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Mr. Greg Essensa
Chief Electoral Officer of Ontario
51 Rolark Drive
Toronto, Ontario
M1R 3B1

Via Email To: info@elections.on.ca

January 10, 2019

RE: Ontario Proud election advertising complaint

Dear Mr. Essensa:

We are writing to request an investigation into the advertising activities of Ontario Proud during the 2018 Ontario election pre-writ and writ period.

I. Ontario Proud's Advertising Campaign

Ontario Proud was a registered third-party advertiser during the pre-writ period and election campaign period of the 2018 Ontario election. It spent \$375,248.24 on advertising during the pre-writ period and \$72,163.08 during the election campaign period. Its Financial Statement can be seen at:

<https://finances.elections.on.ca/en/statements/0000010619>

and its list of contributors to its advertising efforts can be seen at:

<https://finances.elections.on.ca/en/contributions?entityNames=Ontario%20Proud&fromYear=2014&toYear=2019>

and its overall report (with some redactions) can be seen at:

<https://democracywatch.ca/wp-content/uploads/395500917-Ontario-Proud-financial-statement.pdf>

According to its Financial Statement and this news article:

<https://globalnews.ca/news/4747339/ontario-proud-donations/>

Ontario Proud spent the following amounts on ads during the pre-writ and election campaign periods:

TV ads - \$60,642

Facebook ads - \$155,976

YouTube ads - \$154,250

Ontario Proud's website is:

<https://www.ontarioproud.ca/>

and its Facebook page is at:

<https://www.facebook.com/OntarioProud/>

and two of its TV ads can be seen at:

https://www.ontarioproud.ca/ontario_proud_launches_first_tv_ads

and its YouTube channel is at:

https://www.youtube.com/channel/UC_rB7o-xToWKSpCtJDC5Kng

As it states in this news article:

<https://www.canadalandshow.com/ontario-proud-mostly-funded-by-developers/>

“Third-party advertiser Ontario Proud, which describes itself as a “grassroots” operation, received over half a million dollars in donations during the spring provincial election — 89.6 per cent of it from corporations.

“Filings submitted to Elections Ontario on Friday show that the top donors to the Facebook-centric conservative advocacy group were Toronto-based housing developer Mattamy Homes, at \$100,000; anti-union contractors association Merit Ontario, at \$50,000; Nashville Developments, also at \$50,000; Opportunities Asia Ltd. at \$30,000; and Shiplake Properties Limited at \$25,000. Seventeen other companies, mostly related to housing development, donated \$10,000 apiece. Of the corporate donations received by Ontario Proud, at least 89.7 per cent came from companies involved in the development and construction industries.”

II. Ontario's Legal Requirements for Third-Party Political Advertisers

Sections 37.5 and 37.10.1 of Ontario's *Elections Finance Act* (“EFA” -- R.S.O. 1990, Chapter E.7 as amended – which can be seen at:

[<https://www.ontario.ca/laws/statute/90e07>](https://www.ontario.ca/laws/statute/90e07)) together require non-political party, non-candidate entities and individuals to register as third-party advertisers if they spend \$500 or more on political advertising during the pre-writ period (which was November 9, 2017 to May 9, 2018) or during the election campaign period (which was May 9, 2018 to June 7, 2018).

On page 21 of Elections Ontario's document entitled *Election Finances CFO Handbook for Third Parties* 2018 at:

<https://www.elections.on.ca/content/dam/NGW/sitecontent/Compliance%20Documentation/English/Third%20Party%20Advertisers/CFO%20Handbook%20for%20Third%20Parties.pdf> third-party political advertising is defined as including:

“... advertising with respect to an issue of public policy during an election for which one or more registered political parties or candidates may also have taken a position.”

and the definition of “political advertising” in subsection 1(1) of the *EFA* says it “includes advertising 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...”

