

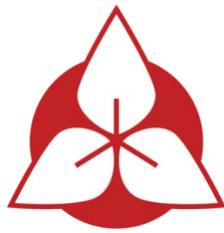
FAQs

Frequently Asked Questions

2021 CHANGES TO ONTARIO'S ELECTION FINANCING RULES

June 2021





**ONTARIO
FEDERATION OF
LABOUR**

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The following analysis is provided by the Ontario Federation of Labour (OFL). It must be emphasized that this is the OFL's interpretation of the law. The OFL would like to acknowledge the assistance of Goldblatt Partners LLP in preparing this analysis. It is, however, provided for general information purposes only and does not constitute legal or other professional advice. Readers are advised to seek legal advice regarding any specific legal issues.

This analysis is based on changes to the *Election Act*, *Election Finances Act*, *Members' Integrity Act*, and *Municipal Elections Act* – resulting from Bill 254, *Protecting Ontario Elections Act*, 2021, and Bill 307, *Protecting Elections and Defending Democracy Act*, 2021.

Bill 307 reinstates the changes included in Bill 254, relating to third party political advertising in Ontario, that were struck from the *Election Finances Act* by Justice Edward Morgan of the Ontario Superior Court of Justice on June 8, 2021 in *Working Families Ontario v. Ontario*, 2021 ONSC 4076. Bill 307 received Royal Assent on June 14, 2021.

Definitions

The legislation is intended to limit the potential influence of third parties (including unions¹) – both during and outside of election periods. It is key to understand what is and what is not considered “political advertising” because there are financial and non-financial limitations for unions partaking in such activity.

Q: What is considered political advertising?

A: Advertising in any broadcast, print, electronic, or other medium to promote or oppose any political party, its leader, or candidates. This includes advertising that takes a position on an issue that is closely associated with a political party, its leader, or candidates.

Political advertising is not permitted during the blackout period (i.e., the day before and election day).

See Section 1(1) of the Election Finances Act.

The Chief Electoral Officer may take many factors into account when determining whether an advertisement is a political advertisement, including:

- Whether the advertising was specifically planned to coincide with the election period and twelve-month period preceding the election period;
- Whether the formatting/branding is similar to that of a party or candidate;
- Whether the advertisement refers to the election or voting;
- Whether the advertisement refers to a party/candidate directly or indirectly;
- Whether there is an increase in the volume of advertising by the trade union;
- Whether the advertising has historically occurred during the relevant time of year;
- Whether the advertising is consistent with previous advertising by the trade union;
- Whether the advertising is within the normal parameters of promotion of a specific program or activity; and
- Whether the content of the advertisement is similar to the political advertising of a party, constituency association, nomination contestant, candidate, or leadership contestant.

See Section 37.0.1 of the Election Finances Act.

¹ As defined under the Ontario *Labour Relations Act*, a union includes a provincial, national, or international union, a certified council of unions and a designated or certified employee bargaining agency.

In the recent *Working Families* decision, Justice Morgan distinguished between advertisements that are “political” versus “partisan” (see paragraphs 40-41), and held that the context of the *EFA* made clear that the definition of “political advertising” was limited to “election-oriented communications” (paragraphs 43 and 78). Justice Morgan explained at paragraph 42:

“It is generally easy to know who is running for election and whether an advertisement or media campaign is targeting a candidate or party; it is also possible to discern whether an advertisement targets a candidate’s or a party’s election talking points or policies” (emphasis added).

That is, Justice Morgan held that the definition of political advertising does not encompass non-partisan issue advertising on matters of public policy, but rather only captures advertising that is “election oriented” and either targets a candidate or party explicitly or their election talking points and policies (i.e., their platform).

Q: What is not considered political advertising?

A: The following is not considered political advertising:

- Communication in any form by a union to their members;
- Transmission of an editorial, a debate, a speech, an interview, a column, news, a letter, or a commentary public; and
- Transmission by an individual of their personal political views on the internet (it must be on a non-commercial basis).

