



May 12, 2016  
The Honourable Peter Milczyn, Chair  
Standing Committee on Finance and Economic Affairs  
Ontario Legislature  
C/o Eric Rennie, Clerk of the Committee  
By email: erennie@ola.org

**Re: Bill 181, Municipal Elections Modernization Act, 2016**

To the Chair and Members of the Committee:

We are writing to express our concern about elements of Bill 181 that would effectively prevent nonprofits from participating in issue-based advocacy during municipal election campaigns across Ontario. Community nonprofits do not engage in municipal issues for personal or corporate gain – their role in communities is to advance the public good. They help bring the voices of marginalized communities to the table; as such, their participation in public policy debate advances the cause of democracy. Hearing from these groups and the people they serve helps municipalities to serve their residents. For this nonpartisan grassroots work to fall under the banner of “third-party advertising” is a misrepresentation of the role of civil society. We fully support the move to reduce the influence of private money in election campaigns, but we suggest that the bill unjustifiably includes legitimate policy advocacy conducted by nonprofits in its scope. We respectfully request amendments to the bill that would permit nonprofits to continue their no-cost or low-cost nonpartisan public policy communications during election campaigns.

**Summary of recommendations:**

1. Establish a “nonpartisan small spender” category that exempts eligible organizations spending under \$1000 per municipal election campaign from having to register as “third-party advertisers.”
2. Refine the definition of “advertising” so that it focuses on spending on direct costs for election-related purposes, such as the purchase of paid advertisements in print and social media. Exclude indirect or ongoing costs such as website hosting and routine public communications such as newsletters.
3. Regardless of whether a municipality decides to allow or ban corporate and union donations, “nonpartisan small spender” campaigns should be permitted. It is inappropriate to link the right to engage in public communications to an organization’s eligibility to donate money to candidates—as the bill is currently drafted.

Bill 181 is a complex bill with many parts. Please allow us to unpack what this bill means for Ontario's nonprofit sector and provide a rationale for how we believe the bill's potential unintended consequences may be mitigated.

### **Identifying nonprofit public policy advocacy as “third-party advertising” betrays a misunderstanding of the role of nonprofits in democracy**

Under Bill 181, section 88 of the *Municipal Elections Act* would require nonprofits (as incorporated organizations) to register as “third-party advertisers” before they can engage in public policy advocacy during the six-month municipal election campaigns that take place every four years. Bill 181 introduces a definition for “third-party advertising” that includes not just billboards and newspaper ads, but low-cost public communications such as flyers, buttons, and e-newsletters. Any communication from a nonprofit that incurs any cost, directly or indirectly, falls under this definition as long as the audience goes beyond an organization's own staff and membership list. Any nonprofit that allows non-members, such as donors or the general public, to subscribe to their e-newsletter would have its communications labelled as “third-party advertising” under the Act if it simply paid for web hosting and included an article about local housing, child care or environmental issues in its e-newsletter.

This definition of “advertising” is unnecessarily broad, misleading, and inappropriate, and it would have a significant impact on the way that community groups can work during the election campaign window. Unlike those who would seek to influence municipal elections for private gain or corporate profit, the nonprofit sector plays a critical role in helping municipal council candidates hear the voices of communities. This enabling role of nonprofits is fundamental to the democratic process. Nonprofits should not have to register simply for enabling community voices to be heard—particularly those voices that are underrepresented in policy discussions. Determining that this democratic activity constitutes “advertising” is not appropriate as it expands the scope of Bill 181 to the point where it places unreasonable limits on democratic speech.

### **We do not need another “advocacy chill”**

Canadian charities recently breathed a collective sigh of relief when the Government of Canada announced that it would no longer conduct audits of registered charities' “political activities.” Even though nonpartisan policy advocacy is a legitimate activity (up to a certain threshold) for these organizations, many decided not to engage in public policy for fear of being off side with federal regulators. For those who were caught in the Canada Revenue Agency net, the consequences were devastating because these audits cost significant staff time and resources.

