



# Elections Ontario

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March 15, 2018

Ross & McBride Law Firm  
P.O. Box 907  
Hamilton, Ontario  
L8N 3P6

Attn: Mr. Andrew Spurgeon and Mr. Wade Poziomka

Dear Mr. Spurgeon and Mr. Poziomka:

## **Re: Democracy Watch**

Further to my acknowledgement dated March 07, 2018 of your letter of March 06, 2018 (received March 07, 2018), I am writing on behalf of Mr. Greg Essensa, Chief Electoral Officer, to more fully address the issues raised by Democracy Watch in your aforementioned letter, and in previous correspondence from Democracy Watch dated January 8 and 12, 2018.

### **1. History of Correspondence**

You have stated that Elections Ontario has not responded to the previous correspondence from Democracy Watch, which I assume refers to the correspondence from Democracy Watch dated January 8 and 12, to which you make reference in the first paragraph of your letter.

Elections Ontario responded to Democracy Watch on January 12, 2018, a copy of which is attached. Elections Ontario did not issue a separate response to the e-mail from Mr. Duff Conacher, Co-founder of Democracy Watch, dated January 12, since our previous response addressed the same topics and issues.

In addressing the issues which have been outlined in your letter of March 6, I will also make reference to those points summarized in Democracy Watch's letters of January 8 and 12, since a number of the arguments and issues are replicated in these documents.



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## 2. Elections Ontario's Public Education and Information Programs

In undertaking our programs, including a broad range of information available through Elections Ontario's website, media, hard copy materials, and formal learning programs, the Chief Electoral Officer ("CEO") must determine the nature, balance and timing of information to ensure an informed public. The following sections specifically provide for the discretion of the CEO in determining the implementation and means to inform the public.

Specifically, subsections 114.1(1) and (2) of the *Election Act*, R.S.O. 1990, c. E.6 (the "Act") state:

**114.1 (1)** The Chief Electoral Officer may implement public education and information programs to make Ontario's electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights. 2007, c. 15, s. 27.

**114.1 (2)** The Chief Electoral Officer may, using any media or other means that he or she considers appropriate, provide the public with information about Ontario's electoral process, the right to vote and how to be a candidate. 2007, c. 15, s. 27.

As such, while it is certainly within Democracy Watch's purview to recommend changes to Elections Ontario's public and information programs, it is clearly within the CEO's discretion to decide the nature, content and timing of these programs. Elections Ontario does, in fact, take into account feedback provided by members of the public, various special interest groups, and others in determining our programs; however, this does not mean that all requests or recommendations are implemented.

Your client focuses on one question: whether or not one specific topic – the right under section 53 of the Act – should be added to a list of print and online materials where it does not currently appear. The CEO and our staff, in assessing the need for information and public education on a variety of topics concerning the electoral process, must carefully choose what information to provide in what formats.

Although Democracy Watch comments on Elections Ontario's budget for advertising and media, this is not merely a budgetary question. It is a question of how best to convey information in a targeted fashion using all of the tools available to the CEO and his staff.

Nor is this a question about fully utilizing 'blank space' on individual publications but, rather, about assessing the public information and education campaigns as an integrated whole. The



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CEO's task is not simply a question of whether to add one topic to a particular publication, but rather, to balance the provision of information with the needs and expectations of Ontarians – the objective being to mitigate the risk of confusion and/or 'information overload' in the information conveyed in any given publication or advertisement, and to focus on essential topics for intended audiences of any given form of publication.

It is only fair that Elections Ontario's efforts to educate electors on all their rights be considered in context of the duties of the CEO and our staff as a whole rather than focusing on one issue without that context.

### 3. Section 53 of the *Election Act*

Elections Ontario recognizes the right of an elector to decline to vote and that section 53 of the Act prescribes the process by which an elector can do so. Section 53 of the Act reads as follows:

#### **Declined ballot**

**53** An elector who has received a ballot and returns it to the deputy returning officer declining to vote, forfeits the right to vote and the deputy returning officer shall immediately write the word "declined" upon the back of the ballot and preserve it to be returned to the returning officer and shall cause an entry to be made in the poll record that the elector declined to vote. R.S.O. 1990, c. E.6, s. 53

Your letter on behalf of Democracy Watch opines that "the right of a voter to formally decline a ballot is a crucial component of a voter's franchise." In the January 8 letter, reference is made to section 53 of the Act, which entitles an elector to decline a ballot.

Democracy Watch argues that Elections Ontario is not meeting its responsibilities in adequately informing the public of their ability to decline the ballot, and speculates that if Elections Ontario devoted greater resources to promoting awareness of section 53, this would increase voter turnout at election time. In the letter of January 8, Mr. Conacher cites a marked increase in declined ballots between the 2011 and 2014 General Elections, which he attributes to media and social media coverage generated by Democracy Watch with respect to "Election Ontario's illegal refusal to inform voters of their right to decline their ballots".

