

Court File No. CV-21-00665404-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

WORKING FAMILIES COALITION (CANADA) INC., PATRICK DILLON, PETER
MACDONALD, ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION, THE
ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, FELIPE PAREJA, THE
ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION AND LESLIE WOLFE

Applicants

and

THE ATTORNEY GENERAL OF ONTARIO

Respondent

and

THE CANADIAN CIVIL LIBERTIES ASSOCIATION, CENTRE FOR FREE
EXPRESSION AT RYERSON UNIVERSITY, CRIMINAL LAWYERS' ASSOCIATION,
DEMOCRACY WATCH AND THE CHIEF ELECTORAL OFFICER OF ONTARIO

Intervenors

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*

FACTUM FOR THE INTERVENOR DEMOCRACY WATCH

November 17, 2021

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PART I - INTRODUCTION

1. Spending limits provide a necessary and desirable function in a democracy, but only where those limits are carefully designed to uphold democratic principles. The structure of the spending limits introduced in the *Protecting Elections and Defending Democracy Act, 2021* (“Bill 307”) undermines, rather than upholds, the democratic principles underlying s. 3 of the *Charter*.

2. Under the structure, the global spending limit of \$600,000 during the 12-month period before the issuance of a writ applies to all third parties regardless of their size, constitution, or character. This means that citizen groups, even those comprising thousands of members, are effectively limited in their advertising spending to the same amount as a single affluent individual, or a small group of affluent individuals.

3. This result is antithetical to a healthy, functioning democracy. Democracy Watch asks this Court to apply the principles from Supreme Court of Canada jurisprudence surrounding election advertising, to find that the structure under Bill 307 results in an unjustifiable violation of s. 3. Democracy Watch submits:

- (a) Section 3 of the *Charter* applies during the pre-election period,
- (b) The “egalitarian model” of elections aims to limit the influence of wealth in politics;
- (c) Third parties such as the Applicants provide a crucial means for ordinary Ontarians to effectively participate in the electoral process;

- (d) By failing to account for the differences between third party advertisers, the current legislation exacerbates the influence of the wealthy in the electoral process; and,
- (e) The administrative requirements under Bill 307 violate s. 3.

PART II - SUMMARY OF FACTS

4. Democracy Watch relies upon the facts set out by the parties.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Section 3 applies during the pre-election period

5. While the Supreme Court has not considered whether s. 3 of the *Charter* applies to pre-election advertising spending, it must.

6. First, advertising during the pre-election period can have an impact on the results of an election. Democracy Watch agrees with the ETFO that voters rely on third parties to inform them about issues both during and between elections.¹ This alone should be dispositive of the fact that s. 3 rights are engaged by limits that apply in the pre-election period.

7. Second, the Supreme Court has held that s. 3 protects not just the right to participate in the electoral process, but the political process generally.² This means that s. 3 must be interpreted to apply to periods even when no election is currently taking place.

¹ Factum of the Elementary Teachers' Federation of Ontario and Felipe Pareja [*ETFO Factum*] at para 31.

² [*Harper v. Canada \(Attorney General\)*](#), 2004 SCC 33 (CanLII), [2004] 1 SCR 827 [*Harper*] at para 73.

8. Finally, the challenged legislation in this case regulates *election* advertising. Any legislation that regulates election advertising, whether it takes effect during an election period or not, must be subject to scrutiny under s. 3 of the *Charter*.

9. This does not mean that all pre-election spending limits violate s. 3. Spending limits that uphold the egalitarian model of elections and limit the corrosive influence of wealth in the political process are perfectly appropriate regardless of whether they apply during or before the election period. Put differently, if the spending limits achieve the objective of enhancing the right of citizens to effective representation, and prevent wealth from undermining the informational component of the right to vote, then such limits do not violate s. 3 regardless of when they apply.

10. Here, however, the limits under Bill 307 fail to achieve these objectives and violate s. 3.

B. The egalitarian model of elections is concerned with the unequal influence of wealthy individuals in the electoral process

11. The “egalitarian model” of elections, as set out in the Lortie Report, lies at the heart of jurisprudence on spending limits. There is no case involving a *Charter* challenge to spending limits that has not cited the Lortie Report.³ The Attorney General correctly notes in its factum that the regulation of third party election advertising in Canada is “rooted” in the egalitarian model of elections as expressed in the Lortie Report, and that the egalitarian model of elections represents no less than a “constitutional imperative.”⁴

³ [British Columbia Teachers' Federation v British Columbia \(Attorney General\)](#), 2011 BCCA 408 [*BC Teachers' Federation*] at paras 32-33; [Working Families v Ontario](#), 2021 ONSC 4076 [*Working Families*] at paras. 29 and 31; *Harper* at para 79; [Libman v Quebec \(Attorney General\)](#), [1997] 2 SCR 596 (CanLii) [*Libman*] at para 47; [Reference re Election Act \(BC\)](#), 2012 BCCA 394 at paras 24 and 39.

