

Bill 254 Summary



April 26, 2021

Bill 254, the “Protecting Ontario Elections Act, 2021”, was passed in the Ontario legislature and received Royal Assent on April 19, 2021. This Bill makes significant amendments to the *Elections Act* and the *Election Finances Act*, among others. The Bill dramatically expands the regulation and restriction of individuals and groups, other than political actors like political parties and candidates, who wish to speak out about an election and about important issues of public policy (“third parties”). At the same time, it will permit political parties to raise more money from wealthy donors, giving these donors and the political parties who benefit increased voice and influence, all the while silencing those who rely on collective action to have their political views heard.

Prior to Bill 254’s passage, third parties in Ontario were already subject to substantial restrictions on their political expression. They faced limits on the amount they could spend on political advertising both during an election period, and in the six months beforehand. These restrictions are subject to an ongoing Charter challenge in Ontario Courts by the Working Families Coalition, a group of trade unions who wish to speak out publicly on political issues on behalf of their members.

With Bill 254’s passage, third parties’ spending on political advertisements are limited for an entire year prior to an election, as well as during the election itself. This restriction not only limits the amount of advertising that third parties can run in support of or opposed to particular political actors, it also limits their advertising on political issues that are “closely associated” with any political actor. This means that third parties, like trade unions, are constrained in their ability to advertise about political issues that may directly affect their membership, even if they do not reference any political party or candidate.

This could potentially even prevent trade unions from being able to advertise about collective bargaining issues.

Despite the extension of the time during which third party political expression is limited, the spending limit that third parties are subject to remains the same. Third parties are limited to spending \$106,200 on political advertising during an election period and \$637,200 on political advertising in the year prior to the election period. Running mass media campaigns is expensive. While these limits may seem high, they do not go far when it comes to a full year of campaign development and advertising.

Bill 254 also imposes onerous new reporting requirements on third parties. In addition to providing a final report of their spending and contributions received, third parties are also now required to provide interim reports to Elections Ontario every time they spend or commit to spending an additional \$1,000 on political advertising. They must provide these reports throughout the year leading up to the election period, as well as during the election period.

In addition, Bill 254 has created new restrictions on how third parties may interact with each other. Third parties may not share information with other third parties, or even use the same vendor as another third party, if they are found to have done so in order to circumvent, or attempt to circumvent the third party spending limits. It is unclear what information or vendors third parties are prohibited from sharing. Furthermore, third parties can no longer lend financial support to other third party advertising campaigns without counting those expenses towards their own spending limit.

Third parties who are found to have violated the Act can be subject to substantial consequences, including fines of up to \$100,000.

These restrictions will serve to silence third parties, including trade unions, and prevent them from advertising on issues that directly affect the working lives of their membership. The lack of clarity about how some of these restrictions will be applied and about what advertising will be considered “closely associated” with a political actor will create a chilling effect that will force third party groups and individuals to self-censure the expression of their political views.

The restrictions on third party advertising arguably infringe the rights to freedom of expression and freedom of association set out in sections 2 (b) and (d) of the Canadian Charter of Rights and Freedoms.

While Bill 254 constrains the political expression of groups like trade unions, who engage in collective action to voice the political views of their membership, the Bill increases the political contribution limit to a total of \$9,900 to a political party and its associated candidates and constituency associations. This limit is now the highest of any Canadian jurisdiction that limits political contributions. It will privilege political parties who benefit from wealthy donors. It is already the case that the vast majority of Ontarians cannot afford to donate anywhere near the maximum contribution to political parties. This raises the prospect of wealthy donors expecting to receive influence or access to politicians in exchange for their donations. This increase will amplify the political voice and reach of wealthy Ontarians and the political parties who benefit from their donations, while leaving Ontarians who cannot afford to pay in exchange for political access silenced and further behind.