Given the recent end of the federal “advocacy chill,” the last thing nonprofits need is a new one prompted by a provincial bill—and yet that is what we can expect with Bill 181. In 2009, when the British Columbia government introduced election advertising rules similar to the provisions in

Bill 181, these rules created confusion and anxiety for “small spenders” during the subsequent provincial election. Some organizations censored themselves to avoid the risk of being labelled a “third-party advertiser” under the new law.<sup>1</sup> Like Ontario nonprofits, they were concerned that their low-cost advocacy activities—even maintaining their website—could net them a fine if they did not register. Because registration and reporting was perceived to be onerous, many small organizations instead just opted out of public debate.

The Ontario Government is aware of the fact that the BC law on which elements of Bill 181 are based is currently before the Supreme Court of Canada. This Charter challenge argues that the absence of a minimum dollar amount that an organization had to spend before being required to register contravened the right to freedom of speech.<sup>2</sup> The Government is also aware that the BC Supreme Court called that law’s definition of “advertising” overly broad and that the Supreme Court of Canada has accepted limits on third-party spending *only when these limits further the goal of equality*. We hope that Ontario can learn from the experience in other jurisdictions and craft a law from the outset that is defensible from a Charter of Rights perspective.

We should emphasize that Bill 181’s stated intent would serve Ontarians well by reducing the influence of wealthy individuals and corporations in elections. We fully support enabling municipalities to enact limits or a ban on corporate and union donations to candidates as well as the requirement for large-scale third party campaigns to register and be transparent about their financing. There is evidence to suggest that democracy can be subverted when there is too much influence from big money on politics and not enough accountability.<sup>3</sup> Nonetheless, Bill 181 must leave open a window for “nonpartisan small spenders” to participate in public policy debate. These groups bring the voices of their communities to the public policy debate on issues that matter to them. Grassroots groups should neither have to abandon their websites and social media accounts during municipal campaigns nor register if their policy communications are genuinely small-scale and nonpartisan.

**The Government of Ontario has recognized the need to reduce the administrative burden for nonprofits—and yet Bill 181 would only add to this burden.**

Bill 181 would impose yet another mechanism for nonprofits to register, track and report on their donations and financing on top of existing requirements under government funding agreements, federal charity regulations, the Broader Public Sector Accountability Act (for procurement), the Public Sector Salary Disclosure Act (for executive salaries), and the Lobbyist Registration Act (for government meetings). If a nonprofit seeks to engage in public policy communications during elections, this requirement only adds to the already significant administrative burden for nonprofits.

Furthermore, registration is only the beginning of what Bill 181 requires. Nonprofits would have to open a special banking account, track donations that support their public policy work during an election campaign as distinct from donations made for other purposes or for public communication outside election windows, file financial statements for donations and election-

related expenses with the clerk of the municipality, and risk incurring fines if any of this is done improperly. For a community group that simply wants to raise awareness on local issues, this would constitute a significant barrier to participation in the public policy debate.

**There are precedents from other jurisdictions that would allow the Province to curtail the influence of third parties in elections without shutting down the role of nonprofits**

Further to the Supreme Court of Canada's point about spending limits being justifiable only when they further equality, it is worth pointing out that federal rules offer an alternative approach. Elections Canada permits third parties to spend up to a threshold during each election without having to register.<sup>4</sup> We would recommend a threshold for municipal elections of \$1000 to allow "nonpartisan small spenders" to participate in public policy debate while levelling the playing field. Whether or not the definition of "advertising" were amended, this would allow community groups to maintain their websites, engage in social media debates, and mobilize around local issues using techniques such as flyers and town halls, without having the register under the Act.

**Regardless of a municipality's decision on whether to allow or ban corporate and union donations, "nonpartisan small spender" campaigns should be allowed. It is inappropriate to link the right to engage in public communications to an organization's eligibility to donate money to candidates—as Bill 181 is currently drafted.**

We support enabling municipalities to limit or ban corporate and union donations to candidates. Community nonprofits rarely make such donations and those that are registered charities are already prohibited by federal law from doing so. However, a troubling element of Bill 181 links the *right to donate to candidates* to the *ability of third parties to participate in election campaigns at all*.