⁴ Factum of the Attorney General [*AG Factum*] at para 33.

12. The egalitarian model is centered on the notion of equal participation by all members of the electorate, and is primarily concerned with the unequal amount of influence that can be exercised by affluent members of society. As the Supreme Court commented in *Harper*, under the egalitarian model “[w]ealth is the main obstacle to equal participation”.⁵ Because more affluent members of society can use greater resources to influence the outcome of elections, the egalitarian model seeks to level the playing field by restraining the influence of wealth; the egalitarian model, at its core, “promotes an electoral process that requires the *wealthy* to be prevented from controlling the electoral process to the detriment of others with less economic power”⁶ (emphasis added).

13. Previous cases, including *Harper*, have held that spending limits uphold the egalitarian model because they limit the influence of wealth in politics. Put differently, spending limits uphold this constitutional imperative precisely because they prevent the most affluent from “monopolizing election discourse and consequently depriving their opponents of a reasonable opportunity to speak and be heard.”⁷ In the absence of properly tailored spending limits, election spending can lead to “dominance of the political discourse by the wealthy” which “can erode the confidence of the Canadian electorate who perceive the electoral process as being dominated by the wealthy.”⁸

14. Here, the spending limits cannot possibly be said to prevent dominance of the political discourse by the wealthy. They muzzle groups such as the Applicants that are vital to the

⁵ *Harper* at para 62.

⁶ *Ibid.*

⁷ *Libman* at para 47.

⁸ *Harper* at para 79.

effective participation of working class and middle class Ontarians. The current limits have not lessened the disproportionate influence of the wealthy in the electoral process, but have instead dramatically impacted the ability of unions and citizen groups to advocate on behalf of their constituencies.

15. The Lortie Commission did not describe what it meant by the concept of “wealth” and did not specifically address how notions of wealth should apply to representative organizations who are speaking on behalf of a large segment of the electorate.⁹ However, as noted in *Working Families*, the Lortie Report identified “corporate interests, not labour interests” as the subject of concern.¹⁰ It is Democracy Watch’s position that the egalitarian model cannot be used to justify silencing groups that represent tens or even hundreds of thousands of working class voters. The egalitarian model is premised upon preventing the wealthy from influencing politics, not coalitions of labourers, nurses, teachers, or other workers.

16. To claim, as the Attorney General does,¹¹ that the current advertising limits uphold the egalitarian model is wrong. Democracy Watch agrees with *Working Families* that the government has deliberately conflated “trade unions and civil society organizations with the US billionaires who influence the outcome of elections by contributing hundreds of millions of dollars to political parties and candidates.”¹² Trade unions and civil society organizations must be allotted greater spending limits than individuals because they represent more participants in

⁹ See Affidavit of Dr. Erin Crandall sworn July 26, 2021 [*Crandall Affidavit*] at para 18, OSSTF Application Record [*OSSTF AR*] Vol 3, Tab 6, p 874.

¹⁰ At para 60.

¹¹ AG factum at para 7.

¹² Factum of Working Families Coalition (Canada) Inc., Patrick Dillon, Peter MacDonald and Ontario English Catholic Teachers’ Association [*Working Families Factum*] at para 4.

the democratic process. As a consequence, spending limits must differentiate between different third parties in order to properly uphold the egalitarian model.

C. Third parties such as the Applicants are crucial to the effective participation of Ontarians

17. The Applicants are organizations with tens of thousands of members. The OSSTF represents approximately 32,000 secondary school teachers, and 31,000 education workers.¹³ The ETFO has approximately 83,000 members.¹⁴ Working Families is supported by more than 250,000 members.¹⁵ Despite this, as a consequence of the current legislative scheme, these organizations cannot spend more on election advertising than a single individual with the means to contribute \$600,000, or a small subset of individuals with the means to do so.