See Section 1(1) of the Election Finances Act.

Q: Do unions need to identify themselves in political advertising?

A: Yes. A political advertisement in any medium must name the organization causing it to appear and any other organization who is sponsoring or paying for it.

It is also important to understand what is and what is not considered a “political contribution” because of the prohibition of union contributions.

Q: What is a political contribution?

A: A contribution includes any money, goods, or services solicited by or donated to a registered political party, constituency association, nomination contestant, candidate, or leadership contestant.

Note: Advertising can be considered a political contribution if all of the following conditions are met:

- (a) It promotes a party, a nomination contestant, candidate, or leadership contestant;
- (b) Its value is more than \$100; and
- (c) It is provided or arranged for by a union in coordination with the party, contestant or candidate, or the registered constituency association of the candidate.

In (c), coordination occurs if a party, candidate, constituency association, nomination contestant, or leadership contestant (or their agents, employees, or contractors):

- Requested, suggested, or assented to the advertisement;
- Was materially involved in decisions such as content, audience, or dissemination;
- Engaged in substantial discussions regarding the advertisement; or
- Conveyed information about their plans/needs for the purposes of contributing to the advertisement.

Contributions, however, do not occur simply due to an endorsement by a union to their members; inquiries as to the party/candidate's position on a legislation/policy matter; the exchange or reliance on publicly available information; mutual attendance at a public event; use of a common vendor; or conveyance of information that is not related to the advertisement.

See Section 22 and 22.1 of the Election Finances Act.

Q: What is not a political contribution?

A: A contribution does not include any goods produced or services performed for any political party, constituency association, nomination contestant, candidate, or leadership contestant by voluntary labour. In other words, a service provided free of charge by a person outside their working hours.

Q: What constitutes collusion/circumvention?

A: The *Election Finances Act* prohibits third parties from circumventing or attempting to circumvent a spending limit. The *EFA* now specifically addresses the following conduct as forms of circumvention/collusion:

- Acting in collusion with another third party so that their combined political advertising expenses exceed the applicable limit;
- Splitting itself into two or more third parties;
- 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;
- Sharing a common vendor with one or more third parties that share a common advocacy, cause, or goal;
- Sharing a common set of political contributors or donors with one or more third parties that share a common advocacy, cause, or goal;
- Sharing information with one or more third parties that share a common advocacy, cause, or goal; or
- Using funds obtained from a foreign source prior to the issue of a writ for an election.

See Section 37.10.1 (3) of the Election Finances Act.

In the *Working Families* decision, Justice Morgan clarified at paragraph 85, “it is the activity of circumventing the spending limits, and not the associational aspect of that activity, that is prohibited”. That is, activities such as sharing information and vendors are not in and of themselves violations of the *EFA*, but rather these activities are only addressed as examples of the manner in which an entity may have engaged in the circumvention of the *EFA*’s spending limits. Justice Morgan commented,

“...the anti-circumvention sections are enacted to ensure that third parties cannot do together what they cannot do on their own. The restriction on expenditures, and not the fact that those expenditures may be done either in concert or individually, is what the legislation is about. The Applicants are permitted to coordinate and share as much information as they wish, and are only prohibited from doing so for what other provisions in the *EFA* identify as impermissible ends.”

Election-Related Actions

Financial Contributions

Q: Can unions make political contributions?

A: No. As of January 2017, only individuals, who are Ontario residents, can make contributions to political parties, constituency associations, candidate campaigns, nomination contestants, and leadership contestants registered in Ontario. A union is also prohibited from giving funds to an individual to make contributions.

See Sections 16, 19, and 29 of the Election Finances Act.

Q: Can a union contribute to another third party?

A: A union that holds bargaining rights in Ontario may contribute to another third party. However, any contribution from one third party to another third party for the purposes of political advertising shall be deemed as part of the political advertising expenses of the contributing third party.

See Section 37.10.1 (3.1) of the Election Finances Act.