According to section 37.0.1 of the *EFA* and the list set out on pages 21-22 of the Handbook, the Chief Electoral Officer considers the following criteria to determine if an advertisement is political advertising:

- a) whether it is reasonable to conclude that the advertising was specifically planned to coincide with the period referred to in Spending Limits section;
- 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 advertising 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 the Act.

Section 37.4 and subsection 22(9) of the *Election Finances Act* require the name of the person or entity who placed an ad and the name of person or entity who sponsored or paid for it, to be included in the ad. As subsection 22(9) states:

Information to be included in political advertisement

- (9) A political advertisement in any medium shall name,
(a) the person, registered party, registered constituency association or other organization or entity who is causing it to appear; and
(b) any other person, registered party, registered constituency association or other organization or entity who is sponsoring or paying for it. 2016, c. 22, s. 16 (3).

As well, section 37.10.1(4), subsection 16(1), subsections 22(1) and (2), and section 22.1 of the *Act* together prohibit third parties that are entities (a business, union or other type of organization) from coordinating ads with candidates, riding associations or parties as such coordinated ads are deemed by the *Act* to be contributions, and entities are prohibited as they are prohibited from making contributions.

III. Evidence that raises questions concerning Ontario Proud's compliance with the *Election Finances Act*

A. Evidence concerning identification of entities that paid for ads

According to Ontario Proud's Financial Statement, it did not contribute any of its own money to pay its advertising costs. As a result, its ads were sponsored or paid for by contributors. As set out above in section I, 89.6 percent of Ontario Proud's contributors were corporations from the inter-linked development and construction industries.

Ontario Proud's Financial Statement does not list the dates of donations made by various people and entities. However, tracking the dates of donations would reveal which entities paid for which ads. Given Ontario Proud did not have any of its own funds to pay for each ad, each of its ad seems to have been paid for by the donations Ontario Proud received just before each ad was paid for and run.

Therefore, under subsection 22(9) as applied via section 37.4 of *Election Finances Act*, Democracy Watch's opinion is that Ontario Proud's ads should have identified the entities that paid for each ad as the ads were not paid for by Ontario Proud.

The following donors to Ontario Proud:

- Mattamy Inc. – \$100,000 donated to Ontario Proud
- Giampaolo Investments Ltd. – \$10,000 donated to Ontario Proud
- Lakeview Homes – \$10,000 donated to Ontario Proud
- Riva Plumbing Ltd. – \$10,000 donated to Ontario Proud
- Solmar – \$10,000 donated to Ontario Proud
- Midhaven Homes Ltd. – \$1,000 donated to Ontario Proud

are also members of the Ontario Homebuilders Association (OHBA):

https://www.ohba.ca/ohba_member_directory/

which, according to the OHBA's website:

<https://www.ohba.ca/ohba-membership/>

seems to clearly involve paying some amount to the OHBA.

According to its Financial Statement as a registered third party for the Ontario 2018 election spent \$51,400 of its own funds on the total of \$55,950 it spent on pre-writ and election campaign advertising (\$33,780 during the pre-writ period, and \$22,170 during the election campaign period):

<https://finances.elections.on.ca/en/statements/0000010597>

These funds would have come from the amounts paid by members to the OHBA.

Therefore, the entities listed above who are members of the OHBA and also contributors to Ontario Proud are, it can be argued, colluding with these two registered third parties and colluding all together as unregistered third parties.

Elections Ontario should consider the question of why these entities donated to Ontario Proud to pay for ads instead of to the OHBA? A plausible answer is that they knew that if the OHBA ran ads the ads would be have identified as sponsored and paid for by OHBA and voters seeing the ads would dismiss them as expressing the interests of home builders (and therefore biased). In contrast, if they donated to Ontario Proud and it ran ads while claiming to be a "grassroots" citizen group, voters seeing the ads would view them as expressing the interests of other voters.

