



November 2, 2016

The Honourable Grant Crack, Chair
Standing Committee on General Government
Ontario Legislature
c/o Sylwia Przewdziecki, Clerk of the Committee
By email: sprzewdziecki@ola.org

Re: Bill 2, *Election Finances Statute Law Amendment Act, 2016*

To the Chair and Members of the Committee:

I am writing to you on behalf of the Ontario Nonprofit Network (ONN), 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 private sector to create and influence systemic change. We wrote to you in August with our concerns about the *Election Finances Statute Law Amendment Act* when it was under consideration as Bill 201. We raised concerns about the definition of “political advocacy” that remain unaddressed by revisions to the bill. We are concerned that this definition in Bill 2 will discourage community-based nonprofits from participating in nonpartisan policy debate during provincial election campaigns. We are furthermore concerned about the discrepancy between the definition of “political advertising” in Bill 2 and the definition of “third party advertisement” adopted by the Ontario Legislature in the Spring session as part of the *Municipal Elections Modernization Act* (Bill 181).

Key recommendations

1. Refine the definition of “political advertising” in Bill 2 so that it **excludes all nonpartisan issue-based political communications**, whether or not the position taken in the communications can “reasonably be regarded as closely associated with” a party, leader, or candidate. This would harmonize Bill 2 with the definition of “third-party advertising” in the recently passed *Municipal Elections Modernization Act*.
2. If the definition is not changed, **increase the small-spender exemption from \$500 to \$1000**. This change would align Bill 2 with Elections Canada rules.

Bill 2 includes not only *partisan* but also *issue-based* advocacy in its definition of “political advertising” and thereby creates unintended consequences for community-governed organizations that participate in democratic debate during election campaigns. Community-governed nonprofits play an important role in bringing the voices of marginalized communities to public discourse; hearing from these groups and the people they serve help candidates for political office to serve their constituents. For this nonpartisan work to fall under the banner of “political advertising” is a misrepresentation of the role of civil society. We fully support efforts to reduce the influence of powerful third-party spenders in election campaigns, but we respectfully suggest that the bill should be amended to permit community nonprofits to continue their low-cost nonpartisan communications about public policy during election campaigns without being subject to the administrative burden of registering with the Chief Electoral Officer.

Alignment with the *Municipal Elections Modernization Act* (Bill 181)

Passed only five months ago by the Ontario Legislature, Bill 181 provides a definition of third-party political advertising for the rules that govern municipal elections in Ontario. Section 6 of the bill adds the following definitions to the *Municipal Elections Act*:

Definition of third-party advertising under the *Municipal Elections Modernization Act*, adopted Spring 2016 by the Ontario Legislature:

“registered third party” means, in relation to an election in a municipality, an individual, corporation or trade union that is registered under section 88.6;

“restricted period for third party advertisements” means the period described in subsection 88.4 (2);

“third party advertisement” means an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing,

(a) a candidate, or

(b) a “yes” or “no” answer to a question referred to in subsection 8 (1), (2) or (3),

It is important to note that Bill 181 was presented to the Legislature at First Reading with a definition of “political advertising” that encompassed both partisan and issue-based advertising. After hearing the concerns of community nonprofits that saw it as their right and responsibility to participate in public policy debates during municipal elections without having to take the onerous step of registering and reporting, the Standing Committee on Finance and Economic Affairs elected to remove issue-based advertising from the scope of the definition.

We ask that the Standing Committee on General Government align Bill 2 with the definition of third-party advertising in the recently-amended *Municipal Elections Act*. It is inconsistent to

regulate nonpartisan issue-based public policy advocacy at the provincial level just months after having excluded it from being regulated at the municipal level. Such a move would also generate needless confusion among community groups that seek to participate in public policy debate during elections.

In our previous letter to your committee, we outlined what the (Provincial) *Election Finance Statute Amendment Act* means for Ontario's nonprofit sector and provided a rationale for our proposal to mitigate the bill's potential unintended consequences. Please allow us to restate our position here.

Including nonpartisan public policy advocacy within the scope of “third-party political advertising” betrays a misunderstanding of the role of nonprofits in democracy

If Bill 2 is passed in its current form, section 37.5 of the *Election Finances Act* would require nonprofits to register as “third-party political advertisers” if they spent over \$500 engaged in public policy debate on issues that a candidate happens to address during the prescribed election period. This requirement is a consequence of Bill 2's broad definition of “third-party political advertising” with respect to issue-based advocacy:

Definition of third-party advertising under the (provincial) Election Finances Statute Law Amendment Act at Second Reading:

“political advertising” means advertising in any broadcast, print, electronic or other medium with the purpose of promoting or opposing any registered party or its leader or the election of a registered candidate and **includes advertising that takes a position on an issue that can reasonably be regarded as closely associated with** a registered party or its leader or a registered candidate and “political advertisement” has a corresponding meaning... [Bill 2, Section 1 (4)].