Section 54 (1) of Bill 181 adds a provision under section 88.15 of the *Municipal Elections Act* that enables a municipality to pass a by-law banning corporate and union donations. Section 54 (2) then decrees: "If a by-law is passed under subsection (1), a corporation or trade union is prohibited from filing a notice of registration under section 88.6 to be a registered third party in that municipality and is prohibited from making a contribution to a registered third party in that municipality." In any municipality that exercised its right to ban these donations, then, it would be illegal for third parties to spend any money on "advertising" during the election campaign window. Coupled with the overly-broad definition of "advertising" in Bill 181 that includes both direct and indirect spending on public communications, this would effectively silence nonprofits entirely in these municipalities, whether they were willing to register or not, as they could then incur no expenses for communications during election campaigns in these municipalities. In other words, these nonprofits would have to fall silent for six months every four years.

It is very troubling to think that in those municipalities, nonprofits would be subject to fines for having even raised an issue such as homelessness, the need for more child care spaces, the quality of sports facilities, or other local issues during a campaign. There is no good reason for linking the right to participate in public policy debate with the ability to make partisan donations. And the consequence of this provision for communities in which corporate and union donation bans were enacted would be significant in terms of silencing grassroots groups.

To summarize, we strongly urge you to consider the role of nonprofits in the democratic process and to recognize that their activities, when conducted on a nonpartisan basis and on a small scale, are not “third party advertising” but rather legitimate participation in public policy debate. Requiring “nonpartisan small spender” nonprofits to register under the Municipal Elections Act would constitute an unreasonable and unwarranted administrative burden that would simply create a barrier to participation for community groups. There are excellent alternatives from other jurisdictions that would enable the Ontario Government to achieve its policy objective of reducing the influence of money in politics without silencing community groups. We request:

1. that you create a “nonpartisan small spender” exemption from the requirement to register for third parties that spend under \$1000 during a municipal election campaign.
2. that you clarify the definition of “advertising” under the Act so that it encompasses only the direct costs of advertising for election-related purposes, such as the cost of paid advertisements in print and social media. “Advertising” should thus exclude indirect or ongoing costs such as website hosting and routine public communications such as newsletters.
3. that you allow third parties to undertake nonpartisan election-related activities up to the “small spender” threshold even in those municipalities that have chosen to ban corporate and union donations to candidates.

Local nonprofits do not need more red tape that diminishes the value of their contribution to society. They should be empowered to speak as key partners in the democratic process because they work to broaden the dialogue to be more inclusive of the needs and priorities of those whose views are not always taken into account in public policy debates.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathy Taylor', written in a cursive style.

Cathy Taylor  
Executive Director

c.c. The Honourable Ted McMeekin, Minister of Municipal Affairs and Housing  
The Honourable Michael Chan, Minister of Citizenship, Immigration and International Trade

*The Ontario Nonprofit Network's (ONN) vision is to support thriving communities and a dynamic province through a strong and resilient nonprofit sector. We are the provincial network for the 55,000 nonprofit organizations across the province of Ontario. ONN brings the diverse voices of the sector to government, funders and the business sector to create and influence systemic change. ONN activates its volunteer base and the network to develop and analyze policy, and work on strategic issues through its working groups, engagement of nonprofits and charities and government.*

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<sup>1</sup> Shannon Daub. "State of play – 3rd party advertising rules and the 2013 provincial election." Feb. 5, 2013. <http://www.policynote.ca/state-of-play-3rd-party-advertising-rules-and-the-2013-provincial-election/>

<sup>2</sup> BC Freedom of Information and Privacy Association (FIPA). "Notice of Civil Claim."

[https://fipa.bc.ca/library/Legal\\_Submissions/FIPA\\_FiledNOC\\_ElxnAct.pdf](https://fipa.bc.ca/library/Legal_Submissions/FIPA_FiledNOC_ElxnAct.pdf)

<sup>3</sup> Robert MacDermid. *If It's Broke, Fix It: a Report on the Money in Municipal Campaign Finances of 2014*. Campaign Fairness Ontario. <http://www.campaignfairness.com/s/CampaignFairnessReport2016-web.pdf>

<sup>4</sup> Elections Canada. "What is a third party" and "Registration requirements." *Election advertising handbook for Third Parties, Financial Agents and Auditors (EC 20227)*. July 2015.

<http://www.elections.ca/content.aspx?section=pol&dir=thi/ec20227&document=p1&lang=e#a>