



FEDERATION OF
URBAN
NEIGHBOURHOODS
OF ONTARIO

www.urbanneighbourhoods.org

An Umbrella Group of
Community Associations
throughout Ontario

*Communities count.
Civic matters.*

*Guelph
Hamilton
Kingston
London
Milton
Ottawa
Sudbury
Thunder Bay
Toronto
Waterloo*

William J. Phillips
President

21 Dale Avenue, Suite 621
Toronto Ontario M4W 1K3
416-969-8994
funontario@rogers.com

Queen's Park Report

F.U.N. ASKS PREMIER TO AMEND THE *MUNICIPAL ELECTIONS ACT* PRIOR TO THE NEXT ELECTION

The Federation of Urban Neighbourhoods has sent the following letter to Premier Dalton McGuinty requesting changes to the *Municipal Elections Act*. The Federation has also sent a copy of its Position Paper - *Municipal Elections Act* - December 2007 that suggests the amendments that should be made to improve the Act.

The Honourable Dalton McGuinty
Premier of Ontario
Legislative Building
Queen's Park
Toronto ON M7A 1A1

February 20, 2008

Dear Premier McGuinty,

The Federation of Urban Neighbourhoods of Ontario Inc. requests that your government take immediate action to amend the *Municipal Elections Act* to address our concerns about the abuses of, deficiencies in and lack of enforcement of the current Act. We would also highlight our strong concern that the Act be amended to prohibit contributions by corporations and trade unions to municipal candidates.

We have included a copy of our latest submission to the Minister of Municipal Affairs and Housing, which sets out our recommendations for improving the *Municipal Elections Act*.

The Federation of Urban Neighbourhoods of Ontario represents more than sixty ratepayer and resident groups from the urban centres of Guelph, Hamilton, Kingston, London, Milton, Ottawa, Sudbury, Thunder Bay, Toronto, and Waterloo. We have heard concerns about the need to amend the Act from communities in all areas of the Province of Ontario.

The Federation of Urban Neighbourhoods of Ontario would appreciate that the amendment of the Act be a priority item so that the new requirements can be in place for the next provincial election.

Thank you for your consideration of our request.

Yours truly,

William J. Phillips
President

Cc: Honourable Jim Watson, Minister of Municipal Affairs and Housing

The Federation of Urban Neighbourhoods of Ontario encourages representatives of community and ratepayer associations across the Province of Ontario to meet with their local MPPs to urge government action on this matter before the next election. Simply call up your MPP's constituency office to make an appointment and take along a copy to the F.U.N. position paper to make your points. If enough of Ontario's resident and ratepayer groups meet with their local MPPs on this matter, it will have a significant impact. To find contact information for your MPP, visit http://www.ontla.on.ca/web/members/members_current.do?locale=en

Please e-mail a copy of this Report to anyone that you think might be interested.



Suggestions for Improving the Ontario Municipal Elections Act

SUBMISSION TO THE
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING
FOR THE PROVINCE OF ONTARIO

Prepared by the

Federation of Urban Neighbourhoods (Ontario) *Inc.*
www.urbanneighbourhoods.org

December 2007

The Federation of Urban Neighbourhoods (Ontario) represents more than sixty ratepayer and resident groups from the urban centres of Guelph, Hamilton, Kingston, London, Milton, Ottawa, Sudbury, Thunder Bay, Toronto, and Waterloo.

Rationale

This position paper on the Municipal Elections Act arises from great concerns about the abuses of, deficiencies in and lack of enforcement of the current Act.

Consultation process

The draft position paper has been circulated to urban ratepayer and resident associations across the province and their responses have provided assistance in the preparation of this final position paper to be submitted to the Minister of Municipal Affairs and Housing of the Ontario Government.

FEDERATION OF
URBAN
NEIGHBOURHOODS
OF ONTARIO

www.urbanneighbourhoods.org

An Umbrella Group of
Community Associations
throughout Ontario

Communities count.
Civic matters.