18. This result is particularly troubling since parties such as the Applicants may be the only way for ordinary Ontarians to achieve effective representation. The Supreme Court has confirmed on several occasions that effective representation is the purpose of s. 3.¹⁶ Effective representation connotes more than the ability to merely vote. It connotes the ability to have one's voice heard in the deliberations of government. As noted by McLachlin J. in *Reference re Provincial Electoral Boundaries*:¹⁷

[T]he purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality of voting power per se, but the right to “effective representation”. Ours is a representative democracy. Each citizen is

¹³ Affidavit of Kerri Ferguson sworn July 22, 2021 at para 3, OSSTF AR, Vol 1, Tab 3, p 55.

¹⁴ Affidavit of Federico Carvajal sworn July 20, 2021 at para 3, ETFO Application Record [*ETFO AR*], Vol 1, Tab 3, p 56.

¹⁵ Affidavit of Patrick Dillon sworn July 15, 2021 at para 2, Working Families Application Record [*Working Families AR*], Vol 1, Tab 3, p. 48.

¹⁶ *Harper* at para 68; [Reference re Provincial Electoral Boundaries](#), [1991] 2 SCR 158 (CanLii) [*Reference re Electoral Boundaries*] at p. 183.

¹⁷ *Ibid.*

entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative. . .

19. Involvement in larger organizations is the only practical way for many Ontarians to achieve effective representation.

20. As the Supreme Court held in *Libman*, “[i]f the principle of fairness in the political sphere is to be preserved, it cannot be presumed that all persons have the same financial resources to communicate with the electorate...”.¹⁸ It additionally held in *Harper* that the primary limitation on citizens from participating in election advertising is “a lack of means, not legislative restrictions.”¹⁹ Practical reality dictates that, without membership in large organizations, individuals such as those represented by the Applicants might not have any opportunity to have their voices heard. The average Ontarian does not \$13,000 of disposable income to spend on an election.²⁰ Indeed, as noted in the affidavit of Felipe Pareja, some members of these groups do not have the means to make any personal contributions whatsoever.²¹ These members rely on organizations like the Applicants to have their voice and opinions expressed collectively.²² In such cases, it is only through representation in larger organizations that such members can expect to have their voices heard by the average voter.

¹⁸ *Libman* at para 47.

¹⁹ *Harper* at para 113.

²⁰ Affidavit of Vicki McKenna sworn July 22, 2021 [*McKenna Affidavit*] at para 65, Working Families AR, Vol 11, Tab 8, p. 28.

²¹ Affidavit of Felipe Pareja sworn July 22, 2021 at para 25, ETFO AR, Vol 1, Tab 4, p. 370.

²² *Ibid.*

21. The larger the group or organization's membership is, the more likely it is that the group represents individuals that do not have the means to effectively participate by themselves. Given that there is no realistic way for such individuals to provide feedback to elected representatives or voice their concerns to the broader public without membership in larger organizations, parity would dictate that such groups be allotted a louder voice to accommodate this disparity. On the other hand, by limiting the spending of third parties without any regard for the size of their membership, the current legislation effectively disenfranchises their least-wealthy members.

22. Democracy Watch urges the Court to consider the practical realities of political involvement for average Ontarians. Under the current structure, the most affluent Ontarians can spend up to \$600,000 in election advertising without the need to seek out similarly-minded individuals with whom they can pool their resources. Ordinary Ontarians cannot. Nor can they realistically be expected to seek out membership in smaller organizations in order to effectively maximize their ability to pool resources under the current limits. Leaving aside the fact that this might offend the anti-circumvention provisions, it is more realistic to expect that Ontarians will belong to larger organizations that share an aligned interest.

23. Indeed, citizens may be attracted to large groups like the Applicants precisely because they advocate for issues that extend to thousands of similarly situated individuals. Organizations like the Ontario Nurses' Association promote issues that "extend beyond each individual workplace...and implicate things like systemic undervaluing of work in female-dominated job classes."²³ Because groups such as the Applicants represent a greater portion of the population,

²³ *McKenna Affidavit* at para 49, Working Families AR, Vol 11, Tab 8, p. 18.

they are better positioned to address issues that affect broad cross-sections of Ontarians. This has implications not only for the right of underrepresented individuals' effective participation, but also the informational component of the right to vote. As the evidence shows, many of the issues facing working class Ontarians are underrepresented in traditional media coverage of elections.²⁴

24. Finally, the ability of large organizations to pool the resources of their members provides a necessary counterbalance to the disenfranchisement of their individual members. Democracy Watch agrees with ETFO that an individual's ability to meaningfully participate is affected by the broader institutional and political framework of Ontario.²⁵ The pooling of resources in order to further advance the collective views of members is particularly important given the evidence that advertising is the only means by which such groups can obtain an effective "seat at the table."²⁶ Collective action is therefore "necessary to ensure democratic participation by those with lesser resources than more powerful institutions".²⁷

25. Ultimately, large groups serve twin purposes. They allow ordinary Ontarians to achieve effective representation, and they allow like-minded Ontarians to pool their resources together more effectively. Both purposes are conducive to the principle of effective representation.

