



August 15, 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](mailto:sprzewdziecki@ola.org)

**Re: Bill 201, *Election Finances Statute Law Amendment Act, 2016***

To the Chair and Members of the Committee:

We are writing to express our concern about an element of Bill 201 that could effectively prevent nonprofits from participating in nonpartisan policy debate during provincial election campaigns in Ontario.

Bill 201 includes not only *partisan* but also *issue-based* advocacy in its definition of “political advertising” and thereby creates unintended consequences for community-based organizations that participate in democratic debate during election campaigns. Community-governed nonprofits bring the voices of marginalized communities to the table; hearing from these groups and the people they serve helps candidates for political office to serve their residents. For this nonpartisan work to fall under the banner of “political advertising” is a misrepresentation of the role of civil society. We fully support the move to reduce the influence of third-party spending in election campaigns, but we respectfully suggest that the bill should be amended so as to permit nonprofits to continue their low-cost nonpartisan public policy communications during election campaigns without being subject to the administrative burden of registering with the Chief Electoral Officer.

**Key recommendation**

Refine the definition of “political advertising” so that it **excludes** political communications that take a position on “an issue with which a registered party or candidate is associated.”

Allow us to outline what this bill means for Ontario’s nonprofit sector and provide a rationale for our proposal to mitigate the bill’s potential unintended consequences.

## **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 201 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 speak out on during the prescribed election period. This requirement is a consequence of Bill 201’s broad definition of “third-party political advertising” with respect to issue-based advocacy:

*“political advertising” means advertising in any broadcast, print, electronic or other medium with the purpose of promoting or opposing any registered party or the election of a registered candidate and includes advertising that takes a position on an issue with which a registered party or candidate is associated... [Bill 201, Section 1 (4)].*

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 incurs any cost falls under this definition as long as the audience goes beyond an organization’s own 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 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 201 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 might expect with Bill 201. In 2009, when the British Columbia government introduced election advertising rules similar to the provisions in Bill 201, 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.

We should emphasize that Bill 201’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 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.<sup>2</sup> Nonetheless, Bill 201 must—as Ontario’s Chief Electoral Officer has argued—distinguish between partisan campaigns and nonpartisan, issue-based policy advocacy.<sup>3</sup> We ask that you amend the definition of “political advertising” so as to ensure that democratic debate on any given issue—whether or not any given 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 participate in public policy debate while levelling the playing field.

**The Government of Ontario has recognized the need to reduce the administrative burden for nonprofits—and yet Bill 201 in its current form would only add to this burden.**

There may be some who would argue that it is no great imposition for nonprofits to have to register with the Chief Electoral Officer if they wish to engage in political communications during election campaigns. Registration, however, is only the beginning of what Bill 201 would require of nonprofits. Unlike campaigns that exist only during election windows and only for one purpose, community-based nonprofits would have to 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 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 201 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 201 would add another layer on top of its already significant administrative burden.

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 rather legitimate participation in public policy debate. Requiring “nonpartisan small spender” nonprofits to register under the *Election Finances Act* would constitute an unwarranted administrative burden that would simply create a barrier to participation for community groups. 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. We request:

1. a refinement to the definition of “political advertising” so that it **excludes** political communications that take a position on “an issue with which a registered party or candidate is associated.”
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 partners in the democratic process because they 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. We ask that the Ontario Legislature recognize their critical role in provincial public policy debates.

Sincerely,



Cathy Taylor  
Executive Director

c.c. The Honourable Yasir Naqvi, Attorney General  
The Honourable Laura Albanese, Minister of Citizenship and Immigration

*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> 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>3</sup> 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/>