*Guelph
Hamilton
Kingston
London
Milton
Ottawa
Sudbury
Thunder Bay
Toronto
Waterloo*

William J. Phillips
President

21 Dale Avenue, Suite 621
Toronto Ontario M4W 1K3
416-969-8994
funontario@rogers.com

TABLE OF CONTENTS

	Page
PART 1: FINANCING THE ELECTION CAMPAIGN	3
1.1 MATCHING GRANTS AS A REPLACEMENT FOR THE FLAWED REBATE PROGRAM	3
1.2 LIMITING THE AMOUNT CONTRIBUTED BY AN INDIVIDUAL AND PROHIBING CORPORATION OF TRADE UNION CONTRIBUTIONS	4
1.3 CONTRIBUTIONS OF CASH	5
1.4 INFORMATION ABOUT SHAREHOLDERS OF NUMBERED COMPANIES	5
1.5 DISPOSITION OF SURPLUSES	5
PART 2: ELECTION CAMPAIGN EXPENDITURES	6
2.1 LIMITING THE AMOUNT OF ALLOWABLE CAMPAIGN EXPENDITURES	6
2.2 LITERATURE FROM INCUMBENTS DURING THE ELECTION YEAR	7
PART 3: CORRUPT PRACTICES	8
PART 4: ENFORCEMENT OF THE ACT AND REGULATIONS	8
4.1 ENFORCEMENT OF THE ACT DURING THE ELECTION	8
4.2 ENFORCEMENT OF THE ACT AFTER AN ELECTION	9
PART 5: REPORTING OF ELECTION CONTRIBUTIONS	10
PART 6: LENGTH OF THE ELECTION CAMPAIGN	10
PART 7: ELIMINATION OF NUISANCE CANDIDATES	10
PART 8: PERMITTING LANDED IMMIGRANTS TO VOTE IN MUNICIPAL ELECTIONS	11
PART 9: MANDATORY ELECTRONIC FILING OF CANDIDATE'S FINANCIAL STATEMENT & AUDITOR'S REPORT	12
PART 10: CANDIDATE LIABILITY WITH REGARD TO MAXIMUM CAMPAIGN CONTRIBUTIONS	12
PART 11 COMPLIANCE AUDIT: MODIFICATION TO REQUIREMENTS SECTION	14
APPENDIX I PROPOSED AMENDMENTS TO THE MUNICIPAL ELECTIONS ACT	15
APPENDIX II SAMPLE MATCHING GRANT PROGRAM	23

PART 1: FINANCING THE ELECTION CAMPAIGN

1.1 MATCHING GRANTS AS A REPLACEMENT FOR THE FLAWED REBATE PROGRAM

While not widely in use, both Toronto and recently Ottawa are two municipalities with rebate programs. There have been numerous concerns that contributions from corporations and, to a lesser extent, from trade unions exert a disproportionate influence on decision-making at the municipal level. For example, a staff information paper showed that candidates elected to the City of Toronto Council in 2000 received 60% of their contributions from corporations and trade unions while only 40% of their funding came from individuals. This has contributed to a wide spread belief that “City Hall” is more responsive to the demands of corporations (developers, suppliers, constructions firms, etc.) and trade unions than it is to the citizens of the city.

The same document dated December 23, 2002 reported that unsuccessful candidates received only 38% of their funding from corporations and trade unions while 62% of their contributions came from individuals. There is a wide spread belief among citizens that the system of election financing is biased in favour of corporations and trade unions and places individuals, especially those with low or modest incomes, at a disadvantage in financing and electing candidates of their choice.

The implementation of rebate programs was supposed to make it easier for individuals, especially those with limited resources, to finance candidates of their choice. The rebate plan has proven a great disappointment. It has funnelled large amounts of tax money towards corporations and trade unions that have no difficulty funding contributions and been of limited value in assisting low-income people to contribute. This is because it requires an up-front payment of a total amount with a rebate coming a year or so later. For low-income families, it is very difficult to find significant amounts of money to contribute to a candidate’s campaign even if most of it will be rebated some time in the future.

What is needed is a program that will supply matching grants to contributions from individuals, thus giving an immediate multiplier effect to their contributions. Since corporations and trade unions have no difficulty funding contributions to candidates of their choice, there is no need to supply matching grants to contributions from corporations and trade unions. The matching grants would only apply to contributions of money, not to contributions of goods or services.

Present legislation permit plans such as that of the City of Toronto which rebates \$150 of the first \$200 contributed and lesser percentage rebates as the amount of the contributions increases up to a maximum rebate of \$1000. This is excessive.

While a matching grant program could operate in a similar fashion by providing a grant to the candidate of \$150 for the first \$50 contributed, it is recommended that matching grants or rebates be limited to a maximum of \$150. A requirement could be that, in order to qualify for matching grants, the candidate would have to provide evidence of a minimum number of contributors (possibly 50) giving at least \$25 to ensure that only serious candidates are able to participate in a matching grants program.

