



Bill 181: Municipal Elections Modernization Act

Standing Committee on Finance and Economic
Affairs

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Introduction

The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 250,000 members in virtually every community and every riding in Ontario. CUPE members provide services that help make Ontario a great place to live. CUPE members are employed in five basic sectors of our economy to deliver public services. CUPE represents approximately 80,000 municipal workers, and 55,000 school board workers across Ontario. Our members are also attentive voters, who have a strong interest in municipal and school board elections. All of our work is geared towards making our communities and our province better for workers, and we therefore have an interest in electoral politics, including rules governing municipal and school board elections. We are committed to the principle of electoral fairness, including creating a level playing field for everyone who stands for public office.

The issue of campaign contributions has garnered a great deal of attention of late. Although most of the media focus has been on contributions to provincial parties, the role of large contributors to all electoral campaigns has been highlighted as a problem. We would like to thank the government for introducing this legislation, with which we agree in principle. Our submission will focus on the components of Bill 181 that we find to be of greatest significance, including rules around campaign contributions, third party advertising, and the proposal to allow municipalities to use ranked ballot elections. We also propose amendments that we believe will strengthen and clarify parts the legislation.

Limits on Campaign Contributions

In the absence of limits on contributions to candidates elections can be unduly influenced by a relatively small number of donors with access to large sums of money. While money itself cannot guarantee electoral success – well-financed candidates might spend money inefficiently, or might have an unpalatable message that could not win support regardless of how much promotion is done – money can give candidates a competitive edge. For example, a recent study of the 13 municipalities of the Lake Simcoe watershed area found that Developers are the single most likely group to make contributions to candidates, and that candidates who accept contributions from Developers were twice as likely to win as candidates that did not accept such donations. It is interesting to note that in this study, unions only contributed 0.5% of campaign money.¹ What is clear is that some well-financed interests have a disproportionately large influence on the outcome of municipal elections.

¹ “If It’s Broke, Fix It: A Report on the Money in Municipal Campaign Finances of 2014”, <http://static1.squarespace.com/static/53c9753ce4b003bdba4f5b2c/t/56fe8cdc37013b09a739a733/1459522783372/CampaignFairnessReport2016-web.pdf>

In a study of the 2003 election in ten Toronto area municipalities, Robert MacDermid found that corporations contributed more than \$1 million more to municipal candidates than did individuals. Corporations contributed 43.4% of all money used by candidates, the rest being contributed by individuals (27.9%), candidates themselves (16%), undisclosed source (11.1%), and unions (1.6%). The average corporate campaign donation to the candidates they supported was \$12,961. The average individual contribution was \$7521, and the average union contribution was \$1570.² It is reasonable to assume that contribution patterns were similar in subsequent elections in cases in which there have been no bans on corporate or union donations.

Corporate and wealthy individual contributors, those who can afford to donate more than \$7000, clearly have a greater capacity to influence municipal election outcomes, giving candidates that they support a competitive edge over others. This is why we support capping contributions to individual candidates. The limit of \$750 per candidate, and \$5000 for multiple candidates in a given municipality or school board, is a reasonable start. The cap established by this legislation will help to level the playing field between candidates. We encourage the government to monitor these spending limits with the goal of re-evaluating them after each election. Most Ontarians cannot afford \$750, let alone \$5000, for campaign contributions. It might be necessary, after review, to lower these limits for elections after 2018.

In this legislation, limits established for contributions to candidates do not apply to self-financing of campaigns. Self-financing privileges those individuals who are relatively affluent. This practice allows for continued distortion in the competitive field. We ask that this exemption be reviewed, and that appropriate limits be placed on the amount that candidates can contribute to their own campaigns. There might be justifiable grounds for allowing candidates to self-finance at a level higher than caps for other contributors. That case, however, has not been made clearly in the legislation. In any event, there does need to be a limit on how much money an individual can spend on their own campaign.