While the bill has been amended so it does not include all issue-based (as opposed to explicitly partisan) political communications, it is our position that the amended definition does not go far enough. Consider, for example, such policies as inclusionary zoning for affordable housing, public smoking bans, or regulations that have reduced acid rain. All these policies originated as proposals by nonprofit, non-governmental organizations. If they had been raised during election campaigns at the time they were under consideration by political parties, this advocacy would have required these organizations to register as “third party advertisers.” The fact that a candidate or party has taken up an issue is an arbitrary reason to require nonprofits to register during an election campaign.

With a broad definition of “political advertising” that captures not just billboards and newspaper ads, but also “other media” such as flyers, buttons, and e-newsletters, any communication from a nonprofit that has a cost falls under this definition if the audience is beyond an organization's staff and membership list. Any nonprofit that promoted awareness of a public policy issue with

non-members, such as donors or the general public, could have its communications deemed to be “third-party political advertising” under the Act. This would apply to many issues, including child care, affordable housing, arts and recreation funding, and climate change—all of which are issues on which candidates routinely take a position.

The definition of “political advertising” is unnecessarily broad and would have a significant impact on the way that community groups operate during the election campaign window. Unlike those who seek to influence elections for private gain or corporate profit, the nonprofit sector plays a critical role in helping candidates for political office hear the diverse range of voices of communities. 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 issue-based policy advocacy constitutes “political advertising” is not appropriate as it expands the scope of Bill 2 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 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 charities, many decided not to engage in public policy for fear of being offside 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.

With the recent waning 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 might expect with Bill 2. In 2009, when the British Columbia government introduced election advertising rules similar to the provisions in Bill 2, 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.¹ Like Ontario nonprofits, they were concerned 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.

We should emphasize that Bill 2’s stated intent would serve Ontarians well by reducing the influence of wealthy third-party spenders in elections. We fully support the ban on corporate and union donations to candidates as well as the caps and financial reporting requirements for large-scale third-party partisan campaigns. There is evidence to suggest that democracy can be subverted when there is too much influence from wealthy third parties on politics and not enough accountability.² Nonetheless, Bill 2 must—as Ontario’s Chief Electoral Officer has argued—distinguish between partisan campaigns and nonpartisan, issue-based policy advocacy.³ We ask that you amend the definition of “political advertising” to ensure that democratic debate on any given issue—whether or not any candidate has taken a position on it—is not stifled.

Failing a change in definition, we would recommend an increase in the “small spender” cap from \$500 to \$1000. Elections Canada permits third parties to spend up to this threshold during each election without having to register. We would recommend the same threshold for provincial elections to allow “nonpartisan small spenders” to fairly participate in public policy debate.

Bill 2 in its current form would add to the administrative burden for nonprofits - despite the Government of Ontario recognizing the need to reduce this burden

There may be some who would argue it is no great imposition for nonprofits to have to register with the Chief Electoral Officer if they want to engage in political communications during election campaigns. Registration, however, is only the beginning of what Bill 2 would require of nonprofits. Unlike campaigns that exist only during election windows and for one purpose, community nonprofits would have to track those donations supporting their public policy work during an election campaign separately from donations made for other purposes, or for public communication outside election windows. Nonprofits would also have to file a special set of financial statements for donations and election-related expenses with the Chief Electoral Officer, and risk incurring fines if any of this is done improperly. For a community group that simply wants to raise awareness of local or provincial issues, these requirements would constitute a significant barrier to participation in the public policy debate.

These requirements should be seen in the context of the existing administrative burden for nonprofits. Bill 2 would impose yet another mechanism for nonprofits to register, track and report on their financial activities on top of existing requirements under provincial transfer payment 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 spends \$500 engaged in public policy communications during an election, Bill 2 would add another layer on top of its already significant administrative burden.

Summary - Key Recommendations

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 political advertising” but are legitimate participation in public policy debate. There are excellent alternatives that would enable the Ontario government to achieve its policy objective of reducing the influence of money in politics without silencing community groups.

1. A refinement to the definition of “political advertising” so that it **excludes all nonpartisan issue-based political communications**, whether or not the position taken in the communications can “reasonably be regarded as closely associated with” a party, leader, or candidate.
2. Failing that, an increase in the “small spender” cap from \$500 to \$1000 to align with federal election rules.

Community-governed nonprofits should be empowered to speak as key pillars in the democratic process because they broaden the dialogue to include the views of more people whose needs and priorities are not always visible nor heard in public policy debates. We ask that the Ontario Legislature recognize their critical role in provincial public policy debates.

Sincerely,



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c.c. The Honourable Yasir Naqvi, Attorney General
The Honourable Laura Albanese, Minister of Citizenship and Immigration
Members of the Standing Committee on Finance and Economic Affairs (c/o Eric Rennie,
Clerk of the Committee)
Lindsay Aagaard, Senior Policy Advisor, Office of the Premier

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 private 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.

¹ 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/>

² 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>

³ Greg Essensa, Chief Electoral Officer, Elections Ontario, quoted in Adrian Morrow, "Ontario unions behind 94 percent of third party ad spending in last three elections." *Globe and Mail*. Aug. 9, 2016. Online edition. <http://www.theglobeandmail.com/news/national/ontario-unions-behind-94-per-cent-of-third-party-ad-spending-in-past-three-elections/article31326097/>