The advantage of a matching grant program would be three fold. First, it would make it easier for low and modest income citizens to become involved in financing the election of their candidate of choice in a meaningful way without undue financial hardship. Second, a matching grant program is much easier to administer. It would require a candidate to supply documentation as to the contributions to his campaign at specific intervals during the election campaign and require only one grant cheque to be issued to the candidate's campaign account rather than the hundreds or even thousands of checks that must be written to individual contributors under a rebate program. Third, It would make it easier for a community-based candidate to raise funds for a campaign, as contributions from individuals would have greater weight because of the matching grants than those from corporations and trade unions. The alternative would be to only allow contributions from individuals as is done for provincial elections in Quebec and Manitoba. See Appendix II for an example of a program of matching grants.

Recommendation 1.1 – Amend Subsection 82. (1) of the Act so that a municipality or local board may, by by-law, provide for a program of matching grants to be made to candidates for contributions of money by individuals to the candidates for office on the municipal council or local board and remove the provision for a rebate program. Maximum matching grants and maximum contributions eligible for matching grants should be set out in the general regulations under the Act.

1.2 LIMITING THE AMOUNT CONTRIBUTED BY AN INDIVIDUAL AND PROHIBITING CONTRIBUTIONS FROM CORPORATIONS OR TRADE UNIONS.

Present legislation allows an individual, corporation or trade union to contribute up to \$750 to any one candidate. However, there is no limit to the number of candidates to whom an individual, corporation or trade union can contribute \$750. It would be possible for a wealthy individual, corporation or trade union to contribute \$750 to many candidates for office in a municipality. An example of this occurred in 2000 Toronto elections where a single corporation has contributed to the campaigns of 18 candidates. The public perception is that this will unduly influence the decision-making process in matters affecting that corporation and thus erode confidence in the democratic process. Because so much of an urban municipality's dealings are with developers and goods and service providers such as construction companies, businesses and unions, it is inappropriate for corporations or trade

unions to make contributions to candidates for municipal office. It would be preferable to limit the total contributions that an individual can make to all candidates for public office in a municipality and prohibit corporation or trade union contributions in municipal elections entirely.

Recommendation 1.2 – Add a new Subsection to Section 71 of the Act to require that an individual contributor's total contributions in respect of all the offices in a municipality shall not exceed \$2500 and amend Section 70 (3) of the Act to prohibit contributions from corporations or trade unions.

1.3 CONTRIBUTIONS OF CASH

The current Municipal Elections Act requires that a contribution of money in cash that exceeds \$25 shall not be made to or accepted by or on behalf of a candidate. Since this paper proposes that a \$25 contribution could attract a \$75 matching grant, the amount that can be contributed in cash should be less than \$25. Cash contributions (i.e. contributions of less than \$25) would not be eligible for matching grants under any matching grant or rebate programme.

Recommendation 1.3 – Amend Subsection 70. (8) of the Act so that a contribution of money in cash of \$25 or more shall not be made to or accepted by or on behalf of a candidate.

1.4 INFORMATION ABOUT SHAREHOLDERS OF NUMBERED COMPANIES MAKING DONATIONS

Existing federal law requires disclosure of the names of the principal shareholders of a numbered company where that company has made a contribution to a candidate. This should be a requirement at both the provincial and municipal level in Ontario.

Recommendation 1.4 – Amend the Act to require the disclosure of the names of the principal shareholders of a numbered company where that company has made a contribution to a candidate if contributions from corporations are allowed.

1.5 DISPOSITION OF SURPLUSES

The current Municipal Elections Act provides that surpluses from one election shall be held in trust by the clerk and that if, in the next regular election or in an earlier by-election, the candidate is nominated for an office on the same council or local board, the clerk shall pay the amount held in trust to the candidate, with interest.

It is not unknown for candidates to have huge surpluses, especially those that have been elected or re-elected. It gives these candidates, most of whom are incumbents, a huge advantage over those who are running for municipal office for the first time. This is patently unfair. Contributions are made to a candidate for a specific election. Those contributing to a candidate at one election could change their mind and not want their contributions to support the same person in the next election or, as often happens, in a future election. The municipality substantially funds surpluses when there is a rebate or matching grant system. Surpluses should become the property of the municipality or local board, as the case may be, if they are not used in the election for which they were raised.