Bill 181 states that the following are not deemed to be contributions: “the value of services provided voluntarily under the direction of the person or the individual, corporation or trade union, by an employee whose compensation from all sources for providing the services does not exceed the compensation the employee would normally receive for the period the services are provided.” In principle we do not disagree with this provision as it can facilitate greater participation in the electoral process. However, the government should consider restricting the use of paid employees who provide professional services, for example polling, communications, advertising, and research. Professional services, such as these, provide greater value to

² Robert MacDermid, “Campaign Finance and Campaign Success in Municipal Elections in the Toronto Region”, <https://www.cpsa-acsp.ca/papers-2007/MacDermid.pdf>

campaigns than other kinds of activities (like leafleting or helping distribute and set-up campaign signs). There is merit in considering professional labour differently from other forms of campaign work.

Granting municipalities the right to ban corporate and union contributions is an acceptable measure, as demonstrated by rules governing elections in the City of Toronto. Grouping unions and corporations does, however, imply that unions and corporations have an equal impact on elections. As the data presented above show, corporations tend to outspend unions by a wide margin. In municipalities with higher union densities, like the cities in the Toronto Area, union contributions might make up slightly more than 10% of total contributions. In smaller municipalities union contributions account for a much smaller proportion. Corporations, on the other hand, appear to account for 40-50% of contributions regardless of the size of the municipality. Despite the false equivalency, if the goal is to appear to level the playing field, then allowing municipalities to ban contributions from both unions and corporations is an appropriate measure.

Third Party Advertising

Limits on third party advertising are also an important component to ensuring campaign fairness. In the absence of limits on third party advertising it would be possible to circumvent the limits on campaign contributions and expenditures. The Supreme Court, in *Harper v. Canada (Attorney General)*, ruled that limits on third party advertising are a reasonable limit on freedom of expression, and thus constitutional. Requirements to register as third parties in order to advertise during election periods will help maintain a level of transparency in the process.

We do have some concerns about the definition of third party advertisement in Bill 181. The Bill defines third party advertising as “an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting, supporting or opposing a candidate or an issue in relation to an election in a municipality....” Our concern is that the definition of “issue” is not entirely clear. If the purpose is to limit advertisements on issues that can be clearly identified as related to specific candidates, then that should be made more explicit in the legislation. This would be an appropriate definition of issue-based advertising.

The definition of “issue” is of particular significance in municipalities that decide to ban union and corporate donations. In such cases unions and corporations will be prohibited from registering as third parties, and thus will also be barred from any form of third party advertising. While these limits can be appropriate, we believe that unions should still have the ability to purchase advertisements on “issues” of general importance to us, so long as they cannot be identified with any specific candidate.

Exemptions to third party advertising rules that are included in the legislation are appropriate. Messages that incur no cost do not constitute third party advertising, and messages sent to members (or shareholders, directors, or employees) are not deemed to be third party advertisements. As democratic organizations, unions need to be able to communicate with our members. We appreciate the government's recognition of this with these exemptions to the third party advertising limits.

Ranked Ballots

We have concerns about including provisions in this Bill that would empower municipalities to use ranked ballots. The primary purpose of the Bill should be to change rules about election financing to create a fair playing field for all candidates. Allowing for changes to electoral system in municipalities is a separate and distinct issue, and should be considered on its own. The proposal to allow ranked ballots comes without any prior discussion, and without sufficient research to determine what effects such a change would have in municipalities. We propose that this section of the Bill be removed, and an open consultation process on electoral reform in municipalities be undertaken.

Recommendations

1. Review maximum campaign contributions after each election to evaluate how effectively the caps have leveled the playing field between candidates. Consider lowering contribution maximums in subsequent elections if doing so will make elections more fair.
2. Place limits on contributions that candidates can make to their own campaigns. Until a case can be made for such limits to exceed the limits placed on other contributors, the limits for candidate self-finance should be \$750.
3. Provide a clear definition of "issues" with regard to third party advertising. We propose that the definition follow the model in the Canada Elections Act, which restricts issue advertising if it is clearly directed at a specific candidate, but which allows for advertising on issues beyond that.
4. Consider limiting the use of donated professional services, such as polling, communications, advertising, and research. There is merit in considering donated labour of this kind as a campaign contribution.
5. Remove sections of the Bill that relate to Ranked Ballots, and hold an open consultation process on possible changes to municipal electoral practices.