Again, Democracy Watch's opinion given the above information is that, under subsection 22(9) as applied via section 37.4 of *Election Finances Act*, Ontario Proud was required to identify the entities that paid for each ad, the 89.6 percent of Ontario Proud's contributors that were corporations from the inter-linked development and construction industries, as the ads were not paid for by Ontario Proud.

Elections Ontario's conclusion should be, at the very least, that Ontario Proud's ads should have each included an identifying line that read something like:

"Funded almost entirely by a small group of home building and construction companies"

and also included a link to a webpage that listed the companies.

B. Questions about whether Ontario Proud's ads were coordinated with Ontario Progressive Conservative Party?

In its investigation of Ontario Proud's advertising, Democracy Watch's opinion is that there is a reasonable amount of evidence to cause for Elections Ontario to examine also whether Ontario Proud's ads were coordinated with the Ontario Progressive Conservative Party.

As revealed at the end of April 2018, Doug Ford was recorded promising to “open up a large chunk of the Greenbelt” to home building companies to build homes. You can see reports of these comments in this media report:

https://www.huffingtonpost.ca/2018/04/30/doug-ford-developers-ontarios-greenbelt_a_23423976/

and this media report:

<https://www.theglobeandmail.com/canada/toronto/article-doug-ford-promises-big-chunk-of-ontarios-greenbelt-to-developers/>

and this media report:

<https://www.yorkregion.com/news-story/8578430-doug-ford-tells-developers-he-plans-to-open-greenbelt-to-development/>

Secondly, as noted above in section I, 89.6 percent of Ontario Proud’s contributors came from the inter-linked home building and construction industries, both of which would have an interest in having the Greenbelt opened for development.

Thirdly, as shown on Ontario Proud’s website, Facebook page, YouTube channel linked above in section 1, Ontario Proud’s ads, and social media posts, overwhelmingly favoured the Ontario Progressive Conservative Party by attacking the Ontario Liberal Party and, when the Ontario NDP began to receive more support in election survey results, the Ontario NDP.

Finally, Ontario Proud is run by Jeff Ballingall who has worked in the past with the federal Conservative Party.

It may be that Ontario Proud’s advertising was entirely developed and coordinated solely by Ontario Proud. However, the above evidence, in Democracy Watch’s opinion, is enough to give Elections Ontario reason to investigate whether Ontario Proud’s advertising was coordinated with the Ontario Progressive Conservative Party.

IV. Conclusion

While Democracy Watch is filing this complaint concerning Ontario Proud, its position is that every advertisement should be investigated by Elections Ontario if the ad stated that it was sponsored by an entity when, in fact, the entity’s Financial Statement shows that the ad was largely or entirely funded by another person or entity.

In other words, any entity that is essentially a front for another person or entity(ies) must be required by Elections Ontario to identify in all of its ads the other person or entity(ies) who actually funded each ad.

If Elections Ontario does not take this position in its enforcement policy for these provisions of the *Election Finances Act*, it is essentially saying that the voters do not have the legal right to know who is paying for or sponsoring third-party ads when they

view an ad, even though the *Act* clearly states that third parties must disclose this information on every ad they run expressly so that voters do know who is paying for each ad.

If Elections Ontario does not take this position in its enforcement policy, it will also facilitate people, businesses, unions and other organizations setting up front groups that pose as mass citizen groups but are, in fact, front groups funded largely or entirely by one person or entity or a small group of people or entities who share a common interest.

Democracy Watch's position is also that, if evidence exists of alignment and connections between any third party and its ads and sponsors and a political party's or candidate's platform and campaign, then Elections Ontario should investigate to ensure that the third party and the party or candidate did not illegally coordinate their advertising.

We are happy to answer any questions you may have about the above. Given the above information, we believe that an investigation should not take very much time and we look forward to receiving your ruling very soon on whether Ontario Proud violated any of the provisions of the *Election Financing Act*.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

Duff Conacher, Co-founder

On behalf of the Board of Directors of Democracy Watch