²⁴ Affidavit of James Winter sworn July 22, 2021, Exhibit "C" at pp. 6-10, Working Families AR, Vol 6, Tab 7, p. 2402-2406.

²⁵ Factum of the Elementary Teachers' Federation of Ontario and Felipe Pareja [*ETFO factum*] at para 45.

²⁶ *McKenna Affidavit* at paras 59-61, Working Families AR, Vol 1, Tab 8, pp. 25-26.

²⁷ Affidavit of Peter MacDonald sworn July 15, 2020, Exhibit "A" at para 22, Working families AR, Vol 3, Tab 4, p. 935.

D. Election spending limits should account for fundamental differences between third parties

26. Because Bill 307 fails to properly account for the difference between wealthy individuals and third party groups, it exacerbates the ability of the wealthy to influence the outcome of elections and is fundamentally undemocratic

27. Spending limits would uphold the egalitarian model of elections if they took proper account of the differences between third parties. Third parties are “important and influential participants in the electoral process.”²⁸ They highlight issues that are otherwise ignored, increase voter awareness, and enrich political debate.²⁹

28. But not all third parties are equally valuable. Political involvement by multitudinous groups is inherently conducive to a healthy democratic process precisely because of their large membership. As set out above, their participation in the electoral process enhances the egalitarian principle by allowing underprivileged Ontarians to achieve meaningful and effective representation. The fact that these groups represent a large portion of the population is precisely why they should be permitted to have increased spending power. They amplify the political voice of thousands of Ontarians, rather than a single Ontarian. They thus represent an aggregation of political preferences, which the Supreme Court has recognized as a democratic value.³⁰

²⁸ *Harper* at para 63.

²⁹ Affidavit of Marc Mayrand sworn July 30, 2021 at para 26, ETFO AR, Vol 3, Tab 6, p 614.

³⁰ *Figueroa v Canada (Attorney General)*, 2003 SCC 37, [2003] 1 SCR 912 (CanLii) [*Figueroa*] at para 31.

29. A single, wealthy individual simply does not have the same representational status as one of these groups. It defies the principle of egalitarianism that a single wealthy individual should effectively have the same spending power in an election as a group with hundreds or even thousands of members. If an individual does claim to represent the voice of thousands of Ontarians, then those individuals have the option of forming their own organizations and trying to attract similar levels of membership.

30. To uphold the egalitarian principle espoused by the current government in enacting Bill 204, the legislation must account for the fundamental differences between third parties.

31. While the Supreme Court upheld spending limits in *Harper* that similarly failed to distinguish between different third parties, the constitutionality of those limitations was not challenged on that basis.

32. There are several reasons why the constitutionality of blanket limitations ought to be carefully scrutinized in this application. The Applicants suggest that the current legislation was intended to benefit the incumbent government, The Applicants, all of them large organizations representing tens of thousands of members, were the top third party advertisers in the 2011 general election and argue that the current legislation directly targeted them.³¹ The record indicates that individual, wealthier donors are overwhelmingly supporters of the incumbent government.³² The fact that individual contribution limits to political parties were doubled provides additional context,³³ and underlines the fact that the current legislation serves to

³¹ Working Families factum para 60; OSSTF factum para 75; ETFO factum para 62.

³² Affidavit of Randy Besco affirmed July 27, 2021, Exhibit “C”, OSSTF AR, Vol. 4, Tab 7, pp 1041, 1045.

³³ *Election Finances Act*, RSO 1990, c. E.7 s. 18(1) [*EFA*].

increase the influence of the wealthy in the political landscape. This is particularly concerning given that the current party, as demonstrated by the evidence, benefits from a greater number of individual donors.³⁴ All of these facts belie the notion that the current spending limits are “tailored in a manner consistent with the egalitarian model”, as argued by the Attorney General.³⁵ Rather, there is strong reason to believe that the structure of the current spending limits increases the influence of wealth in the electoral process and benefits the incumbent government.