Recommendation 1.5 Amend Section 79 of the Act so that surpluses would become the property of the municipality or local board, as the case may be, if they are not used in the election for which they were raised.

PART 2: ELECTION CAMPAIGN EXPENDITURES

2.1 LIMITING THE AMOUNT OF ALLOWABLE CAMPAIGN EXPENDITURES

The amounts of contributions that candidates are currently allowed to raise and spend in many cases far exceed the actual spending limits imposed by the regulations. This occurs where candidates either spend large amounts of funds for fundraising events or for holding parties and making other expressions of appreciation after the close of voting. Candidates also raise money in excess of their expenditure limits so that the clerk will retain these funds in trust for their future campaigns.

For example, in the 2000 Toronto election, one candidate for Councillor raised \$110,058 when his spending limit was \$28,044. In the same election in the City of Toronto, 23 of the 44 successful candidates for Council raised more than twice their campaign spending limits. The same excessive fund raising has occurred in other municipalities and provides an unfair advantage for incumbents as well as being a drain on the finances of a municipality that is providing rebates for contributions. This trend appears to have continued in the 2003 municipal elections.

To help correct the problems of excessive fundraising, it will be necessary to redefine expenditures to include the cost of holding fund-raising functions and the cost of holding parties and making other expressions of appreciation after the close of voting as campaign expenses. To offset this additional election expense, it is proposed that the maximum amount of allowable election expenses be increased by 25%.

To remove the incentive to raise funds in excess of the maximum amount of allowable election expenses for use in subsequent elections, it will be necessary to revise Section 79 of the Act to provide that if the candidate's financial statement or supplementary financial statement shows a surplus exceeding \$500 and the election campaign period has ended at the time the statement is filed, he or she shall, when the statement is filed, pay the total surplus to the clerk with whom the candidate's nomination was filed and if subsection 79. (7) does not apply, the amount becomes the property of the municipality or local board. (Note: Subsection 79. (7) only applies when the candidate's election campaign period recommences because of a recount or controverted election.) This will ensure that surpluses will not be available for use by the candidate in the next election. It will also eliminate the situation where an individual who does not intend to stand for election nominates him or herself and then withdraws in order to insure that a surplus from the previous election will continue to be held in trust for a future election.

Recommendation 2.1 – Amend Section 76 of the Act to include the cost of holding fund-raising functions and the cost of holding parties and making other expressions of appreciation after the close of voting as campaign expenses and thus subject to the maximum expenditure limit. Amend the General Regulation under the Act to increase the maximum expenditure limit by 25% to allow for the increased expenditures required by making the above expenditures subject to the maximum expenditure limitation.

2.2 LITERATURE FROM INCUMBENTS DURING THE ELECTION YEAR

Incumbents for municipal office often have the advantage of being able to distribute newsletters, notices and other items that serve to put their name before the public and publicize their activities on behalf of their constituencies even during the election year. Currently the funds spent on producing and distributing these materials during the election year are not included in their election expenses if they choose to become a candidate in the municipal elections. This gives the incumbents an unfair advantage in two ways. First, they do not have to raise the funds for such publications and second, the costs are not subject to their campaign expenses limits.

Recommendation 2.2 – Amend Subsection 67. (2) of the Act to include as expenses the cost of publications distributed throughout the electoral district during the year of a regular election from the office of a candidate who is an incumbent.

PART 3: CORRUPT PRACTICES

Ensuring the integrity of the election process must have the highest priority in a democratic society. Interfering with the free exercise of an individual's vote by offering or providing a valuable consideration, money or an office or employment has severe penalties (*a fine of not more than \$5,000, or to imprisonment for not more than six months, or to both, and disqualification from voting at an election until the fourth anniversary of voting day*). Influencing the outcome of an election by affecting candidate selection is hardly mentioned. Under the current Act, the only thing that it is forbidden to do in inducing a person to become a candidate, refraining from becoming a candidate or withdrawing his or her candidacy is to offer the person an office or employment. Even the offer to make one a deputy mayor is apparently not covered by this clause.

It is unacceptable that it is legal for an individual or corporation to offer a person any sum of money to run for office and possibly take votes away from a candidate with a similar name. It is equally unacceptable that it is legal for an individual or corporation to offer a candidate any sum of money to withdraw his or her candidacy so that votes could go to another candidate. There have been allegations that both of these types of activities have occurred within the past few municipal elections. This reduces public trust in our democratic system and such activities must be prohibited.

