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Submission of Democracy Watch to the Ontario Standing Committee on the Legislative Assembly regarding Bill 254

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A. Introduction

Democracy Watch and the Money in Politics Coalition (made up of 50 groups with a total of more than three million members), welcome this opportunity to participate in the policy-making process concerning Bill 254, which changes Ontario's provincial political finance system, among other changes.

Democracy Watch and the Money in Politics Coalition, joined by the tens of thousands of Ontarians who have supported Democracy Watch's Money in Politics Campaign, hope that the Committee will make several changes to the bill to ensure it actually democratizes Ontario's provincial political finance system as set out under the [Election Finances Act](#), R.S.O. 1990, c E.7 (*EFA*).

Democracy Watch and the Money in Politics Coalition approve of, in a very qualified way, a couple of Bill 254's proposed political finance reforms, as follows (and as listed in the Ontario government's news release):

1. Allowing independent candidates to register and receive contributions before the election campaign period begins (however much more disclosure is needed of donations and spending by such candidates), and;
2. Allowing the Chief Electoral Officer of Elections Ontario to impose fines for violations, instead of having to prosecute offenders (however, the CEO must be required to have a reasonable belief of a violation, and an appeal to the courts must be allowed).

However, Bill 254 has several serious flaws, makes changes that are undemocratic and unethical, and with some measures clearly in violation of *Charter* rights, and it also fails to address several serious gaps that must be closed in order to make Ontario's provincial political finance system actually democratic and ethical.

Ontario's political finance system currently violates the fundamental democratic principle of one person, one vote in many ways, and Bill 254 will increase the extent of those violations. As a result, several changes are needed to Bill 254.

B. List of undemocratic, unethical, and in some cases likely unconstitutional, sections that must be deleted from Bill 254

The following is the list of sections that should be deleted from [Bill 254](#) because, if they are enacted, they will make Ontario political finance system even more undemocratic and unethical than it already is:

1. Schedule 2, section 7 of Bill 254 should be deleted because it doubles all the current donation limits in the *Election Finances Act (EFA)*, which will allow wealthy donors to use money even more to have undemocratic and unethical influence over parties and candidates (and receive even more public funding through the tax credits provided to donations). Doubling the donation that candidates are allowed to make to their own campaign will also allow wealthy candidates to have an undemocratic advantage.

Doubling the donation limit will also likely benefit the PC Party the most, as it is supported much more by donors who donate \$1,000 or more annually, as Democracy Watch disclosed in this news release last Friday: <https://democracywatch.ca/2020-donations-show-ontario-political-finance-system-still-undemocratic-almost-50-of-pc-donations-from-20-of-donors-who-donated-1000/>

The other main parties' top donors also provided disproportionate amount of funding. Democracy Watch's analysis also shows that the median donation to provincial parties of donations of more than \$100, which is the most accurate indication of the amount an average voter can afford, is: PCs (\$200), Liberals (\$50); NDP (\$25); Greens (\$30).

As a result, the donation limits should all be lowered to an amount that an average voter can afford (which is no more than \$100). Loans that are allowed under section 35 of the *EFA* should also be limited to \$100. See subsection D.1 and 2 below for detailed reasons why these changes should be made to Bill 254.

2. Schedule 2, subsection 11(1) of Bill 254 should be deleted because it increases the per-vote funding subsidy set out in the *EFA* from 45.2 cents per vote per quarter (\$1.81 per-vote annually) to 63.6 cents per quarter (\$2.54 annually).

Instead, an independent commission should be established to study the actual annual costs of running a provincial political party, and provincial and local election campaigns, in this age of email, the Internet and social media.

Currently, the four main parties are receiving half or more of their annual funding from the per-vote subsidy, which is too much given the funding allows parties to receive the money each year even if they break their election promises or lose voter support.

Instead, the donation limit should be lowered to no more than \$100 and, if the commission concludes that the parties cannot reach voters adequately based on their donations, and that public funding is actually needed, per-vote funding should be re-established to provide only a low base level of funding for each party (especially opposition parties, as the ruling party almost always receives a higher percentage of MPPs than it deserves compared to its percentage of popular vote, along with the extra annual public funding those MPPs receive).