Q: What is the new annual contribution limit in a calendar year by individuals to a political party?

A: \$3,300. There is no additional amount that can be given during campaign periods. This amount is subject to indexing.

See Section 18 of the Election Finances Act.

Q: What is the new annual contribution limit in a calendar year by individuals to a constituency association?

A: \$3,300. This limit also includes contributions to nomination contestants registered as of July 1, 2017. This amount is subject to indexing.

See Section 18 of the Election Finances Act.

Q: What is the new contribution limit in a campaign period by individuals to a candidate's campaign?

A: \$3,300. This amount is subject to indexing. There is no annual contribution permitted to a candidate outside of an election period.

See Section 18 of the Election Finances Act.

Q: What is the contribution limit for leadership contestants?

A: \$3,300. This is outside of the election period. This amount is subject to indexing.

See Section 18 of the Election Finances Act.

Q: Are contributions still eligible for a tax credit in Ontario?

A: Yes. Contributions to candidates, political parties, constituency associations, and leadership contestants are eligible for a tax credit. Contributions made to nomination contestants are, however, not eligible for a tax credit.

In other words, individuals can give a maximum of \$9,900 annually (i.e., \$3,300 to a party; \$3,300 to the candidate, but only during an election period; and \$3,300 to the constituency associations/nomination contestant). Donors can no longer double their contributions to parties during any election or by-election period. Please note that the contribution limits are subject to indexing.

Political Advertising by Trade Unions

Q: Are unions required to register as a third-party?

A: Yes. If a union has incurred political advertising expenses of \$500 or more 12 months before a general election period or during an election period, they must immediately register. Unions must re-register for third-party status every election.

See Section 37.5 of the Election Finances Act.

Q: Are unions required to appoint a Chief Financial Officer and an auditor?

A: Yes. If a union has incurred political advertising expenses of \$500 or more 12 months before a general election period or during an election period, they must appoint a Chief Financial Officer. In addition, if a union incurs political advertising expenses in an aggregate amount of \$5,000 or more 12 months before a general election period or during an election period, they must also appoint an auditor.

See Section 37.6 and 37.7 of the Election Finances Act.

Q: Can unions organize activities (e.g., phone banks, canvasses, distribute literature) to talk to their members about the election or election-related issues?

A: Yes. Such activity is not considered political advertising and is therefore not subject to the limitations on political advertising – provided the activity is directed solely at the union's members.

Q: Can unions release staff to work on campaigns?

A: No. Individuals working on campaigns must do so free of charge and on their own time (e.g., after work, on their vacation time, on a leave of absence).

See Section 1(1) of the Election Finances Act.

Q: Can unions release members to serve as member mobilizers to encourage members to contribute to a candidate, volunteer on a candidate's campaign, and vote?

A: Yes. Such activity is not considered political advertising and is therefore not subject to the limitations on political advertising – provided the encouragement is directed solely at the union's members.

Q: Can unions launch internal campaigns (i.e., directed solely towards their members)?

A: Yes. Such activity is not considered political advertising and is therefore not subject to the limitations on political advertising – provided the campaign is directed solely at the union's members.

Q: Can unions launch external campaigns (i.e., directed towards the public)?

A: Yes. This is, however, subject to the requirements and restrictions under the *Act* with respect to political advertising, as described above.

Q: Is there a summary of the rules around issue-based campaigns and political advertising?

A:

1. Unions can communicate in any form with their members, regardless of content, and such communications do not count as political advertising.
2. Unions can engage in political advertising in favour or against political parties and candidates, however, it is subject to the requirements of the *Election Finances Act* including registration, limitations on spending, identification, and auditing/reporting.
3. Unions can launch issue-based campaigns, however, special attention must be paid to whether an issue-based campaign takes a position on an issue that can reasonably be regarded as closely associated with a party or candidate. If it does, the campaign constitutes political advertising is subject to the requirements of the *Election Finances Act* including registration, limitations on spending, identification, and auditing/reporting. Issue-based campaigns that do **not** take a position on an issue that can reasonably be regarded as closely associated with a party or candidate are not political advertising.

