do this. That's why I'm calling on the government to refer it to the Court of Appeal, which the cabinet can do under section 8 of the Courts of Justice Act, and have the Court of Appeal rule on the constitutionality of these provisions before they are enacted.

Mr. Taras Natyshak: In order to save us time, money, taxpayer money defending it at the Supreme Court level, as we saw the government enact with the carbon tax legislation with the federal government, which they just lost—we warned them that they were going to lose prior to that and they still embarked on a legal challenge nevertheless. In your experience and research, have any other governments or jurisdictions that you could point us to gone to this extent with reforms to their election laws?

0930

The Chair (Mr. Kaleed Rasheed): One minute.

Mr. Taras Natyshak: Tell us who's gone this far. Have any governments or authoritarian regimes that you might be able to identify pushed the envelope this far?

Mr. Duff Conacher: Well, Democracy Watch focuses on Canada, but other than authoritarian regimes that try to silence critics in this kind of way by making dissent illegal, this one is not making dissent totally illegal, but is setting such a limit, again totally arbitrarily, with no evidence as to what the costs are for interest groups to actually reach voters through advertising and what a reasonable limit would be. I've never seen the government go this far. It will be struck down. Likely, the groups will apply for an injunction, and it will be stopped right away and suspended until the courts hear it.

Again, it's a waste of time, and that's why I'm calling on the Attorney General to disclose the opinions he received from the lawyers and the constitutional policy division of his office—

The Chair (Mr. Kaleed Rasheed): Thank you very much. Apologies to cut you off.

We are now going to move to the independent member. MPP Collard, please go ahead.

M^{me} Lucille Collard: Yes, thank you to the presenters this morning for making time to come to the committee. I really appreciate the information you're providing, and I hope we're going to get your written submissions—the deadline is today at 7 p.m.—because I think that there's good advice in there.

Ms. Taylor, you explained some of the changes you would like to see. You talked about undue burden and silencing, I guess, of some issue-related recommendations that need to be voiced; you talked about the registration threshold; and you talked about clarifying the collusion rules. You had a third point, which I didn't get entirely, because I got distracted by something else. Could you go back to this?

Ms. Cathy Taylor: Sure. My third point was that, right now, there's an existing clause in the Election Finances Act that prohibits charities from donating to non-partisan, issue-based campaigns even though they're allowed to do them in-house, and there's been a new ruling federally in 2018 called Canada Without Poverty that rules that charities can do non-partisan public policy advocacy. Our recommendation is while the committee is reviewing the Election Finances Act, fix that problem and allow charities to be able to donate to non-partisan, issue-based campaigns.

M^{me} Lucille Collard: Okay, great. Thank you very much for that clarification.

Mr. Conacher, I want to pick your brain a little bit. I haven't been elected many times—actually once only at the provincial level, and recently—so I'm not all that familiar with elections rules and whatnot, but what I find is that we spend a lot of time as politicians and parties chasing money instead of talking to electors about issues, and I find it not the most efficient way to be a candidate.

I like your idea about the fact that there should be consultation. If you're going to change the election process, all parties should be involved in looking at those rules and making meaningful consultations about what would be the best approach. I think that conversation has been going on in the province and even in the country for quite a bit of time. I just want to know, according to your best information and the research you've been doing, what would be a reasonable approach in developing election rules?

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Duff Conacher: Well, developing it is to do a meaningful consultation. The world's best practice is called study circles. We would have a group of experts giving their opinion, and then, of course, stakeholders would make their opinion heard. Then for involving

voters, you set up study circles. Those are small, independently facilitated circles of 15 to 20 people who meet four or five times, learn about the issue over the first three meetings, and then in the last one or two meetings give their opinion back to the government. That is all taken into account, along with the stakeholders and experts. That's the best way to do it. That's what Quebec did in setting up the world's leading and most democratic, ethical, political finance system, with a \$100 donation limit, per-vote funding that's a bit too much, but they also have donation-matching funding, which is very democratic and inclusive of—

The Chair (Mr. Kaleed Rasheed): One minute.

M^{me} Lucille Collard: Okay. Thank you. I don't have any more questions.

The Chair (Mr. Kaleed Rasheed): Thank you very much. We are now going to move to the opposition side. MPP Mantha.