Recommendation 3 – Amend Section 90 of the Act to ensure that no person shall, directly or indirectly, offer, give, lend, or promise or agree to give or lend any valuable consideration to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy; advance, pay or cause to be paid money intending that it be used to commit an offence referred to above, or knowing that it will be used to repay money used in that way; or apply for, accept or agree to accept any valuable consideration or office to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy.

PART 4: ENFORCEMENT OF THE ACT AND REGULATIONS

4.1 – ENFORCEMENT OF THE ACT DURING THE ELECTION

During the election year, there is a need for clear mechanisms to deal with possible contraventions of the Act. Currently there is a lack of clarity as to what agency is responsible for the enforcement of possible contraventions of the Act such as when

a candidate for mayor of the City of Toronto was alleged to have raised funds prior to the commencement of the election campaign period. Other municipalities experienced complaints from candidates regarding harassment of citizens by other candidates with regards to signs, inappropriate /inaccurate printed material, inappropriate distribution delivery of material, etc. When trying to ascertain where a candidate goes to register a complaint, some were told to call the local Municipal Affairs and Housing (MAH) office by the municipal election office but MAH referred the complaints to the municipality. In both cases, the municipality and the provincial government department acknowledged there was little in the act to deal with complaints of this nature, yet the complaints were commonplace and not restricted to one city or one ward.

Recommendation 4.1 – Amend the Act to clarify the appropriate avenues for persons to pursue to deal with possible contraventions of the Act during the election campaign period.

4.2 – ENFORCEMENT OF THE ACT AFTER AN ELECTION

After the election there is a need for an independent civilian body to review the financial statements filed by the candidates and to deal with complaints arising from the election campaign of any candidate. It is inappropriate for the Council of the municipality to have this responsibility as they would have an inherent conflict of interest in such matters.

Recommendation 4.2 – Amend the Act to require the establishment of an Election Finance Review Board, an independent civilian body to be responsible for the compilation of aggregate data based on returns filed by councillors and for the preparation of reports to Council based on the data. The Election Finance Review Board should be empowered to deal with complaints arising from the election campaign of any candidate. The Election Finance Review Board should be set up to act as an oversight body to monitor elections finance activities in each large municipality. Such a body must have adequate staffing and other resources and support to ensure its effectiveness. As well, civilian members appointed to serve on the Board must be free from political influence, and should be provided with a per diem remuneration while serving on the board. The Election Finance Review Board would submit annual reports to Council. In sum the mandate of the Board is to act as an oversight body that will: (1) review all data based on all returns filed, (2) compile aggregate data for reports to Council, (3) recommend amendments to the legislation, financial reporting system and rebate program for approval by Council, and (4) review and report to council regarding council’s guidelines concerning election finance issues and to the appropriate court agency on complaints concerning possible infractions of the legislation.

PART 5: REPORTING OF ELECTION CONTRIBUTIONS

The electorate has a right to know in a timely fashion who the major supporters of candidates are. This is especially relevant where the municipality is providing funds through a matching grant or similar program to encourage contributions to candidates.

Recommendation 5 – Amend the Act to provide for the timely reporting of election contributions before Election Day.

PART 6: LENGTH OF THE ELECTION CAMPAIGN PERIOD

Currently, a candidate's election campaign period for an office begins on the day he or she files a nomination for the office and ends on December 31 in the case of a regular election and 45 days after voting day in the case of a by-election. The election campaign period ends on the day the nomination is withdrawn or deemed to be withdrawn under provisions of the Act or on nomination day if the nomination is rejected under the provisions of the Act. Nomination papers may be filed any time before or on nomination day in the year of an election. Thus the election campaign period can be as long as an entire year. This appears to be excessively long and places at a disadvantage those persons running for office for the first time who are employed full time and cannot afford to take up to a year leave of absence to be a candidate for municipal office. If nominations cannot be filed until after the last day of May, the length of the election campaign period for a candidate can, under normal circumstances, be no longer than about seven months instead of the twelve months currently possible.

Recommendation 6 – Amend Subsection 33. (4) of the Act so that a nomination cannot be filed before the first day of June in an election year.