Q: Can unions endorse a political party, its leader, or candidates to their members?

A: Yes. Such activity is not considered political advertising and is therefore not subject to the limitations on political advertising – provided the endorsement is directed solely at the union’s members.

Q: Can unions endorse a political party, its leader, or candidates publicly?

A: Yes. This is, however, subject to the requirements and restrictions under the *Act* with respect to political advertising including registration, limitations on spending, identification, and auditing/reporting – unless the endorsement is made via a method that is not political advertising, such as through an editorial, a debate, a speech, an interview, a column, news, a letter, or a commentary public. Unions also must be careful to avoid coordination with political campaigns (as explained further above) to ensure that any political advertising does not amount to an unlawful contribution.

Q: Can members, including elected officers, use their personal social media accounts to publicly promote or oppose a political party, its leader, or candidates?

A: Yes. The transmission of a person’s own personal political views, on a non-commercial basis, on the internet is not considered political advertising. It is, however, advisable to make clear that the post reflects the author’s own view.

While personal social media posts (for example, on Facebook or Twitter) are generally not considered political advertising, a coordinated social media campaign that distributes content professionally produced by another person/entity may be treated as political advertising.²

² For more information on Elections Ontario’s position regarding social media, see <http://www.elections.on.ca/en/media-centre/social-media-rules-during-an-election.html>.

Q: Can members, including elected officers, post news content (e.g., blogs, videos, editorials) on their personal websites about the election or about issues that one or more political parties have taken a position on?

A: Yes. The transmission of a person's own personal political views, on a non-commercial basis, on the internet is not considered political advertising. The definition of political advertising also excludes the transmission of an editorial, a debate, a speech, an interview, a column, a letter, a commentary, or news.

Q: What limitations are there for third parties when it comes to social media content?

A: Elections Ontario's position is that social media by organizations such as unions may constitute political advertising. Where an organization produces social media in-house that meets the definition of "political advertising," the labour cost attributable to any paid staff time involved in producing or transmitting the content (advertisement) should be considered "third party political advertising" under the *Election Finances Act* definition.

Q: Can a union use their professional social media accounts to publicly promote or oppose a political party, its leader, or candidates; or to address issues that one or more political parties have taken a position on?

A: Yes. This is, however, subject to the requirements and restrictions under the *Act* with respect to political advertising including registration, limitations on spending, identification, and auditing/reporting. Unions also must be careful to avoid coordination with political campaigns (as explained further above) to ensure that any political advertising does not amount to an unlawful contribution.

In other words, unions, their leaders, and staff are legally free to communicate internally with their members about an election and election-related issues, including endorsing a party or candidate, encouraging members to donate, and/or volunteer on campaigns. Unions can spend money to do this without being subject to the "political advertising" restrictions.

Fundraising Activities

Q: What are the attendance restrictions?

A: The following people are prohibited from attending a fundraising event.³

- MPPs
- Leaders of political parties
- Nomination contestants
- Candidates
- Leadership contestants
- Premier's office staff
- Ministers' chiefs of staff
- Staff in the leader's office of a political party

The above individuals, however, are not prohibited from attending an event held on a cost-recovery basis, where any money raised in excess of the amount required for cost recovery is paid to the Chief Electoral Officer. These individuals can also continue to fundraise over the phone or by e-mail.

See Section 23.1 of the Election Finances Act.

Q: Can a candidate attend an event that is not for his or her direct benefit (e.g., can Candidate A attend a fundraiser held solely for the benefit of Candidate B)?

A: No.

See Section 23.1 of the Election Finances Act.

Q: Can a candidate attend an event if there is no cover charge?

A: Yes. If there is no charge as a condition of gaining entry, a candidate can attend.

See Section 23.1 of the Election Finances Act.

Q: Can a candidate attend an event if the cover charge is limited to the cost of hosting the event?

