



Election Primer 2014

Presented by Eric M. Davis

Introduction

1. A few things about myself:
 - LSUC Certified Specialist in Municipal Law/Land Use Planning and Development
 - Two-time provincial candidate in the riding of Kitchener-Waterloo
 - Really enjoy elections – especially when I'm not the candidate

By the Numbers

- In the 2010 elections, more than 8,000 candidates ran for positions on councils and school boards in Ontario
- In 2014, Ontarians will elect approximately 2,800 council members and 700 school trustees across the province

Key Dates

1. **January 2, 2014** – Nomination and Campaign Period Begins
2. **September 12, 2014** – Nomination Day (Last Day to be Nominated) & Final Day for Withdrawal of Candidacy
3. **October 27, 2014** – Voting Day
4. **December 1, 2014** – School Board Term Begins
5. **December 31, 2014** – Campaign Period Ends
6. **March 27, 2015** – Financial Filing Deadline
7. **November 30, 2018** – School Board Term Ends

Topics

1. Campaigning
2. Recounts
3. Campaign Finances

Campaigning

Campaigning - Signs

- The *Municipal Elections Act, 1996* does NOT regulate signs – check with your local municipality (i.e. a sign by-law)
- A candidate has to remove their signs after Voting Day

Campaigning - Debates

- The *Municipal Elections Act*, 1996 does NOT require candidate debates to be held and the municipal clerk is not responsible for organizing meetings or debates
- Debates could be organized by community groups, media outlets, candidates or any other interested person

Campaigning - Slates

- The *Municipal Elections Act, 1996* does NOT prohibit “like-minded” candidates from campaigning on the same platform or identifying themselves as a group or slate
- However, each candidate must keep their campaign finances separate and any joint expenses (e.g. signs with two candidate’s names on them) must be divided between the campaigns

Campaigning – Voting Date

- The *Municipal Elections Act, 1996* does NOT prohibit campaigning on voting day
- Unlike federal or provincial elections, there are no “blackouts” for municipal and school board elections
- However, the Act does prohibit campaign material inside a voting place – this could include the entire property of a building that has a voting place inside it (including the parking lot)

Campaigning – Voting Place

- Candidates and scrutineers are allowed to stay in a voting place to observe, but are not allowed to interfere with voters, attempt to influence how they vote, or ask a voter how they voted
- If acclaimed, stay out
- Can arrive 15 minutes before voting place opens to inspect ballot boxes, the ballots, etc. - may not delay opening of voting place
- Entitled to place a seal on the ballot box so that ballots in the box cannot be removed without breaking the seal

Campaigning – Counting the Votes

- If a municipality is going to use voting machines or vote counting equipment, the clerk must have the process and procedures for use of this equipment by **June 1, 2014**
- Vote counting begins after the close of voting at **8:00 p.m.**
- If the votes are counted manually, a candidate and their scrutineers are entitled to view the ballots as they are counted, but are not allowed to touch the ballots

Campaigning – Counting the Votes (cont'd)

- Candidates/scrutineers may object to a ballot or how it is counted
- The deputy returning officer (DRO) is responsible for deciding whether to accept the objection and must keep a list of all the objections raised
- After the votes have been counted, the DRO will prepare a statement showing the results, and seal all the other election documentation, including the ballots, inside the ballot box

Campaigning – Counting the Votes (cont'd)

- The sealed ballot box and statement of results will then be delivered to the clerk, who will compile the results and declare who has been elected

Recounts

Recounts - Ties

- If two or more candidates get the same number of votes, and they can't all be elected, there is an **automatic recount**
- The recount must be held within **15 days** of the clerk declaring the results of the election
- If the recount shows that there's still a tie, then the election will be decided by a race around the world! The Queen herself will drop the checkered flag.

Recounts – Ties (cont'd)

- That was a joke. I'm just making sure you're still paying attention.
- If there's still a tie, the election will be decided by lot (drawing a name out of a hat) – the pinnacle of democracy
- Except for a tie, all other recounts must be **requested**

Recounts – Requests/Applications

- A recount can be requested by a council or a school board
- Councils and boards have **30 days** after the clerk declares results to do this
- If a candidate requests a recount and the council or board refuses, then the candidate can apply to the Superior Court of Justice for an order to hold a recount

Recounts – Requests/Applications (cont'd)

- Anyone who is an eligible elector may also apply to the Court for a recount – must be made within **30 days**
- Recounts must be conducted in the same way that the votes were originally counted, unless the recounted is ordered by the Court
- If the votes were counted using a machine, the council or board may NOT request that the recount be conducted by hand