Mr. Conacher does not, however, provide any evidence to support that the increase in declined ballots was a result of greater awareness of section 53 of the Act caused by media or social media exposure, as opposed to any other cause (e.g. electors choosing to exercise that



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right instead of exercising their right to mark a ballot in favour of a candidate, which could be influenced by innumerable factors) or information on section 53 originating from any other source. Nor does he proffer any evidence that an increase in attention to this issue by Elections Ontario would further increase voter turn-out.

Your letter of March 6 states that “your (Elections Ontario’s) refusal to adequately educate voters about their right to vote and decline their ballot is unreasonable (especially given the wording of the enabling section).” With respect, I take exception to this statement that Elections Ontario has refused to include in its public education and information programs information for electors about the right to decline a ballot.

Elections Ontario provides information on an elector’s right under section 53 in a variety of soft and hard copy materials provided to the public. Declining a ballot is addressed on Elections Ontario’s website in the following locations:

- o How to Vote : <https://www.elections.on.ca/en/voting-in-ontario/how-to-vote.html#accordionmark-ballot>
- o Glossary - Declined Ballot:  
<https://www.elections.on.ca/content/ngw/en/resource-centre/learning-about-elections/glossary.html#accordiondeclined>
- o Ontario Voter Rights Poster:  
<https://www.elections.on.ca/content/dam/NGW/sitecontent/2017/resources/Ontario%20Voter%20Rights%20poster.pdf>
- o Election Results: <https://www.elections.on.ca/en/resource-centre/elections-results.html>

The “How to Vote” section on Elections Ontario’s website specifically provides the following:

## **Declining your ballot**

Ontario’s election law allows voters to decline their ballot. To decline your ballot, tell the election official that you are declining your right to vote when they hand you a ballot. This is a public process and is done out loud. The election official will mark “declined” on the election documentation and your ballot will not be placed in the ballot box but in an envelope for declined ballots.



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Declined ballots will be counted and reported after the polls close on election night and included in the official results as "declined ballots".

Elections Ontario's communication strategy focuses on encouraging Ontarians to access Elections Ontario's website for information about the election. Elections Ontario believes its website is the most modern, efficient and effective means by which to disperse information to the electorate, and that it is the easiest and quickest to update. This is why so many of our resources that mention the right to decline a ballot are electronic resources. The same would be true for virtually any other topic of the electoral process, given the extent to which we use our website as a hub for educating the public on the electoral process.

Elections Ontario also has a dynamic Social Media campaign, "Did You Know?", which provides a range of information about the voting process, including declining your ballot. This forum has proven to be not only a popular source of information, but an excellent platform to direct Ontarians to our website for more detailed information and support.

Print-based materials make up only a small portion of Elections Ontario's overall efforts to provide information to the Ontario electorate, and it is not possible to reference every aspect of the electoral process on print-based materials. Indeed, there are other topics where Elections Ontario does not specifically inform electors through print media concerning their legal rights under the Act. This includes, for example, the 'three hour rule' under subsection 6(3) of the Act, which requires that employers must ensure that qualified electors have at least three consecutive hours free from work while polls are open, without any loss of pay; or the special ballot process. Although these rights are addressed in some places (for instance, the 'three hour rule' is mentioned on "Ontario Voter Rights" poster described above), information on those topics does not appear in the variety of print and other media on which Democracy Watch requests that section 53 rights be included.

Nevertheless, during the writ period, a hard-copy information pamphlet, the Householder, will be sent to 5.5 million households (all residential addresses in Ontario), reaching approximately 9 million Ontarians. This pamphlet will specifically reference that Ontario law gives the elector the right to decline their ballot and that the declined ballots are included in the official count. Furthermore, the Ontario Voter Rights Poster referenced above, lists an elector's right to decline a ballot. This will be delivered to each of the over 7,000 voting locations that will be used in Ontario's general election.



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Lastly, one allegation that I feel the need to respond to is the suggestion in Democracy Watch's January 8 letter that there is misleading information on the "Voting in Ontario" information brochure. Democracy Watch's letter states: "In fact, in the 'What happens at the polls?' section, it says that you have only 'voted successfully' if you mark a candidate as your choice." The letter implies this statement is false or misleading. It is neither.

Section 53 of the Act entitles an elector to "decline" the ballot, thereby "declining the right to vote", at which point the deputy returning officer is instructed by the Act to mark the ballot declined, segregate it to be returned to the returning officer, and to note the declining of the vote in the poll record.

Declining the ballot is a public act that exercises a right under the Act (as noted by Elections Ontario's literature referenced above) that creates a record of that person having participated in the election, and which is recorded in the count at the poll. But it does not constitute 'voting' as that term is used in the Act. No ballot is entered into the ballot box and no vote is recorded. Indeed, it would be misleading to state that an elector who declines the ballot under section 53 has "voted" successfully.

## 4. Election Ontario's Education Programs for Schools and New Electors

Subsection 114.2 (1), which is specific to new electors, requires the CEO to prepare information packages for school boards for distribution to students who have or will soon reach voting age.

