

Legislative
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Bill 307

(Chapter 31 of the Statutes of Ontario, 2021)

An Act to amend the Election Finances Act

The Hon. D. Downey
Attorney General

1st Reading	June 10, 2021
2nd Reading	June 14, 2021
3rd Reading	June 14, 2021
Royal Assent	June 14, 2021



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 307 and does not form part of the law.
Bill 307 has been enacted as Chapter 31 of the Statutes of Ontario, 2021.*

The *Election Finances Act* is amended to re-enact certain provisions. The Act is declared to operate despite sections 2 and 7 to 15 of the *Canadian Charter of Rights and Freedoms* and despite the *Human Rights Code*.

An Act to amend the Election Finances Act

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Section 37.0.1 of the *Election Finances Act* is repealed and the following substituted:

Considerations re political advertising

37.0.1 In determining whether an advertisement is a political advertisement, the Chief Electoral Officer shall consider, in addition to any other relevant factors,

- (a) whether it is reasonable to conclude that the advertising was specifically planned to coincide with the period referred to in section 37.10.1;
- (b) whether the formatting or branding of the advertisement is similar to a registered political party's or registered candidate's formatting or branding or election material;
- (c) whether the advertising makes reference to the election, election day, voting day, or similar terms;
- (d) whether the advertisement makes reference to a registered political party or registered candidate either directly or indirectly;
- (e) whether there is a material increase in the normal volume of advertising conducted by the person, organization, or entity;
- (f) whether the advertising has historically occurred during the relevant time of the year;
- (g) whether the advertising is consistent with previous advertising conducted by the person, organization, or entity;
- (h) whether the advertising is within the normal parameters of promotion of a specific program or activity; and
- (i) whether the content of the advertisement is similar to the political advertising of a party, constituency association, nomination contestant, candidate or leadership contestant registered under this Act.

2 Subsections 37.10.1 (2), (3) and (3.1) of the Act are repealed and the following substituted:

Same, non-election period

- (2) No third party shall spend,
 - (a) more than \$24,000 in any electoral district for the purpose of third party political advertising in that district during the 12-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the *Election Act*, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar; or
 - (b) more than \$600,000 in total for the purposes of third party political advertising during the 12-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the *Election Act*, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar.

No combination to exceed limit

- (3) No third party shall circumvent, or attempt to circumvent, a limit set out in this section in any manner, including by,
 - (a) acting in collusion with another third party so that their combined political advertising expenses exceed the applicable limit;
 - (b) splitting itself into two or more third parties;
 - (c) colluding with, including sharing information with, a registered party, registered constituency association, registered candidate, registered leadership contestant, or registered nomination contestant or any of their agents or employees for the purpose of circumventing the limit;
 - (d) sharing a common vendor with one or more third parties that share a common advocacy, cause or goal;
 - (e) sharing a common set of political contributors or donors with one or more third parties that share a common advocacy, cause or goal;

- (f) sharing information with one or more third parties that share a common advocacy, cause or goal; or
- (g) using funds obtained from a foreign source prior to the issue of a writ for an election.

Contributions

(3.1) Any contribution from one third party to another third party for the purposes of political advertising shall be deemed as part of the expenses of the contributing third party.

2022 election

(3.2) With respect to the general election to be held in 2022 in accordance with subsection 9 (2) of the *Election Act*, the relevant period for the purposes of subsection (2) of this section commences on the day the *Protecting Elections and Defending Democracy Act, 2021* receives Royal Assent.

3 Section 37.10.2 of the Act is repealed and the following substituted:

Interim reporting requirements

37.10.2 (1) Every third party shall promptly file the following interim reports with the Chief Electoral Officer, in the prescribed form:

1. When it has paid or committed to any person or entity to spend any funds on paid political advertising, it shall report the amount spent or committed, with a separate report being required each time its aggregate spending increases by an amount of at least \$1,000.
2. When it has reached the applicable spending limit under section 37.10.1, it shall report that fact.

Posting

(2) The Chief Electoral Officer shall publish every report filed under subsection (1) on the website of the Chief Electoral Officer within two days of receiving it.

Percentage

(3) Based on the interim reports, the Chief Electoral Officer shall determine the amounts spent or committed to be spent by each third party as a percentage of the maximum spending that is permitted for a third party under section 37.10.1, and publish the percentages on the website of the Chief Electoral Officer.

Purpose

(4) The purpose of the percentages determined under subsection (3) is to permit persons or entities that sell advertising to be aware that the third party is at risk of exceeding its spending limit, and to make informed decisions about selling advertising to the third party.

No selling over limit

(5) No person or entity shall sell advertising to a third party when the person should reasonably be aware, based on the reporting under this section, that the sale would cause the third party to exceed a limit imposed by section 37.10.1.

4 The Act is amended by adding the following section:

Application of Charter and *Human Rights Code*

53.1 (1) Pursuant to subsection 33 (1) of the *Canadian Charter of Rights and Freedoms*, this Act is declared to operate notwithstanding sections 2 and 7 to 15 of the *Canadian Charter of Rights and Freedoms*.

Human Rights Code

(2) This Act applies despite the *Human Rights Code*.

Commencement

5 This Act comes into force on the day it receives Royal Assent.

Short title

6 The short title of this Act is the *Protecting Elections and Defending Democracy Act, 2021*.