Recounts – Requests/Applications (cont'd)

- If a recount is ordered by the Court, the Judge may order the votes be counted in a different manner if the judge believes that the way the votes were counted the first time was a factor

Campaign Finances



Campaign Finances

- A candidate's campaign must end on December 31 unless the candidate has a deficit and informs the clerk in writing that they are going to extend their campaign
- Once a candidate's campaign has ended, the candidate should close their campaign bank account and prepare their campaign financial statement

Campaign Finances – Record Keeping

- Each candidate is responsible for keeping records of the financial activities related to their campaign
- The *Municipal Elections Act, 1996* does NOT require a candidate to use any specific accounting system – one should consult with an auditor or accountant
- A candidate is required to keep all financial records of their campaign until **December 2018** (when the next council or school board takes office)

Campaign Finances – Record Keeping (cont'd)

- Each candidate must keep the following records:
 - The receipts issued for every contribution including when the contribution was accepted and the date the receipt was issued
 - The value of every contribution, whether it is in the form of money, goods or services, and the contributor's name and address
 - All expenses, including the receipts obtained for each expense

Campaign Finances – Record Keeping (cont'd)

- Each candidate must keep the following records:
 - Any claim for payment of an expense that the campaign disputes or refuses to pay
 - The funds raised and expenses incurred from each separate fundraising event or activity
 - The monies received at a fundraising event or activity by donations of \$10 or less
 - The terms of any loan received from a bank or other recognized lending institution

Campaign Finances – Campaign Period

- Candidates are only allowed to accept contributions or incur campaign expenses **during their campaign period**
- The campaign begins on the day a candidate files their nomination
- In most cases, the campaign will end on December 31

Campaign Finances – Bank Account

- Once a candidate has filed their nomination form, they are required to open a separate bank account for their campaign
- A candidate is NOT permitted to use their personal bank account for campaign finances
- All contributions – including contributions made by the candidate – must be deposited into the campaign bank account
- All expenses must be paid from the campaign bank account

Campaign Finances – Contributions

- Campaign contributions are any **money, goods or services** that are given to a candidate for use in their campaign, including money and goods that the candidate contributes themselves
- If a candidate is given a special discount on something, the **difference** between what the candidate was charged and what an average person would be charged is considered to be a **contribution**

Campaign Finances – Contributions (con'td)

- For example, if a candidate has signs left over from a previous campaign and they are used again, the current market value of the signs (i.e. what it would cost that candidate to buy those signs today) is considered to be a contribution that a candidate makes to their campaign
- Again, for example, if a candidate or their spouse guarantees a campaign loan, and the campaign is unable to repay the full amount, any unpaid balance is considered to be a contribution by the guarantor

Campaign Finances – Not Contributions

- Volunteer labour
- A cash donation of \$10 or less received at a fundraising event – may accept such donations without keeping track of who gave them
- Value of free political advertising (i.e. available to all candidates)
- If a candidate obtains a campaign loan from a bank or a recognized lending institution, the amount of the loan is not considered to be a contribution

Campaign Finances – Who Can Contribute

- A candidate can accept contributions from:
 - Individuals who are normally resident in Ontario
 - Corporations that carry on business in Ontario
 - Trade unions that hold bargaining rights for employees in Ontario
 - A candidate and their spouse
- If a candidate is going to accept contributions from a business, they must ensure that the business is a corporation

Campaign Finances – Who Can Contribute (cont'd)

- Other kinds of businesses, such as sole proprietorships or LLPs, are not eligible to make contributions
- **Fair warning:** the City of Toronto has passed a by-law banning contributions of money, goods and services from corporations and trade unions
- This ban applies to the municipal election – it does not apply to any school board candidates

Campaign Finances – Who Can't Contribute

- The following individuals and organizations are NOT allowed to make contributions to a municipal or school board campaign:
 - A federal political party, constituency association, or registered candidate in a federal election
 - A provincial political party, constituency association, or a registered candidate or leadership contestant
 - A federal or provincial government, a municipality or a school board

Campaign Finances – Contribution Limits

- There is a **\$750 limit** that applies to each person, corporation and union who contributes to a candidate's campaign
- The limit for the Mayor of the City of Toronto is \$2,500
- The maximum total amount that a contributor can give to candidates in the same jurisdiction (i.e. running for the same council or the same school board) is **\$5,000**

Campaign Finances – Contribution Limits (cont'd)

- Only a contribution that is \$25 or less can be made in cash
- All contributions above \$25 must be made by cheque, money order or by a method that clearly shows where the funds came from
- For a candidate, there are no limits on how much they and their spouse can contribute to their campaign
- Contributions made by a candidate or their spouse do not count towards the \$5,000 limit