A: Yes. If an event is held on a cost-recovery basis, a candidate can attend (see above).

See Section 23.1 of the Election Finances Act.

³ A fundraising event is an event held for the purpose of raising funds for a party, constituency association, nomination contestant, candidate, or leadership contestant – where there is a charge for attending (sale of tickets or otherwise).

Specific Actions More Than 12 Months Before a General Election Period

(Before June 14, 2021)

Q: How much can unions spend on political advertising during this period?

A: Unions may engage in political advertising without any requirement to register with Elections Ontario and without any caps on spending. In addition, unions are not subject to Elections Ontario auditing and reporting requirements with respect to political advertising during this period.

Note: Unions, however, continue to be subject to other rules, including the prohibition on contributions. They must therefore be careful that any political advertising does not amount to a contribution (including by avoiding coordination, as explained further above). It is prudent to identify the entity causing the advertisement to appear and paying for it – to make clear there is no coordination contrary to the Act.

Specific Actions 12 Months Before a General Election Period

Bill 307 makes clear that for the 2022 general election, the regulated period for third party advertising commenced the day Royal Assent was received, i.e. June 14, 2021.

Q: How much can unions spend on political advertising during this period?

A: \$600,000 maximum, including a limit of \$24,000 in each riding. This amount is subject to annual indexing.

Note: An amount paid for political advertising is included towards the cap on spending for this period – whether it was paid before, during, or after this period – provided that it runs during this time period. If a combined amount is paid for political advertising with respect to this period and another period, the amount is apportioned according to when the advertising appeared.

A third party may not split itself into multiple third parties or collude with other parties to avoid exceeding the spending limits. See section on expanded rules around anti-circumvention and anti-collusion.

Political advertising is subject to additional restrictions and requirements, as described in greater detail above.

See Section 37.10.1 of the Election Finances Act and table below from Election Ontario's [CFO Handbook for Third Parties](#).

2021 Spending Limit for Third Parties

The current spending limits are effective up to December 31, 2021. These amounts are indexed annually and our materials will be updated with the new amounts in January 2022. [Act reference 37.10.1]

Election Event Type	Period	Limit In any Electoral District	Total Spending Limit
Fixed date General Election	Non-Election Period (12-month period prior to Writ Day)	\$25,488	\$637,200
	Election Period (Writ Day to Polling Day)	\$4,248	\$106,200
By-election	Election Period (Writ Day to Polling Day)	\$4,248	Not Applicable
Non-Fixed date General Election	Election Period (Writ Day to Polling Day)	\$4,248	\$106,200

In addition to the any other applicable penalty, any third party that does not comply with the spending limits mentioned above is liable to a further fine not exceeding five times the amount by which the third party exceeded the applicable limit. [Act reference 46.0.2]

Specific Actions During a General Election Period

*(May 5, 2022- June 2, 2022) *Based on June 2, 2022 Election Date, with a 28-day WRIT period.*

Q: During an election period, how much can unions spend on political advertising?

A: \$100,000 maximum, including a limit of \$4,000 in each riding. This amount is subject to annual indexing.

Note: An amount paid for political advertising is included towards the cap on spending for this period – whether it was paid before, during, or after this period – provided that it runs during this time period. If a combined amount is paid for political advertising with respect to this period and another period, the amount is apportioned according to when the advertising appeared. A third party may not split itself into multiple third parties or collude with other parties to avoid exceeding the spending limits. See section on collusion/circumvention.

Political advertising is subject to additional restrictions and requirements, as described in greater detail above.

See Section 37.10.1 of the Election Finances Act, and table above on spending limits.

Q: What are the new interim reporting requirements?

A: Bill 307 requires every third party to promptly file the following interim reports with the Chief Electoral Officer when a third party has paid or committed at least \$1000 to any person or entity to spend money on paid political advertising. When a third party reaches its applicable spending limit for third party political advertising (\$100,000 maximum, including a limit of \$4000 in each riding during election period), it will also report that fact. All reports will be filed by the Chief Electoral Officer on their website within two days of receiving it. They will also determine the amounts spent or committed by each third party as a percentage of the maximum spending allowed under Section 37.10.1. The point of providing percentages is to indicate that the third party is at risk of exceeding its spending limits.