PART 7: ENSURING CREDIBLE CANDIDATES

In many large urban areas, the number of candidates nominated for a given office can be so excessive as to create serious problems with the design of the ballot. For example, in the 2003 mayoral elections in the City of Toronto where there were 44 candidates nominated for mayor. The resulting ballot required very small printing and two columns for the mayoral candidates making it very difficult for seniors and people with limited vision to cast their ballots with any real sense of clarity. It was likely only five candidates had any possible chance of success and the others each

polled so few votes that their percentages of the votes registered at zero. It might appear that the reasons that these candidates contested the election were for the publicity or to create a problem for a candidate with a similar name.

In London, there were 11 mayoralty candidates of which two were considered serious frontrunners. In many of the candidate public meetings, candidates who clearly were not up to date on issues, solutions or established credibility took much of the time. This reduced time for credible candidates to allow the public to adequately assess differences between positions of the front-runners.

Because the only requirement to run for head of council of a municipality is a nomination-filing fee of \$200 (\$100 for other offices), there is little to discourage nuisance candidates. It would seem appropriate to reintroduce the requirement of having a significant number of people sign the nomination papers of candidates for a municipal office. Serious candidates for council would have no difficulty in recruiting 50 voters to sign their nomination papers while serious candidates for head of council should have no difficulty persuading 100 voters to sign their nomination papers.

Recommendation 7 – Amend Subsection 33. (2) of the Act to require the names, addresses and signatures of 50 eligible voters to nominate a candidate for municipal office except for the office of head of council of a municipality, in which case the number shall be 100.

PART 8: PERMITTING LANDED IMMIGRANTS A MUNICIPAL VOTE

Immigrants who have qualified for landed immigrant status are embarked on a process that, for most, will lead to full Canadian citizenship. However, under current legislation, they are not qualified to vote in municipal elections. This seems unfair when one considers that the municipal government is funded by the taxes levied on all residents, including landed immigrants. A clear case can be made for excluding landed immigrants from voting in federal or provincial elections because of the broad range of law-making authority that these bodies possess. The same cannot be said of municipal governments whose authority exists only to the extent that the provincial government desires. Allowing landed immigrants to vote would bring them into the political arena at an earlier stage and strengthen the involvement as potential citizens.

Recommendation 8.1 – Amend paragraph 17. (2) (b) of the Act to include landed immigrant status as a qualification for being an elector.

PART 9: Mandatory Electronic Filing of Candidate's Financial Statement and Auditor's Report

Under s.78(7) of the current *Municipal Elections Act*, the council of each municipality is entitled to pass a by-law authorizing electronic filing of the financial statement and auditor's report for each candidate. Collectively, these documents reflect each candidate's election campaign finances. It is recommended that s.78(7) be amended to make electronic filing of these documents mandatory in every municipality. Amending the Act to require electronic filing of these documents will make the information contained therein more accessible to the public and serve to enhance the transparency of the political process. Indeed, where only paper records are kept an individual seeking to inquire into the campaign finances of a given candidate or group of candidates is faced with the arduous task of sorting through hundreds of pages of documents. In contrast, electronically filed records provide an individual with a means of quickly and accurately collating and cross-referencing such information.¹

The proposed amendment may include an exemption for small municipalities, where electronic filing would not be feasible or particularly advantageous. The threshold population size at which a given municipality is classified as large or small should be determined upon consultation with the municipalities.

Recommendation 9.1 – Amend s.78(7) to make electronic filing of a candidate's financial statement and auditor's report mandatory.

PART 10: Candidate Liability with regard to Maximum Campaign Contributions

Under the current *Municipal Elections Act*, corporations that contravene s.71(1), by making contributions in excess of \$750 to any one candidate, are subject to prosecution under s.92(1). The current *Act* however, contains no specific provision pertaining to candidate liability for candidates who accept contributions in excess of \$750 from a single contributor. The Act merely provides, under s.69(1)(m), that a candidate who has become aware of a contribution in excess of \$750 from a single contributor is under a duty to return the contribution as soon as possible.

¹ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773 at 777 (Ont. Div. Ct.). (holding that an electronic database maintained by the Toronto City Clerk containing the campaign filing information should have been disclosed under the *Ontario Municipal Freedom of Information and Protection of Privacy Act*, 1996 S.O. 1996, c. 32 notwithstanding privacy considerations).

It is recommended that the *Act* be amended to impart a specific duty on candidates not to accept donations in excess of \$750 from a single contributor and to provide a means of legal recourse against candidates who breach this duty.

