

*Bill 254, Protecting
Ontario Elections Act
2021*

**OECTA Submission to
the Standing
Committee on the
Legislative Assembly**

ONTARIO ENGLISH
Catholic
Teachers
ASSOCIATION

The Ontario English Catholic Teachers' Association (OECTA) represents the 45,000 passionate and qualified teachers in Ontario's publicly funded English Catholic schools, from Kindergarten to Grade 12.

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1. INTRODUCTION

- 1.01** The Ontario English Catholic Teachers' Association (OECTA) appreciates the opportunity to provide our perspectives on the proposed Bill 254, the *Protecting Ontario Elections Act*.
- 1.02** For more than 75 years, our Association has been proud to be part of a vibrant democratic elections process in Ontario. We have promoted the interests of teachers, students, and families by advocating for a strong publicly funded Catholic education system, forward-thinking early learning and child care policies, and a robust social safety net. Like many non-governmental organizations, we have contributed to effective debate by providing an outlet through which our members can share their collective voice and exercise their free speech rights.
- 1.03** Some of these functions had already been eroded under the 2016 *Election Finances Statute Law Amendment Act*. Sadly, with Bill 254, the Ford government is threatening to further undermine the integrity of the elections process and the rights of millions of Ontarians.
- 1.04** This submission will focus on three main objections Catholic teachers have to the proposed legislation:
- The extension of the pre-campaign limit on political advertising, and the broadening of the definition of "collusion," are clear and deliberate attempts to frustrate certain Ontarians from exercising their constitutional rights.
 - Enforcement of some parts of the Act relies on subjective interpretations and the discretionary power of the Chief Electoral Officer.
 - Doubling individual contribution limits would increase the influence of wealthy individuals and further open the door for favouritism and cash-for-access politics.
- 1.05** Given the lack of notice regarding this legislation and the short timelines before the proposed pre-election period would begin, these sudden changes are unreasonable and highly disruptive. They are obviously meant to disadvantage advocacy organizations and favour the governing party. It is the view of our Association that the Ford government must immediately remove these sections of the legislation to protect a fair elections process in Ontario.

2. PRE-CAMPAIGN LIMITS ON POLITICAL ADVERTISING

- 2.01** In their amendments to the *Election Finances Act* (EFA), the previous provincial government dealt a significant blow to effective democratic debate by establishing a six-month pre-campaign period during which there are strict limits placed on political advertising. This went well beyond the parameters laid out by the Supreme Court of Canada in the 2001 *Harper case*, which upheld federal limits on third-party advertising during elections only because such spending was unrestricted prior to the commencement of the election period. The EFA is currently the subject of a constitutional challenge on the basis that it violates Ontarians' rights to freedom of expression and freedom of association.
- 2.02** Now, the Ford government is proposing to extend the pre-campaign period to 12 months before the writ period. This is clearly arbitrary and prejudicial, especially because the definition of political advertising includes issues advocacy, which is promoting or opposing any issue that could be regarded as associated with a party or candidate. It is difficult to think of any advocacy issue that would not fit this definition. And as the government certainly knows, the prescribed spending limit of \$600,000 is well below what would be needed to generate any meaningful public awareness and discussion over a 12-month period. Thus, Bill 254 would effectively smother public discourse on any important policy issues for a full year ahead of the provincial election. Meanwhile, there would remain no limits on the government's ability to promote its policies through taxpayer-funded advertising.
- 2.03** Bill 254 seeks to further imbalance the playing field by establishing an incredibly broad definition of "collusion," including prohibiting likeminded third parties from sharing information with each other or with registered candidates or political parties, and from sharing common vendors. These are activities most advocacy organizations would naturally undertake in the course of a year, as we carry out our core mandates and engage in public discussions about the provincial budget and other relevant policies. For the government to bring additional scrutiny to these activities, and to count them against the pre-campaign spending limits, is nothing short of draconian. Again, the result would be a stifling of public debate on a broad range of policy issues and further advantage for the governing party. And because it would represent such a blatant attack on fundamental rights, it would also likely result in further Charter challenges.