Mr. Michael Mantha: Thank you, Ms. Taylor, for your presentation this morning. I don't have many questions for you, but I do want to ask you one: The work that the Ontario Nonprofit Network does is amazing work. The collaboration that you've been doing over the many years has been beneficial to many organizations. I know one, myself—I participate at SickKids year in and year out. I have the opportunity as an MPP to host constituents from my riding who come up for help over at the hospital. I host them over at my condo here. It's a little bit of a joy and a gift that I can provide in helping those families.

When you're collaborating with your organizations, this law, if passed as it's written—you are basically going to be deemed as being in collusion. What kind of an umbrella is that putting on you as an organization?

Ms. Cathy Taylor: The collusion description is very concerning, because it's unclear what collusion means. It's also unclear about the limit. You're right: Non-profits and charities collaborate all the time. Certainly, in our organization, we collaborate with hundreds of organizations throughout the year on different issues and different topics. To figure out at what point is collaboration “collusion” for the purposes of this act is very difficult. It definitely needs to be clarified, particularly around the threshold piece, whether it's the \$500 or whether it's the \$600,000, and be clear that non-profits and charities often—some share staff. Some share board members. Some use the same kind of equipment or software or even office space, as we do, so clarifying the difference between collaboration and collusion is a firm recommendation we would make to this committee.

Mr. Michael Mantha: Mr. Conacher, this will be challenged. We know it's going to be challenged. It will go through. The time that is going to be spent challenging this—what kind of a window are we looking at?

Mr. Duff Conacher: I think groups will apply for an injunction, as I mentioned in my submission. Just to let you know, Democracy Watch and the Money in Politics Coalition's 12-page submission has been filed with the committee, and we set out the detailed changes that are needed, and then changes that are needed, as well, further

than that to make the whole system in Ontario more democratic, ethical, constitutional and egalitarian.

I think the groups will apply for an injunction, and I think they'll win it. That has happened at the federal level. It happened three or four times at the federal level as the federal government tried to restrict things too much, and it was suspended every time for three different elections before the government set reasonable limits that the Supreme Court of Canada upheld in its 2004 ruling. That's a waste of a lot of people's time. Just refer it to the Court of Appeal for a reference case, as BC did. That will save a lot of time. Suspend the provisions until then, and do an independent study as to what reasonable limits are and then set them by regulation after you hear back from the Court of Appeal. That's the way to do it. It will save everyone time and not be trying to silence critics in the meantime. But this whole bill is aimed at tilting the rules in favour of the ruling Progressive Conservatives, very clearly, in undemocratic, unconstitutional and unethical ways.

Mr. Michael Mantha: I'm just trying to get to a timeline here. This government has a track record for presenting legislation that is constitutionally challenged. This is another one. They've just lost on one as well, which they spent several taxpayer dollars trying to defend. Is it foreseeable that this will go ahead, and that this government already knows that it will be constitutionally challenged, overturned, but the damage will be done? We've got an election coming up next summer. In your best guesstimation, is that a hope that this government is looking at obtaining and completing?

Mr. Duff Conacher: I think groups will file for an injunction and they will win that injunction, and that will suspend the law until the courts have heard the case, which will, by the time the courts rule on it, on appeals, be after the fixed date of the next election, in June 2022. So the government can proceed, if it wants, this way, but I predict that the law will not come into force. It will be ruled unconstitutional and it would be suspended past the date of the next election before that final ruling is heard, if the government doesn't, when it loses at the first level, just give up. The federal government gave up a couple of times at the first level after losing, injunctions were applied each time because the government was trying to go too far to limit third-party spending, and finally, as I mentioned, in 2004 they set a reasonable limit that the Supreme Court of Canada upheld. Although, again, it was not based on any real evidence and it was amazing that the court didn't undertake and ask for evidence of what the actual costs are for groups reaching people.

0940

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Michael Mantha: One final question. You brought up something which nobody else has brought up and I want you to expand on it. You talked about the nomination money that would be collected and spent in secrecy. Can you expand on what you meant by those comments?