It is recommended that s.71(1) be amended to read:

- s.71(1)(a) A contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election
- s.71(1)(b) A candidate shall not accept a contribution exceeding a total of \$750 from any single contributor
-

Further, a provision should be added to s.92(5) in order to account for a candidate's infringement of s.71(1)(b). Subsection 92(5) (c) [which provides that "A candidate is guilty of an offence...if he or she..."] should be added to read:

- (c) accepts a contribution from a single contributor that exceeds what is permitted under s.71.

The proposed amendments to s.71 and s.92 will have a profound effect with regard to the matter of campaign contributions made by associated corporations. Generally speaking, under s.256(1) of the *Income Tax Act*² corporations are associated if, either directly or indirectly, one of the corporations controls the other, or if both corporations are controlled by the same person or group of persons. Under s.72 of the *Municipal Elections Act*, associated corporations are deemed to be a single corporation for the purpose of s.71(1). As such, associated corporations count as a single contributor and therefore may not donate more than \$750 to any one candidate. In municipalities throughout Ontario, the act of associated corporations donating in excess of \$750 to individual candidates appears rampant. In the City of Ajax, for example, two holding companies which shared the same president and director made separate contributions totalling twice the \$750 maximum allowed under s.71(1) to various politicians in Durham Region.³ In the City of London, a review of the filings for the 2003 election indicates numerous instances where companies, who might well be associated on account of similarities in names, addresses and/or contact person, donated in excess of the \$750 maximum. While further investigation is required, since the exact information needed to make the determination under s. 256 is not readily available to the public, on its face it appears that these companies are likely associated corporations. Amending the *Act* to include these provisions will serve to deter candidates from accepting excessive contributions from these entities.

It may be argued that in certain instances imposing a duty on candidates under s.71(1)(b) not to accept contributions exceeding \$750 from a single contributor is too onerous a provision. For example, candidates cannot be expected to know in every instance whether companies contributing to their campaign are associated corporations or not. However, s.92(6) provides that a candidate will not be liable in

² R.S.C. 1985, c.1 (5th Supp.)

³ "Ajax Mayor Battles Influential Developers" *Oakville Green* (2002), online: http://www.oakvillegreen.com/developers_and_elections.htm

all instances where he or she has contravened s.71(1)(b). The exception provided for in s.92(6) will exempt a candidate who has contravened s.71(1)(b) from the penalties described in s.80(2) paragraph 1, where the candidate has acted in good faith, committed the offence inadvertently or because of an error in judgment. As such, only where a candidate knew or ought to have known that he or she was accepting a contribution in excess of \$750 from a single contributor (i.e., associated corporation status appearing likely on its face), or where the candidate failed to make a reasonable inquiry to ascertain whether or not the contribution limit has been exceeded by a single contributor, will the candidate be liable under s.92(5)(c).

In conclusion, amending the Act to impose a duty on candidates not to accept contributions in excess of \$750 from a single contributor fills an obvious gap in the legislation. Amending the Act to discourage candidates from accepting contributions in contravention of s.71 will not only guard against the notion that the decisions of municipal politicians are influenced by campaign contributions but will enhance public faith in local government.

Recommendation 10.1 - Amend the Act to impart a specific duty on candidates not to accept donations in excess of \$750 from a single contributor and to provide a means of legal recourse against candidates who breach this duty.

PART 11 COMPLIANCE AUDIT: MODIFICATION TO REQUIREMENTS SECTION

Under the current *Municipal Elections Act*, s.81(2), an elector has only 90 days after the later of the filing date, the candidate's last supplementary filing date or the end of the candidate's extension for filing granted under s.80(6) to apply for a compliance audit of the candidate's campaign finances. This provision should be amended to extend the 90-day period to 6 months in order to afford an elector a reasonable amount of time to conduct research and prepare an application. Given some of the difficulties encountered in obtaining and digesting the records in a meaningful manner, and in investigating the status of certain corporations, this additional time frame appears to be reasonable.

RECOMMENDATION 11.1 AMEND S.81(2) OF THE ACT TO EXTEND THE 90-DAY PERIOD TO 6 MONTHS TO APPLY FOR A COMPLIANCE AUDIT.

