

Bill 254 Frequently Asked Questions

April 26, 2021

Political Advertising

What is a Third Party?

A third party is a person, group or entity other than a political party, candidate or constituency association. The *Election Finances Act* (the “Act”) regulates the expenses that a third party may incur for political advertising prior to and during an Ontario election.

During what Time Period is Third Party Political Advertising Restricted?

Prior to Bill 254’s passage, the *Act* restricted the political advertising expenses that third parties could incur during an election period and in the six-months prior to it. This restriction was already controversial and is currently the subject of a constitutional challenge.

Bill 254 extends the time period during which third party political advertising expenses are limited to **twelve months before an election period**. It does not, however, increase the spending limit for third party advertisers, who will now be limited to spending the same amount of money on advertising in a year as they previously were allowed to spend in six months.

What kind of Third Party Political Advertising is limited?

The *Act* restricts third parties’ spending on advertising, in any form, whose purpose is either to promote or oppose a political party, the leader of a political party or a candidate or to advertise on political issues. Advertising that takes a position on an issue that can be “reasonably regarded as closely associated” with a political actor is considered political advertising under the *Act*. Any money that trade unions or other third party groups spend on advertising about such political issues must therefore be counted towards their third party spending limit. This could include advertising about important public policy issues that directly affect our members.

Can Unifor Locals run Political Advertising in Ontario?

Running political advertising campaigns, including issue-advertising, exposes Unifor Locals to significant obligations and risks. **No Unifor Local should engage in any political advertising in Ontario without first checking with Unifor’s Director of Membership Mobilization and Political Action, Josh Coles. You can contact him at josh.coles@unifor.org.**

Does the Bill Prevent Locals from Talking to Members about the Election?

No. The *Act*, as amended does not prevent Unifor or its locals from communicating directly with Unifor members, in any form, about political issues and/or an election. **The Act only restricts paid political advertising that is transmitted to the general public.**

Individuals are also still permitted to communicate their personal political views on the internet where they do so without incurring any costs.

What is the Spending Limit on Third Party Political Advertising?

Third parties are now limited to spending a total of \$106,200 on political advertising during an election period and \$637,200 in the year period prior to an election period. Running mass media campaigns is expensive. While these limits may seem high in the abstract, they do not go far when it comes to a full year of campaign development and advertising.

Previously, third parties could contribute to other third parties as they wished. With the Bill’s passage, any contributions a third party makes to other third parties must now be counted towards its own political advertising expense limit.

What Reporting Requirements are Third Parties now Subject to?

The Bill imposes onerous new reporting requirements on third parties. Third parties were already required to file a final report to Elections Ontario detailing all of their political advertising expenses within six months of Election Day.

The Bill has changed the third party reporting requirements so that third parties are now also required to submit interim reports to Elections Ontario every time that they spend or commit to spending an additional \$1,000 on political advertising. Third parties must provide these reports continuously in the year prior to the Election Period, and during the Election Period itself.

Are Third Parties Restricted from Interacting with Other Third Parties?

Yes. Under Bill 254, a third party like Unifor may not share any information with other third parties with whom we share a common “advocacy, cause or goal” in order to circumvent or attempt to circumvent the third party spending limits. The Bill does not detail what kind of information third parties are prohibited from sharing.

The Bill could be interpreted to prevent Unifor from sharing a considerable amount of information with other trade unions or other groups who are also third parties under the *Act*.

Furthermore, the Bill as passed prevents third parties from using the same “vendor” for their advertising as any other third parties who share a common “advocacy, cause or goal.” The Bill does not define the term “vendor”. The Bill could restrict third parties like Unifor from using the same advertising agencies as other third parties who share similar objectives. It could also be interpreted as preventing Unifor from advertising in the same media as any other third parties, if doing so amounts to circumventing or “attempting” to circumvent the third party spending limits.

This could mean that only one trade union who is a third party political advertiser could advertise on Facebook, or on a particular television network or newspaper. This provision will stifle political expression by third parties and may even prevent some third parties from being able to use all of the funds that they are permitted to spend on political advertising. It is unclear how restrictively this provision will be interpreted.

Does Bill 254 violate the Canadian Charter of Rights and Freedoms?

There are persuasive arguments to be made that Bill 254 violates the rights to freedom of expression and freedom of association that are protected by sections 2 b) and d) of the Charter of Rights and Freedoms.

Prior to the enactment of Bill 254, the *Act* was already the subject of a Charter challenge before the courts by Working Families Ontario, which is a coalition of trade unions. Bill 254 has not remedied the parts of the legislation that were the subject of the challenge, but has instead exacerbated them.

To date, no Court in Canada has upheld any legislation that restricts political expression outside of an election period. Laws in B.C. that restricted third party advertising for 60 and 40 days prior to an election have been ruled unconstitutional by B.C. Courts. There is little reason to believe that this legislation will be upheld when those significantly shorter restrictions on third party advertising were struck down.

Political Contributions

Are trade unions allowed to make political contributions under Bill 254?

No. Only individuals who reside in Ontario are permitted to make contributions to political parties, candidates and other political actors under the *Act*. Trade Unions and Corporations are still banned from making political contributions.

Does Bill 254 change the contribution limit?

Yes, Bill 254 doubles the contribution limit to political actors to \$3,300 annually, from \$1650. Individuals may now donate up to \$3,300 to any one registered political party; another \$3,300 to the candidates of any one political party; and another \$3,300 to the constituency associations and nomination contestants of a single political party. This amounts to a total of \$9,900 per year to a political party and its related candidates and constituency associations. This contribution limit will be the highest of any jurisdiction in Canada that limits political contributions, by a factor of almost double.

Enforcement and Penalties

When does the Bill come into effect?

Bill 254 received Royal Assent and came into effect on Monday, April 19, 2021. The one-year pre-election period, during which third party political advertising expenses are restricted, will begin on **Tuesday May 4, 2021**.

How will the revised Act be enforced?

The Chief Electoral Officer of Ontario is responsible for the enforcement of the *Act*. Some of the amendments to the *Act* create considerable ambiguity and it is unclear how these provisions will be enforced.

What are the Penalties for Violating the Act?

Violations of the *Act* can be prosecuted as offences, or in some cases may now be subject to an administrative penalty. **Significant fines, in amounts of up to \$100,000, can be imposed on third parties who are found to have violated the Act.**