See Section 37.10.2 of the Election Finances Act.

Specific Actions After General Election Day

*(June 3, 2022 onwards) *Based on June 2, 2022 Election Date.*

Q: How much can unions spend on political advertising during this period?

A: Outside of the general election period, unions may engage in political advertising without any requirement to register with Elections Ontario and without any caps on spending. In addition, unions are not subject to Elections Ontario auditing and reporting requirements with respect to political advertising during this period.

Note: Unions, however, continue to be subject to other rules, including the prohibition on contributions. They must therefore be careful that any political advertising does not amount to a contribution (including by avoiding coordination, as explained further above). It is prudent to identify the entity causing the advertisement to appear and paying for it – to make clear there is no coordination contrary to the Act.

General

Q: Are unions required to file a political advertising report?

A: Yes, if a union incurred \$500 or more in political advertising expenses, they are subject to the reporting requirements, including the interim reporting requirements (\$1000 or more) mentioned previously. The Chief Financial Officer of every registered third party must file a report within six months after the polling day. This must include a report from the auditor, where the union incurred \$5,000 or more in political advertising expenses.

See Section 37.12 and 37.13 of the Election Finances Act.

Q: What are the maximum penalties for violating the *Election Finances Act*?

A: Bill 307 has been updated to include new administrative monetary penalties (AMP) that can be assessed directly by the Chief Electoral Officer. The most relevant AMP for third parties, including trade unions, are as follows:

- Offence for knowingly failing to file a third-party advertising report: up to \$5,000 for the Chief Financial Officer, and \$50 per day that the default continues;
- Offence for exceeding third party advertising spending limits: a fine of up to five times the amount by which the third party exceeded the spending limit, in addition to any other applicable penalty;
- Offence by trade union: The *EFA* provides that a trade union that knowingly contravenes any provision of the *Act* is guilty of an offence, and the penalty on conviction is up to \$50,000;
- Failure to register as a third party: up to \$10,000;
- Failure to include resolution passed by the governing body authorizing the entity to incur third party political advertising expenses: up to \$10,000;
- Failure to certify in the third-party advertising report that the third party did not coordinate with registered parties/candidates etc.: up to \$10,000;
- Failure to include identifying information in advertisement: up to \$10,000 in the case of an individual, and up to \$100,000 in the case of a corporation or other entity;
- Contravention of advertising blackout period: up to \$10,000 in the case of an individual, and up to \$100,000 in the case of a corporation or other entity; and
- General offence: Administrative penalty for knowingly contravening a provision of the *Act*, where no other penalty is provided: up to \$1,500, in the case of an individual, and up to \$5,000 in the case of a corporation or other entity.

Note: The relevant Sections for a trade union's purposes are 36.1(1) (distribution of election survey during blackout), and 37.10.1 (1) and (2) (unlawful contributions to third parties). The other violations which are the subject of administrative penalties are associated with specific monetary amounts and are described above.

See Sections 37, 45, 47 and 48 of the Election Finances Act.

Note: This FAQ contains information updated as of June 28, 2021. Additional changes may be made and the date will be revised accordingly.

Additional Resources

[Elections Ontario Website](#)

[Election Finances CFO Handbook for Third Parties, 2021](#)

[Form TP-1: THIRD PARTY Registration and Change Notice Form](#)



**ONTARIO
FEDERATION OF
LABOUR**

The Ontario Federation of Labour (OFL) represents 54 unions
and one million workers.

It is Canada's largest provincial labour federation.

15 GERVAIS DRIVE, SUITE 202, TORONTO, ONTARIO M3C 1Y8
416-441-2731 • 1-800-668-9138
OFL.CA • @OFLabour

2021 CHANGES TO ONTARIO'S ELECTION FINANCING RULES