Mr. Duff Conacher: Sure. The bill has these measures that are going to exempt nomination contestants from

filing a return on their expenses and contributions with the Chief Electoral Officer and also, of course, since they don't have to file a return, they won't have to file an audited return. That's just a bad idea. Every single candidate in every single race at every level—nomination, leadership, election or by-election—along with the parties, should be disclosing every single donor and the full information, as you heard from Professor MacDermid yesterday, about those donors, who they work with, their employer, their association, boards they sit on—

The Chair (Mr. Kaleed Rasheed): One minute.

Mr. Duff Conacher: This key information is needed—and then, of course, what they spend their money on as well. That's where dirty money will flow. Dirty money always flows into the secret holes that are left open by legislation, and that's very dangerous because nomination races determine who gets to run for election. It's a bad idea and it should be repealed like many other parts of this bill.

Mr. Michael Mantha: Would the term “slush fund” be appropriate?

Mr. Duff Conacher: It would allow that and facilitate—again, it's donations of money, property or services. Think about how much support someone could offer to someone to help them win the nomination if they can do it all in secret.

Mr. Michael Mantha: Thank you very much, Mr. Conacher.

The Chair (Mr. Kaleed Rasheed): We are now going to move to the independent member. MPP Collard?

M^{me} Lucille Collard: I don't have any more questions, Chair.

The Chair (Mr. Kaleed Rasheed): You don't? Okay. Thank you very much. We are now going to move to the government side. MPP Skelly, please go ahead.

Ms. Donna Skelly: Good morning to our presenters. My first question is to Ms. Taylor. Ms. Taylor, I had to step aside for a second so if you've been asked this question, I apologize. I'm interested in getting your perspective. We are the only province in Canada where third-party spending is counted in the millions of dollars, rather than in the thousands. As a representative of the non-profit sector, what do you think of this? Do you think that we should remain out of step with the rest of the country?

Ms. Cathy Taylor: I think this bill actually puts you out of step with the rest of the country, because it lengthens the amount of time for the period to a year rather than just when the writ drops, and the \$500 limit is the lowest possible threshold. So obviously by population base, I'm sure the donations are higher. I can't comment on the amount of donations for the whole province compared to other provinces. I'm not familiar with that data. But definitely, this legislation is not comparable to other jurisdictions in Canada.

Ms. Donna Skelly: Well, I just wanted to share with you, to put it into perspective, BC, for example: Their third-party advertising sponsors spend about \$640,000 total, and we're talking about a \$700,000 limit per third party, so it is an extremely different amount of money. We

really have a high threshold. I'm just—in that context [*inaudible*] from your sector—

Ms. Cathy Taylor: Yes, it's not the \$600,000 limit that we're concerned about, it's the \$500 minimum that you have to register as a third party and the length of time being expanded to a year before an election. So even knowing if you are going spend \$500—you know, \$42 a month on a social media ad, for example—on an issue that your organization cares about, even if you don't know if one of the parties is going to pick up that issue in their platform—that's the difficult piece.

I think, certainly, we fully support the regulation of donations and third-party advertising, especially for spenders above \$10,000.

Ms. Donna Skelly: One of the most important measures that this bill, Bill 254, introduces is increasing the advance polling period. That actually came from a recommendation by the Chief Electoral Officer back in 2020. The last election in Ontario saw the highest number of Ontarians participating in advance voting. BC and New Brunswick have held elections since the pandemic came to Canada and also had record high turnouts for their advance polls. I'm just wondering if I could get your opinion or your feedback on this proposed change.

Ms. Cathy Taylor: It's not a position of ours around how many advance polling stations there should be or not, but certainly it is a good sign for a healthy democracy. The more advance polling, the better, especially on weekends. It's an accessibility issue for folks who have different work schedules—for example, evenings, weekends, night shifts. So the more accessible voting, the better it is for our democracy.

Ms. Donna Skelly: Mr. Chair, I'm going to share my time with MPP McDonell.

The Chair (Mr. Kaleed Rasheed): MPP McDonell?

Mr. Jim McDonell: I wanted to just direct a question over to Ms. Taylor again. I know that I've run in a number of municipal elections; these are fairly small, rural elections. Each time, I had to go down and open up a bank account and get cheques, and all of it is a pain in the neck. But I think what they're trying to do here is you have to set some limits.