33. Democracy Watch advocates for regulations that accommodate the differences between third parties in order to better achieve the principles underpinning the egalitarian model of elections. In its submission, the egalitarian model of elections could be upheld by legislation that ties spending limits to the number of members of an organization, whether it is an advocacy group, political group, union or otherwise. Of course, the specific limits would have to be set following a proper legislative process.

E. The administrative requirements under Bill 307 violate s. 3

34. Finally, Democracy Watch submits that the administrative burdens, and in particular the interim reporting requirements, imposed by Bill 307 violate s. 3 and cannot be justified under s. 1.

35. The administrative burdens under Bill 307 are distinguishable from those considered in *Harper*. There, the Supreme Court held that the registration, disclosure and reporting requirements for third-party advertising spending during election campaign periods did not

³⁴ Affidavit of Andrea Lawlor, sworn July 23, 2021 at para. 57, ETFO AR, Vol 2, Tab 5, p 404-405.

³⁵ AG factum at para 169.

violate s. 3 because they enhanced the right to an informed vote.³⁶ The legislation in *Harper* required (i) registration after spending \$500 or more on advertising, (ii) appointing an auditor after spending \$5,000 on advertising, and (iii) submitting a report disclosing details concerning ad spending and donors to Elections Canada four months after election day.³⁷

36. While the registration requirements under Bill 307 are similar, the reporting requirements are significantly more onerous. Under s. 37.10.2(1) of the *EFA*, every third party is required to “promptly file” with the CEO an interim report each time it has “paid or committed to any person or entity to spend any funds on political advertising” in the amount of at least \$1,000. Non-compliance can result in an administrative penalty of up to \$100,000.³⁸ As the expert evidence reveals, the interim reporting requirements are likely to have a chilling effect on groups without significant staff or resources.³⁹

37. This regime creates an unnecessary and undue burden on smaller third party groups and individuals without significant resources. In the context of candidates seeking election, courts have held that unnecessary and undue financial burdens violate s. 3 insofar as they interfere with a citizen’s capacity to play a meaningful role in the electoral process.⁴⁰ That same logic should apply to the disclosure and reporting measures mandated by the *EFA*. The current requirements *might* marginally improve the ability of citizens to cast an informed vote by increasing their

³⁶ *Harper* at para 140. The Supreme Court additionally held that, while the requirements violated s. 2(b), they were justifiable under s. 1. See paras 136-139 and 142-146.

³⁷ *Harper* at para. 53, referring to then-sections 353-355 and 559-360 of the *Canada Elections Act*, S.C. 2000, c. 9.

³⁸ *EFA*, s. 45.1(1) and (5).

³⁹ *Crandall Affidavit*, para 28, OSSTF AR, Vol 3, Tab 6, p. 876.

⁴⁰ See [de Jong v Ontario \(Attorney General\) \(2007\), 88 OR \(3d\) 335 \(Ont. S.C.\)](#) (CanLii) at para 50; [Figueroa v Canada \(Attorney General\)](#) (1999), 170 DLR (4th) 647 (Ont. Gen. Div.) (CanLii), varied on other grounds (2000), 50 OR (3d) 161 (Ont. C.A.), restored on other grounds [2003] 1 SCR 912 (SCC).

awareness of who contributes to advertising spending; however, this cannot possibly justify the serious interference with smaller groups' ability to meaningfully participate.

PART IV - ORDER REQUESTED

38. Democracy Watch respectfully seeks an order:

- (a) Declaring Bill 307 to constitute an unjustifiable violation of s. 3 of the *Charter*;
- (b) Declaring s. 37.10.2(1) of the EFA to have no legal force or effect; and
- (c) Declaring s. 53.1 of the *EFA* to have no legal force or effect.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of November, 2021.



Patrick M. Wodhams

November 27, 2021

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SCHEDULE “A”
LIST OF AUTHORITIES

1. *Harper v. Canada (Attorney General of Ontario)*, 2004 SCC 33 1 SCR 827
2. *British Columbia Teachers’ Federation v British Columbia (Attorney General)*, 2011 BCCA
3. *Working Families v Ontario*, 2021 ONSC 4076
4. *Libman v Quebec (Attorney General)*, [1997] 2 SCR 596
5. *Reference re Election Act (BC)*, 2012 BCCA 394
6. *Reference re Provincial Electoral Boundaries*, [1991] 2 SCR 158
7. *Figueroa v Canada (Attorney General)*, 2003 SCC 37, [2003] 1 SCR 912
8. *de Jong v Ontario (Attorney General)* (2007), 88 OR (3d) 335 (Ont. S.C.)
9. *Figueroa v. Canada (Attorney General)*, 1999 CanLII 14787 (Ont. S.C.)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Election Finances Act, R.S.O. 1990, c. E.7

Maximum contributions Registered parties

18 (1) The contributions that a person makes to any one registered party shall not exceed, in a calendar year, \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022. 2021, c. 5, Sched. 2, s. 7 (1).