Donation-matching funding should also be established, on a sliding scale as in Quebec, but on an even more equalizing sliding scale, to ensure that the total funding of a candidate who is supported by more voters who donate less each is equalized with the total funding of a candidate who is supported by fewer voters who donate more each. See below in D.4 to D.6 for detailed reasons why these changes would make the public funding system more democratic.

3. Schedule 2, subsection 11(2) of Bill 254, which proposes to give the parties the second, third and fourth quarter of 2022, and first quarter of 2023, payments of per-vote funding all together in the second quarter of 2022, should be deleted because the election results in June 2022 will change the amounts of per-vote funding the parties will each receive for the rest of 2022 and into the future.

This provision seems aimed at boosting all parties' funding because their [donations have dropped since 2019](#), and also to buy the support of opposition parties for Bill 254, even though many measures in the Bill are undemocratic and unethical, and even likely unconstitutional.

Many worthy charities and other organizations have also seen their donations drop in the past year or so, and they are not receiving similar automatic boosts to their funding next year. What makes political parties so special?

4. Schedule 2, section 12 and subsection 13(1) of Bill 254 should be deleted because they increase the secret aggregate donation loophole in the *EFA* from \$100 up to \$200. This will allow someone to make two donations of \$99, a total donation of \$198, in secret. This will also facilitate illegal funneling of donations twice as much as the current system facilitates it, as the CEO of a company or organization will be allowed to deliver two \$99 cheques to a party, supposedly from all the company's employees, in secret. The current system only facilitates delivering one \$99 cheque.

Instead, all donations of money, property or services must be required to be disclosed, including volunteer labour which is the largest secret donation loophole in the current system. See below in D.3 for detailed reasons why these changes would make the system more democratic and ethical.

5. Schedule 2, subsections 14(1) and (2) of Bill 254 should be deleted because they extend the pre-election period in the *EFA* during which there are limits on spending on “political advertising” by interest groups and individuals – known as “third parties” – from 6 months to 12 months. Political ads include not only ads that support or oppose a party or candidate, but also an ad that “takes a position on an issue that can reasonably be regarded as closely associated with a registered party or its leader or a registered candidate...” The current spending limit for the 6-month period is \$637,200 across the province, and approximately \$25,000 in a riding.

The current 6-month pre-election restriction period is likely an unconstitutional limit on free speech because the ad spending limits have been set arbitrarily, without any detailed study of how much it actually costs interest groups to reach Ontario voters, including through ads.

The current 6-month pre-election restriction period is also likely unconstitutional because spending on issue-oriented ads is included in the definition of political ads.

Doubling the restriction period to 12 months, while keeping the same spending limits, is likely even more clearly unconstitutional.

In May 2012, the B.C. government referred similar proposed third-party restrictions to the B.C. Court of Appeal (although the restricted pre-election period was only for a few weeks before the election campaign, not 12 months as Bill 254 proposes). The Court of Appeal [ruled in October 2012](#) that the restrictions were unconstitutional because they restricted spending on ads as part of a third party’s advocacy on any issue.

The federal government did not even try to restrict spending on issue ads during the pre-election period of 2-3 months when it changed the federal election law with [Bill C-76](#) in 2018-2019. During the pre-election period, the federal law only restricts spending on partisan ads that support or oppose a candidate or party, and the spending limit is so high it is a meaningless restriction.

If the Ford government is not going to delete subsections 14(1) and (2) from Bill 254, before enacting the restrictions it must refer the subsections to the Court of Appeal for a ruling on whether they are constitutional. The government should also work with opposition parties and interest groups to establish a fully independent commission to complete a detailed study of how much it actually costs to reach Ontario voters, including through ads, in this age of email, the Internet and social media.

6. Schedule 2, subsection 14(3) of Bill 254 should be changed to make it clear that the rules it proposes to add to the *EFA*, clauses 37.10.1(3)(d)

which prohibits third parties using the same vendor if they share the same cause, and (e) which prohibits third parties having the same donors if they share the same cause, only impose these prohibitions if the third parties are attempting to violate the third-party ad spending limits.

It is likely unconstitutional to prohibit third parties from using the same vendor or having the same donors if they share the same cause, especially if there is no evidence that they are colluding.