3. ADMINISTRATIVE REMEDIES AND SUBJECTIVE ENFORCEMENT

- 3.01** The strict limits set out in Bill 254 are especially problematic when coupled with the introduction of new “administrative remedies,” directly enforceable by the Chief Electoral Officer.
- 3.02** Under the current regime, the Chief Electoral Officer refers non-compliance issues to the Attorney General of Ontario for prosecution. In practice, this has the effect of limiting the prosecution of violations to the Act to the most serious cases. In the proposed amendments, the Chief Electoral Officer will be empowered to directly impose fines on third parties. Moreover, once the Chief Electoral Officer issues an order to apply a penalty, the respondent has only 15 days to request a review – and this request goes to the Chief Electoral Officer, the same person who applied the penalty in the first place.
- 3.03** This is an incredible amount of power in the hands of an unelected official. Even if the Chief Electoral Officer takes a narrow interpretation of the law, it would open the door and effectively incentivize a spate of frivolous and vexatious complaints from Ontarians who oppose the work of advocacy organizations. No Ontarian should have to rely on the uncertain discretion of a government officer to exercise fundamental freedoms.
- 3.04** The possibilities are all the more troubling when we consider the level of subjectivity involved in interpreting the law. Not only is there still no firm and clear definition of what constitutes political advertising, but it is inevitable that the pre-campaign period will coincide with major policy events that will warrant public discourse.
- 3.05** Our Association has already experienced such a scenario, when a by-election was called in Ottawa while provincial-level collective bargaining negotiations were ongoing. This brought scrutiny to a radio advertisement we were airing across the province, including in the Ottawa area, to bring awareness to the issues being negotiated. While the government remained unimpeded in its ability to air its perspectives, an effective chill was put on Catholic teachers’ free speech rights, resulting in further imbalance between the parties at the bargaining table. The Chief Electoral Officer eventually determined that our advertisements complied with the *Elections Finances Act*, but the damage had already been done. This example echoes

the experience in British Columbia, where restrictions on third-party advertising introduced in 2008 resulted in self-censorship by advocacy organizations and “cast an anti-democratic chill over election discourse” (Daub and Whiteside 2010).

4. INDIVIDUAL CONTRIBUTION LIMITS

- 4.01** Nepotism, cronyism, and pay-to-play politics have been hallmarks of the Ford government’s term in office. Just this month we have seen disturbing reports of donations by corporate executives and senior staff leading to preferential treatment with regard to ministerial zoning orders (McIntosh 2021). So, at a time when the government is obviously trying to silence critics, it is incredibly concerning that they are simultaneously increasing the influence of wealthy Ontarians by doubling individual contribution limits.
- 4.02** The limit of \$3,300 that could be donated to a party, constituency association, contestant, and/or candidate under the proposed legislation may seem insignificant to the wealthiest Ontarians, but the average person would not be able to donate anywhere near this amount. This does not “level the playing field,” but rather puts additional power in the hands of those who already enjoy economic, social, and political advantages. For evidence of the potential consequences we need only look to the federal level, where despite the banning of corporate donations ten wealthy individuals were able to donate more than \$1.1 million between 2004 and 2015 (McMahon 2015).
- 4.03** The issue is compounded by the fact that wealthy donors have the ability to enlist family members to contribute matching amounts. As a result, a single family could donate incredible sums of money and effectively bypass the intention of contribution limits. This is precisely what happened in Quebec in the 1970s, when corporate interests began getting around contribution limits by recruiting family members and employees, providing funds for donations via “bonuses” in what became known as the “prête-nom” system (Beange 2016).
- 4.04** Similarly, doubling the value of goods or services that can be provided to a party, constituency association, contestant, and/or candidate without it being considered a contribution only makes it more likely that those who have sufficient resources will be able to gain access and favour within political institutions, while those who do not have the means to make individual contributions will be shut out.

5. CONCLUSION

- 5.01** As we approach the next election, the Ford government is surely anticipating significant criticism of its handling of the COVID-19 pandemic. There are also lingering memories of the government's disastrous first two years in office, during which they regularly had to retreat from corruption scandals, hastily developed and implemented policy decisions, and general mismanagement.
- 5.02** But while the self-serving motives for this legislation might be understandable, they are completely unacceptable. It is outrageous that the government would attempt to shield itself from judgment by blatantly disrupting the democratic process. Especially during a time of crisis, when marginalized citizens have been disproportionately affected, it is unconscionable to stifle some Ontarians' voices while giving further advantage to the governing party and its patrons.
- 5.03** A government's mandate is not to protect its chances in the next election; leaders are entrusted to safeguard our most sacred rights and institutions. To ensure a fair, transparent, democratic process for all future provincial elections, Catholic teachers call on the Ford government to immediately withdraw the offending portions of Bill 254.

6. WORKS CITED

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