Prohibited contributions and transfers Prohibition on acceptance, transfer, etc.

29 (1) No political party, constituency association, nomination contestant, candidate or leadership contestant registered under this Act shall directly or indirectly knowingly accept contributions from any corporation or trade union. 2016, c. 22, s. 24.

Spending limit

37.10.1 (1) No third party shall spend,

(a) more than \$4,000 in any electoral district for the purpose of third party political advertising in that district during any election period, whether for a by-election or a general election, 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 \$100,000 in total for the purpose of third party political advertising during any election period for a general election, 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. 2016, c. 22, s. 43.

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. 2021, c. 31, s. 2.

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. 2021, c. 31, s. 2.

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. 2021, c. 31, s. 2.

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. 2021, c. 31, s. 3.

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. 2021, c. 31, s. 3.

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. 2021, c. 31, s. 3.

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. 2021, c. 31, s. 3.

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. 2021, c. 31, s. 3.

Administrative penalties

45.1 (1) Where the Chief Electoral Officer believes on reasonable grounds that a person or entity has contravened one of the following provisions of this Act, the Chief Electoral Officer may make an order requiring the person or entity to pay an administrative penalty:

1. Subsection 12.1 (1).
2. Subsection 14 (1).
3. Section 18.
4. Subsection 22 (9).
5. Section 32.
6. Subsection 36.1 (1).

7. Subsections 37 (2) and (3).
8. Subsections 37.5 (1) and (5).
9. Subsections 37.10.1 (1) and (2).
10. Subsections 37.10.2 (1) and (5).
11. Subsections 37.12 (1) and (8).
12. Subsections 38 (1), (2), (3) and (3.1).
13. Section 38.1.
14. Section 41.1.
15. Section 41.2. 2021, c. 5, Sched. 2, s. 22

Purpose

(2) The purpose of an administrative penalty is to promote compliance with this Act and the Election Act. 2021, c. 5, Sched. 2, s. 22.

Limitation

(3) The Chief Electoral Officer shall not make an order requiring the payment of an administrative penalty more than two years after the date on which the Chief Electoral Officer became aware of the contravention. 2021, c. 5, Sched. 2, s. 22.

Payment, etc. -

(4) An administrative penalty shall be paid into the Consolidated Revenue Fund, and shall be in an amount determined by the Chief Electoral Officer in accordance with this section. 2021, c. 5, Sched. 2, s. 22.

Maximum amounts

(5) The maximum amount of an administrative penalty under this section shall be determined as follows:

1. For a contravention of section 18 is an amount equal to twice the amount that was contributed in contravention of that section, plus \$1,500, in the case of an individual, and plus \$5,000, in the case of a corporation or other entity.
2. For a contravention of subsection 22 (9), 37 (2) or 37.10.2 (1) or (5), \$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity.
3. For a contravention of subsection 37.5 (1), 37.5 (5) or 37.12 (8), \$10,000.
4. In all other cases, \$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity. 2021, c. 5, Sched. 2, s. 22.

Criteria for penalty

- (6) The amount of an administrative penalty is to be determined taking into account,
- (a) the degree of intention or negligence on the part of the person or entity that committed the contravention;
 - (b) the harm done by the contravention;
 - (c) whether the person or entity derived any advantage from the contravention;
 - (d) whether the person or entity made reasonable efforts to mitigate or reverse the contravention's effects;
 - (e) whether the person or entity has taken steps to avoid committing the contravention in the future;
 - (f) whether the person or entity has provided all reasonable assistance to the Chief Electoral Officer with respect to the contravention, including reporting it and providing any relevant information;
 - (g) the person's or entity's history of compliance with the provisions of this Act;
 - (h) the person's or entity's ability to pay the penalty;
 - (i) any aggravating and mitigating circumstances; and
 - (j) any other factor that, in the opinion of the Chief Electoral Officer, is relevant. 2021, c. 5, Sched. 2, s. 22.

WORKING FAMILIES COALITION (CANADA) INC., et al.

Applicants

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. CV-21-00665404-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

FACTUM FOR THE INTERVENOR DEMOCRACY WATCH

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