As well, these sections only apply to collusion between third parties. They should also apply, along with other anti-collusion actions, to collusion between a party, riding association or candidate and third parties that support them.

7. Schedule 2, sections 15 and 17 of Bill 254 should be deleted because section 17 removes the requirement of nomination contestants to submit financial statements to Elections Ontario, and section 15 removes the requirement to submit an audited return, even if they receive more than \$10,000 in contributions or spend more than \$10,000 on their campaign. All types of candidates should be required to provide an audited return if they spend more than \$10,000.

C. Summary list of changes to Bill 254 needed to make the system democratic and ethical

The following is a summary list of the changes that need to be made to Bill 254 to make Ontario's political finance system democratic and ethical (NOTE: see details about the reasons for most of the changes listed below change set out in section D). The same changes should be made to the province-wide municipal law to fully democratize the political finance system at that level as well (taking into account that political parties do not exist at the municipal level):

1. Limit annual combined total donations of money, property and services by individuals to \$100-200 to each party (Quebec's limit is \$100), and establish the same limit on candidates donating to their own campaign, with all donations routed through the election watchdog agency (as in Quebec);
2. Prohibit loans to political parties, riding associations and candidates, except from a public fund (with loans limited to the average annual amount of donations received during the previous two years);
3. Strictly limit spending leading up to, and during election campaigns by parties, nomination race and election candidates, third party interest groups and individuals, and also candidates in party leadership races, based on a fully independent study of the actual costs of running parties, and parties, candidates and third parties reaching voters, in this age of email, the Internet and social media;
4. Prohibit collusion between parties/candidates and third-party interest groups and individuals;

5. Prohibit Canadian-based subsidiaries of foreign-owned businesses from spending money on election-related advertising;
6. Require disclosure of all donations and gifts of money, property, services and volunteer labour given to any party, riding association, politician, nomination race, election or party leadership candidate, including the identity of the donor's employer, and board and executive affiliations (and the identity of anyone who assists with any fundraising or fundraising event);
7. Give annual public funding for parties based on each vote received during the last election (no more than \$1 per vote, with a portion required to be shared with riding associations);
8. Give annual public funding matching up to \$1 million that each political party raises (Quebec matches up to \$200,000);
9. Give public funding matching up to \$25,000 that each nomination race and election candidate (including independent candidate) raises (similar to Quebec's matching funding system), and public funding matching up to \$200,000 that each party leadership campaign candidate raises;
10. Require election, donation and ethics watchdogs to conduct annual random audits to ensure all the rules are being followed by everyone;
11. The Auditor General, must be empowered to review all government advertising and to stop or change any ad that is partisan or misleading;
12. All penalties for violating donation and spending rules must be increased to minimum \$100,000 fine and a multi-year jail term, and loss of any severance payment, and a partial clawback of any pension payments;
13. The Chief Electoral Officer (CEO) of Elections Ontario must be required to investigate every complaint filed with Elections Ontario, and every situation Elections Ontario becomes aware of, if an investigation is needed to ensure compliance with the law;
14. The CEO must be required to disclose every ruling on every complaint filed with Elections Ontario, and every ruling on every situation Elections Ontario becomes aware of that raises a question concerning whether a violation of the law has occurred, including disclosing decisions not to investigate, within 30 days after each decision is made, and;
15. Public interest standing must be granted to anyone or any entity that is qualified that files an application for judicial review of any enforcement decision of the CEO and Elections Ontario officials.

D. Explanation of why the changes listed in section C are needed to make Ontario's political finance system democratic and ethical

Set out below are the explanations why each of the changes set out above in section C are needed to make Ontario's political finance system democratic and ethical.

1. Lower the donation limit to an amount an average voter can afford, to uphold the fundamental principle of one person, one vote

The limit on annual donations by individuals to each party must be lowered to \$100 annually (as in Quebec –with an additional \$100 combined total allowed to be donated to each party's riding associations (and during an election year, to each party's election candidates), and donations must be routed through the election watchdog agency (as in Quebec).

To be democratic, a political finance system must uphold the fundamental democratic principle of one person, one vote. Bill 254 violates this principle even more than the current limits because it proposes to double the current limit of \$1,650 annually to each political party and \$1,650 to each party's constituency association, and during an election year the current limit of an additional \$1,650 annually to all of a party's candidates).