Campaign Finances – Contribution Limits (cont'd)

- If a candidate's campaign ends with a surplus, the candidate can withdraw the value of contributions that they and their spouse made from the surplus
- If the candidate still has a surplus once they have withdrawn their contributions, the remaining surplus must be turned over to the clerk
- A candidate is NOT permitted to refund contributions made by anyone other than themselves or their spouse

Campaign Finances – Contribution Rebates

- Contributions to municipal and school board campaigns are NOT income tax-deductible
- Municipalities have the authority to establish programs to provide rebates to contributors

Campaign Finances – Spending Limits

- The spending limit for a campaign is calculated based on the number of electors who are eligible to vote for the office a candidate is running for
- The formula to calculate the limit is:
 - For head of council: \$7,500 plus \$0.85 per eligible elector
 - For council member or trustee: \$5,000 plus \$0.85 per eligible elector
- When a candidate files their nomination, the clerk will give them an estimate of their spending limit – this estimate will be based on the number of electors in the last election

Campaign Finances – Spending Limits (cont'd)

- Within 10 days after the close of nominations, the clerk must give each candidate a final spending limit which is based on the number of electors on the voters' list for the current election
- If the spending limit that a candidate received when they filed their nomination is higher than the final spending limit received in September, then the estimate becomes the official spending limit

Campaign Finances – Spending Limits (cont'd)

- Most expenses will be subject to the spending limit
- The following expenses are NOT subject to the spending limit:
 - Expenses related to holding a fundraising event or activity
 - Expenses related to parties and other expressions of appreciation after the close of voting
 - Expenses relating to a recount

Campaign Finances – Spending Limits (cont'd)

- The following expenses are NOT subject to the spending limit (cont'd):
 - Expenses relating to a court action for a controverted election
 - Expenses relating to a compliance audit
 - Expenses incurred by a candidate with a disability that are directly related to the candidate's disability and would not have been incurred if not for the election
 - Audit and accounting fees

Campaign Finances – Spending Limits (cont'd)

- The spending limit covers expenses that a candidate incurs between the beginning of their campaign and Voting Day
- Expenses incurred between the day after Voting Day and the end of the campaign are not subject to the spending limit
- If you incur an expense before Voting Day but don't get around to paying for it until after Voting Day, it would still be subject to the spending limit

Campaign Finances – Compliance and Enforcement

- There are 3 contraventions of the Act where penalties apply automatically:
 - A candidate fails to file a financial statement or apply to the Court for an extension by the filing deadline
 - A candidate's financial statement shows that they exceeded their spending limit
 - A candidate fails to turn over their surplus to the clerk when they file their financial statement

Campaign Finances – Compliance and Enforcement (cont'd)

- The penalty is that the candidate forfeits their office (if they won the election) and becomes ineligible to run or be appointed to fill a vacancy until after the 2018 election

Campaign Finances – Compliance Audit

- Each municipality and school board must appoint a compliance audit committee
- If an eligible elector believes that a candidate has contravened the election finance rules, they may apply for a compliance audit of the candidate's campaign finances
- An application for a compliance audit must be submitted to the municipal clerk who conducted the election within 90 days of the deadline to file the campaign financial statement

Campaign Finances – Compliance Audit (cont'd)

- The compliance audit committee will consider the application and decide whether to grant or reject the application
- The candidate may appeal the committee's decision to the Ontario Court of Justice within 15 days of the decision
- If the committee grants the application, they will appoint an auditor to conduct a compliance audit of the candidate's campaign finances

Campaign Finances – Compliance Audit (cont'd)

- The auditor will produce a report, which the candidate is entitled to receive
- The compliance audit committee will meet to consider the auditor's report
- If the report concludes that there is an apparent contravention of the Act, the committee will decide whether to commence legal action

Campaign Finances – Compliance Audit (cont'd)

- The compliance audit committee does not have any authority to set penalties
- Only the Court can decide if a candidate has actually contravened the Act and, if so, which penalties should apply
- A prosecution related to the 2014 election must be commenced before December 1, 2018

Campaign Finances – Penalties

- If a candidate is convicted of an offence, they may be subject to the following penalties:
 - A fine of up to \$25,000
 - Ineligibility to vote or run in the next general election
 - Up to 6 months in prison
 - Forfeiture of elected office, if the judge finds that a winning candidate committed the offence knowingly
- If a candidate is convicted of exceeding the spending limit, they may also be fined the amount by which they exceeded the limit

Questions?

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