Subsection 114.2(2) prescribes the required information:

**114.2 (1)** The Chief Electoral Officer shall prepare information packages for new electors and shall make them available, annually, to school boards for distribution to students who have reached voting age or will soon do so. 2007, c. 15, s. 27.

### **114.2(2)**

(2) The information package shall contain information about,

(a) Ontario's electoral process;

(b) the right to vote;

(b.1) the provisional register established under section 17.7;



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(c) how to have one's name added to the permanent register of electors; and

(d) any other matter that the Chief Electoral Officer considers useful for electors. 2007, c. 15, s. 27; 2016, c. 33, s. 33.

With respect to Elections Ontario's education programs in Ontario's schools, it starts with the presentation to educators and teachers, which includes a PowerPoint presentation and Toolkit, the updated versions of which are posted on Elections Ontario's website: <https://www.elections.on.ca/en/resource-centre/learning-about-elections.html#accordionLearn-Tools>. These communications do in fact reference the right to decline the ballot and, therefore, this information is conveyed to students through this means.

Elections Ontario has also developed learning materials for grades 5 and 10 students. These learning packages provided to students do not include information on declining to vote. The reason for this is that these packages were developed in collaboration with Elections Canada, and the *Canada Elections Act* does not include a provision on declining your ballot (i.e. there is no equivalent to section 53 of Ontario's *Election Act*). When these materials are updated in future, consideration may be given to whether to include information on the right to decline the ballot.

## 5. Response to Questions Posed by Democracy Watch

In Mr. Conacher's letter of January 12, he has asked three specific questions. Although I have addressed these questions above, for greater certainty of response, Elections Ontario's formal response to his questions are as follows:

1. Will all Elections Ontario advertisements before and during the upcoming election campaign period contain information about the right to decline your ballot?

As previously outlined, information on the topic of declining your ballot is currently available to the public and will be provided electronically and in hard copy to all Ontarians before the general election. Having said that, not all advertisements will contain information about electors' right to decline a ballot. It is neither possible nor advisable to include information on every right of an elector in every piece of information and media distributed by Elections Ontario to the electorate.

2. Will Election Ontario's voter registration cards and any other materials Elections Ontario sends to Ontario voters in the lead up to the provincial election mention the right to decline your ballot?



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A Voter Information Card (VIC) is designed to assist electors in voting by specifically identifying where an elector may vote, when they may vote and what materials (i.e. identification) they must bring with them in order to vote. The VIC does not contain information on declining to vote. As previously outlined, information on declining to vote is currently available to the public and will be provided electronically and in hard copy to all Ontarians before the general election. The hard copy of this material includes the 'Householder' that is sent to all residential addresses in Ontario, which specifically references the right to decline the ballot.

3. Will Elections Ontario's online and print educational materials for teachers, youth, and new voters be changed to include clear information, in all sections concerning voting, that voters have the right to decline their ballot?

As previously noted, the materials provided to educators and posted on our website do include information on declining your ballot. The present learning packages provided to school boards for students in grades 5 and 10 were developed in conjunction with Elections Canada and do not include information on the right to decline the ballot. When this material is updated, consideration may be given to making reference to this topic.

In closing, I would like to underscore that Elections Ontario is committed to upholding the integrity and accessibility of the electoral process and managing elections in an efficient, fair and impartial manner. We appreciate the interest that Democracy Watch has demonstrated in the issue of declining the ballot and we have given due consideration to the many issues this topic raises in planning our public information process and publications.

We continue to be receptive to constructive ideas on how we can improve elector access to relevant information.

I trust that this response will address your client's concerns. I can be reached directly at 416-212-1662.

Sincerely,

Deborah Danis  
Chief Administrative Officer  
Elections Ontario

Attachment



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January 12, 2018

Dear Mr. Conacher,

Thank you for your letter to Chief Electoral Officer, Greg Essensa, dated January 8, 2018, regarding Elections Ontario's public communications about voters' rights. I am pleased to respond on Mr. Essensa's behalf. We also acknowledge receipt of your previous correspondence on this matter, to which we responded in 2014.

Our primary role is to ensure the integrity, security, and transparency of the democratic process and to protect the democratic rights of voters in the province. We work to ensure that all voters get the information and services they need for provincial elections.

To that end, we regularly refresh our communications content—on our website, in outreach and advertising materials, in media releases, and on social media—to ensure that information is up-to-date, helpful and easy to access.

As we move towards the 2018 General Election, we expect to make further updates to our communications tools to better inform voters on the many days and many ways to vote. Some recent updates to Elections Ontario's website, which may be of interest to you, include content about declining your ballot and can be found on the [How to Vote](#) page, at the top of the [Official Election Results](#) page, on the [Frequently Asked Questions](#) page, and in the [Glossary](#).

There may be a variety of reasons why Ontarians choose to vote or not to vote in any given election. Informing the public is an important endeavour and a shared responsibility. We will continue to prioritize removing barriers to voting and making voting easy for those who choose to participate in the electoral process. We encourage you to continue to do your part to inform Ontario voters about their democratic rights.

Thank you for your comments.

Sincerely,

Kate Ward  
Director, Communications and Strategic Services