This means one person could donate a total of \$3,300 annually to each party and its riding associations in-between elections (increasing by \$25 each year), and during an election year could donate a total of \$9,900 to each party, its riding associations and its candidates. If one person wanted to ensure that two leading parties, either of which may win the election, knew that they supported them, they could donate \$19,800 total to those two parties during an election year.

According to Statistics Canada, the median annual income level of Canadians age 16 and over in 2016 was \$33,600 (the average was \$44,700). Democracy Watch's analysis of 2020 donations to Ontario's four main parties, which can be seen at:

<https://democracywatch.ca/2020-donations-show-ontario-political-finance-system-still-undemocratic-almost-50-of-pc-donations-from-20-of-donors-who-donated-1000/>

shows that the median donation to provincial parties of donations of more than \$100, which is the most accurate indication of the amount an average voter can afford, is: PCs (\$200), Liberals (\$50); NDP (\$25); Greens (\$30).

As a result, the donation limits proposed in Bill 254 are clearly much higher than an average Ontario voter can afford (unless the government believes that average-income Ontarians should, as a top priority, and disregarding basic housing, food, clothing etc. needs, spend a significant portion of their income on political donations).

Allowing higher donations facilitates corporations, unions and other organizations funneling donations through their executives and employees and their family members, even if funneling is illegal. Democracy Watch's summary list of political finance systems across Canada that have a too-high donation limit that facilitates funneling of donations can be viewed at:

<https://democracywatch.ca/wp-content/uploads/ListOfShamCanPoliticalDonationSystems-1-1.pdf>

Few have been charged in Quebec's corruption scandal even though an Elections Quebec audit found \$12.8 million in likely illegally funneled donations from 2006-2011 because the donors (as they always do) claimed that they made the decision to donate on their own.

Bill 201 also increases the amount an election candidate can donate to his/her campaign from \$5,000 up to \$10,000, and for party leadership candidates from \$25,000 up to \$50,000. Candidates should not be allowed to donate more than anyone else to their campaign as it gives an advantage to wealthy candidates, again in violation of the key democratic principle of one person, one vote.

To stop the undemocratic and unethical influence of wealthy interests, in 2013 Quebec lowered its individual donation limit to \$100 annually to each party, with an additional \$100 allowed to be donated to an independent candidate, and required donations to be verified by Elections Quebec before being transferred to parties and candidates (in order to prevent illegal, false funneling of donations by a business or other organization through its executives or employees). The same democratic and ethical changes must be made to Bill 254 –anything less will be an undemocratic charade.

2. Loans to political parties, riding associations and candidates must be prohibited above the donation limit of \$100, except from a public fund (with loans limited to the average annual amount of donations received during the previous two years)

If unlimited loans are allowed, then donation limits become meaningless. As well, although Canada's big banks are mainly federally regulated, they also own investment banks whose activities are regulated by the Ontario government. Credit unions are provincially regulated. If loans are allowed, even at market rates, it will allow these financial institutions to give parties and candidates the favour of granting them a loan. These loans thereby create a conflict of interest for the parties and politicians.

Loans are usually used by parties and candidates during election periods. They are allowed based on the assumption that a specific level of funding is needed to run a successful election campaign (more than the parties can raise in between elections). This is far from a proven need –there is no specific level of funding that determines electoral success. If loans were eliminated, then the election campaigns of parties and candidates would all just operate at a lower level of

funding. Compared to traditional communications, the much lower costs of communicating with voters of email communications, robocalls, and social media (including social media advertising) mean that parties and candidates can very likely operate successfully without election campaign loans (if they actually have support of voters).

However, if the position of Ontario political parties is that loans must be allowed because they are needed to cover extra costs during election campaigns, then loans must come from a public fund to prevent the conflict of interest created by loans from individuals or financial institutions (or other corporations).

As well, neither a party nor a candidate should be allowed to use a loan to close the financial gap from not having as much support from voters as another party or candidate. Loans from the public fund must be limited to the average annual amount of donations received during the previous two years.

3. All donations and gifts of money, property, services and volunteer labour given to any party, riding association, politician, nomination race, election or party leadership candidate must be disclosed, including the identity of the donor's employer, and board and executive affiliations.