I go back to my first election at this level. I think MPP Skelly talked about measuring third-party advertising in the millions, and just some of the games. In my first election, the teachers' unions deducted \$60 per member from their paycheques—of course, that qualified as an election donation—and then collected that money; so \$60 from every person. When you look at the three English unions, you are talking somewhere over \$11 million just from those three groups. They then turned it around and spent it against our party, of which I'm a member. Really, the members had no choice. So you see how collusion works. These are large—I'm just talking about these three unions; there were more that joined the Working Families. Trying to put limits around that when you're talking about

individual contributions of \$60 adding up over hundreds of thousands of people—it's very difficult. Those are the things that we're trying to stop because that's just three groups and there was over \$11 million spent against one party.

And then when you look at the scope across the province, it is something that we're seeing in Ontario that we don't see anywhere else. Getting that lower limit is difficult.

I used to begrudge one union but I would have to do that, and of course, you have to close that bank account, but those are the things that—

The Chair (Mr. Kaleed Rasheed): Two minutes.

Mr. Jim McDonell: —cause a lot of issues because of what we're trying to do to make everybody's vote count. When you have organizations that are allowed to take that kind of money, how does a local person then sift through the deluge of information that's hitting them from every news release or every advertisement that comes out? I remember that election as well—you couldn't get an ad on the radio because they're all taken up by these groups.

I know what you're saying, but would that put it in a little more perspective for the red tape? Maybe you have some solutions. How would we address that one, if the system existing today allows this type of thing to happen?

Ms. Cathy Taylor: I definitely understand that perspective. I think that if the spending limit is \$600,000, and the concept—

The Chair (Mr. Kaleed Rasheed): One minute.

Ms. Cathy Taylor: —is how many organizations spend that much or up to that, it's very different than the \$500 registration limit for a small non-profit in rural Ontario. So I think we are talking apples and oranges for that.

I think there are some ways to ensure that there is no collusion for the big spenders that are in the millions, as you said, absolutely, rules around that—really clear rules around that. But that's very different from an organization that already has a bank account to set up a separate one for a few hundred dollars for some advertising on an issue, not against or for a party.

Mr. Jim McDonell: I have no more questions.

The Chair (Mr. Kaleed Rasheed): Thank you to both presenters this morning. We appreciate your presentation.

That concludes our business for today. A reminder: The deadline for written submissions on Bill 254 is 7 p.m. today, Tuesday, March 30, 2021, and the deadline for filing amendments to Bill 254 is 12 p.m., Tuesday, April 6, 2021. Contact information for legislative counsel has been emailed to all members of the committee and is also available in the committee SharePoint folder.

Thank you, everyone. The committee is now adjourned until 9 a.m. on Thursday, April 8, 2021, when we will conduct clause-by-clause consideration of Bill 254. Thank you, and have a wonderful day.

The committee adjourned at 0950.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président

Mr. Kaleed Rasheed (Mississauga East–Cooksville / Mississauga-Est–Cooksville PC)

Vice-Chair / Vice-Président

Mr. Vijay Thanigasalam (Scarborough–Rouge Park PC)

Ms. Rima Berns-McGown (Beaches–East York ND)

Mr. Michael Coteau (Don Valley East / Don Valley-Est L)

Mr. Faisal Hassan (York South–Weston / York-Sud–Weston ND)

Mr. Logan Kanapathi (Markham–Thornhill PC)

Mr. Michael Mantha (Algoma–Manitoulin ND)

Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)

Miss Christina Maria Mitas (Scarborough Centre / Scarborough-Centre PC)

Mr. Sam Oosterhoff (Niagara West / Niagara-Ouest PC)

Mr. Kaleed Rasheed (Mississauga East–Cooksville / Mississauga-Est–Cooksville PC)

Ms. Donna Skelly (Flamborough–Glanbrook PC)

Mr. Vijay Thanigasalam (Scarborough–Rouge Park PC)

Substitutions / Membres remplaçants

M^{me} Lucille Collard (Ottawa–Vanier L)

Mr. Norman Miller (Parry Sound–Muskoka PC)

Mr. Taras Natyshak (Essex ND)

Ms. Lindsey Park (Durham PC)

Mr. David Piccini (Northumberland–Peterborough South / Northumberland–Peterborough-Sud PC)

Clerk pro tem / Greffière par intérim

Ms. Tanzima Khan

Staff / Personnel

Ms. Monica Cop, research officer,
Research Services