All donations and gifts must be required to be disclosed or secrecy loopholes will very likely be exploited by those wanting to influence parties and politicians by giving secret, off-the-record donations and gifts.

Bill 254 should be changed to require all donations to be disclosed. In contrast, it increases the secret aggregate donation loophole from \$100 up to \$200. This will allow someone to make two donations of \$99, a total donation of \$198, in secret. This will also facilitate the CEO of a company delivering \$99 cheques to a party, supposedly from all the company's employees, in secret.

The largest loophole in the *EFA* is for volunteer labour. Donations of volunteer labour should be required to be tracked and disclosed, including the identity of the donor's employer, and board and executive affiliations, to ensure businesses, unions and other organizations do not attempt to thwart the ban on monetary donations by "volunteering" their employees to parties and politicians.

In particular, the identity of organizers of any fundraising event or effort must be disclosed, including the identity of their employer, and board and executive affiliations. These people are called "bundlers" in the U.S., and they are very valuable to parties, riding associations and candidates of all types. As a result, they and the private interests they are connected to need to be disclosed publicly so that the government's and each party's and politician's dealings with them can be easily monitored for patterns of favour-trading.

4. The base amount of annual per-vote public funding given to parties (based on each vote received during the last election) should likely be lowered after an independent study, with a larger portion required to be shared with riding associations

Bill 254 proposes maintaining annual per-vote public funding of \$2.26 per vote until 2025. Some commentators argue against the per-vote subsidy – even though it most closely upholds the key democratic principle of one-person, one-vote – by making the absurd claim that it forces voters to give money to parties they don't support. Actually, the \$1-2 amount comes from the taxes everyone pays and goes only to the party each person supports (and only if they vote).

Per-vote funding also somewhat corrects the imbalance in public funding given to parties because of the fact that the current voting system and other subsidies shift a lot of taxpayer money in undemocratic directions. Usually, the ruling party obtains a higher percentage of politicians in the legislature than they deserve based on the percentage of voters that support them, and each of those politicians receives a substantial annual public subsidy that they can use for, essentially, an ongoing campaign through their constituency office up to the next election.

As well, people who make donations receive [significant tax deductions](#), which is another form of public subsidy that especially helps wealthy interests that can afford large donations. Per-vote funding is a much more democratic system than allowing large donations and subsidizing them with tax deductions.

However, while per-vote funding is democratic and based on the fundamental principle of one person, one vote, it should not be as high as it currently. Over a three-year period (see chart below covering 2017, 2019 and 2020 – 2018 was not included because it was an election year, which changes both donations and per-vote funding significantly), the main four Ontario provincial parties received the following average percentages of their total annual funding from the annual per-vote funding:

- PC Party – 56.7%
- Liberal Party – 66.5%
- NDP – 64.8%
- Green Party – 44%

Democracy Watch's position is that those percentages are too high. They also don't take into account the fact that some parties, almost always including the winning party, receive a huge public subsidy after each election because our voting system results in them receiving a higher percentage of seats in the legislature than the percentage of popular vote they receive.

Given the annual budget that each MPP receives, the per-vote funding for the opposition parties does not correct the imbalance caused by the voting results.

Per-Vote Funding as % of Total Main Party Funding 2017, 2019 and 2020¹

Annual figures	PC	Liberal	NDP	Green
2020 Total Donations of \$101 or more ²	\$3,398,649	\$2,042,173	\$1,747,046	\$774,787
2020 Per-Vote Funding (% of Total Funding)	\$5,136,018 (60% of total funding of \$8,534,667)	\$2,481,962 (55% of total funding of \$4,524,135)	\$4,260,473 (71% of total funding of \$6,007,519)	\$583,976 (\$43% of total funding of \$1,358,763)
2019 Total Donations	\$6,054,706	\$1,201,972	\$2,596,024	\$994,100
2019 Per-Vote Funding (% of Total Funding)	\$5,526,802 (48% of total funding of \$11,581,508)	\$2,670,807 (69% of total funding of \$3,872,779)	\$4,584,639 (64% of total funding of \$7,180,663)	\$628,409 (39% of total funding of \$1,622,509)
2017 Total Donations	\$2,484,704	\$1,646,254	\$2,111,220	\$627,603
2017 Per-Vote Funding (% of Total Funding)	\$4,091,895 (62% of total funding of \$6,576,599)	\$5,055,097 (75.4% of total funding of \$6,701,351)	\$3,104,757 (59.5% of total funding of \$5,215,977)	\$630,638 (50% of total funding of \$1,258,241)

¹ NOTE: For consistency of comparison of years, and averages, 2018 annual figures not included in chart as it was an election year which changes both donations and per-vote funding totals significantly compared to non-election years. Sources: Elections Ontario, Political Financing and Party Information, online: <<https://finances.elections.on.ca/en/finances-overview>>; PC Party Annual Return 2019, online: <<https://finances.elections.on.ca/en/statements/11380>>; Liberal Party Annual Return 2019, online: <<https://finances.elections.on.ca/en/statements/11383>>; NDP Annual Return 2019, online: <<https://finances.elections.on.ca/en/statements/11382>>; Green Party Annual Return 2019, online: <<https://finances.elections.on.ca/en/statements/11381>>; Elections Ontario, Quarterly Allowances <<https://www.elections.on.ca/en/political-financing0/quarterly-allowances.html#accordionparty>>.

² The full annual returns for Ontario political parties are not disclosed until the end of May of the following year. Donations made during a year by any donor that total more than \$100 are required to be disclosed in Elections Ontario's online database with 10 days of the donation, so that is why the figures for 2020 only include donations of \$101 or more.

No party should receive more than one-half of its annual funding from it to ensure the parties can't unjustifiably prosper by baiting voters with false promises to boost their support during an election, and then break those promises while continuing to receive the annual per-vote public funding right through to the next election.

As a result, the annual per-vote funding subsidy should be decreased to \$1 per vote. This will force parties to stay in touch with voter concerns in between elections if they want to attract their ongoing support, and donations.

5. Annual matching public funding is just as democratic, in some ways more so

As democratic, and in some ways more democratic, than per-vote funding is matching public funding. Annual public funding should be given to parties matching the first \$100,000-\$200,000 raised (as in Quebec). Bill 254 should be amended to establish the same annual public funding matching system as Quebec (\$2.50 for the first \$20,000 raised annually by each party, and \$1 for the first \$200,000 raised annually).

In Quebec since 2013, with the \$100 annual donation limit, and annual per-vote and matching public funding, Elections Quebec has analyzed the results and found that the parties are still adequately funded.

6. Public funding should be given candidates matching the first \$10-20,000 raised

One gap in Quebec's world-leading system is that party candidates and independent candidates only receive matching public funding for the first \$800 raised annually. This is too low an amount and gives each party too much power over its candidates in terms of deciding whether to transfer the public money the party receives to its candidates to support their campaigns.

The system is even more discriminatory against independent candidates as they cannot benefit from a transfer from a party's headquarters. Candidates should receive significant matching funding on a sliding scale similar to the Quebec system for parties --\$2.50 for first \$10,000 raised, then \$1 for next \$10,000 raised. This system will ensure candidates with popular support who are supported by people with lower incomes will have more equal funding compared to candidates who are supported by people who can all afford to give the maximum donation.

7. The changes to the *Government Advertising Act* that weakened the Auditor General's powers to restrict government advertising that favours the ruling party should be repealed and the original powers restored.

As the Auditor General warned, the changes to the *Government Advertising Act* made in June 2015 now allow the government to use the public's money to advertise in ways that help the ruling party, and that are not in the public interest.

The Auditor General's powers to prohibit such advertising should be restored to ensure the government does not use the public's money to advertise in the ruling party's interest, especially given that Bill 254 restricts advertising by third party interest groups and individuals leading up to and during an election campaign period.

The *Government Advertising Act* was a model for the world when it was enacted in 2004 –it should be restored to its model form.

8. Elections Ontario and the Ontario Integrity Commissioner should be required to conduct annual random audits to ensure all the rules are being followed by everyone

The rules in any law are only nice words on paper unless they are properly enforced. As Quebec's experience shows clearly, regular random audits are needed to ensure that everyone is following the rules, and so Ontario's two key enforcement agencies for donations and ethics should be required to conduct annual random audits to ensure compliance with the laws they enforce.