APPENDIX I: PROPOSED AMENDMENTS TO THE MUNICIPAL ELECTIONS ACT

SUMMARY OF CHANGES REQUIRED TO SPECIFIC SECTIONS OF THE ACT AND THE GENERAL REGULATION UNDER THE ACT TO IMPLEMENT THE RECOMMENDATIONS OUTLINED IN THIS POSITION PAPER.

Expenses

67. (1) For the purposes of this Act, costs incurred for goods or services by or on behalf of a person wholly or partly for use in his or her election campaign are expenses. 1996, c. 32, Sched., s. 67 (1).

Additional rules

67. (2) Without restricting the generality of subsection (1), the following amounts are expenses:

1. The replacement value of goods retained by the person from any previous election and used in the current election.
2. The value of contributions of goods and services.
3. Audit and accounting fees.
4. Interest on loans under section 75.
5. The cost of holding fund-raising functions.
6. The cost of holding parties and making other expressions of appreciation after the close of voting.
7. Expenses relating to a recount.
8. Expenses relating to proceedings under section 83 (controverted elections).
9. The nomination filing fee referred to in section 33. 1996, c. 32, Sched., s. 67 (2).

Proposed Addition to 67. (2)

10. The cost of publications distributed throughout the electoral district during the year of a regular election from the office of a candidate who is an incumbent.

Who may contribute

76. (3) Only the following may make contributions:

1. An individual who is normally resident in Ontario.
2. A corporation that carries on business in Ontario.
3. A trade union that holds bargaining rights for employees in Ontario.
4. Subject to subsection (5), the candidate and his or her spouse or same-sex partner. 1996, c. 32, Sched., s. 70 (3); 1999, c. 6, s. 43 (4).

Proposed Amendment to 76. (3)

Who may contribute

70. (3) Only the following may make contributions:

- 1. An individual who is normally resident in Ontario.**
- 2. Subject to subsection (5), the candidate and his or her spouse or same-sex partner. 1996, c. 32, Sched., s. 70 (3); 1999, c. 6, s. 43 (4).**

Maximum amount

76. (4) During the period that begins on the day a candidate is nominated under section 33 and ends on voting day, his or her expenses shall not exceed an amount calculated in accordance with the prescribed formula. 1996, c. 32, Sched., s. 76 (4).

Exception

76. (5) Subsection (4) does not apply in respect of expenses described in paragraphs 3 to 9 of subsection 67 (2). 1996, c. 32, Sched., s. 76 (5).

Proposed Amendment

76. (5) Subsection (4) does not apply in respect of expenses described in paragraphs 3, 7 and 9 of subsection 67 (2).

Corrupt practices: certain offences committed knowingly

90. (1) If, when a person is convicted of an offence under section 89, the presiding judge finds that the offence was committed knowingly, the offence also constitutes a corrupt practice and the person is liable, in addition to any other penalty, for imprisonment for a term of not more than six months. 1996, c. 32, Sched., s. 90 (1).

Corrupt practices: bribery

90. (2) An offence described in subsection (3) constitutes a corrupt practice and a person who commits it is liable, on conviction, to a fine of not more than \$5,000, or to imprisonment for not more than six months, or to both, and is disqualified from voting at an election until the fourth anniversary of voting day. 1996, c. 32, Sched., s. 90 (2).

90. (3) No person shall, directly or indirectly,

- (a) offer, give, lend, or promise or agree to give or lend any valuable consideration, in connection with the exercise or non-exercise of an elector's vote;
- (b) advance, pay or cause to be paid money intending that it be used to commit an offence referred to in clause (a), or knowing that it will be used to repay money used in that way;

(c) give, procure or promise or agree to procure an office or employment in connection with the exercise or non-exercise of an elector's vote;

(d) apply for, accept or agree to accept any valuable consideration or office or employment in connection with the exercise or non-exercise of an elector's vote;

(e) give, procure or promise or agree to procure an office or employment to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy. 1996, c. 32, Sched., s. 90 (3).

Proposed Amendments to Subsection 90. (3) (additional paragraphs)

(f) offer, give, lend, or promise or agree to give or lend any valuable consideration to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy,

(g) advance, pay or cause to be paid money intending that it be used to commit an offence referred to in clause (f), or knowing that it will be used to repay money used in that way,

(h) apply for, accept or agree to accept any valuable consideration or office to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy.

Cash

70. (8) A contribution of money in cash that exceeds \$25 shall not be made to or accepted by or on behalf of a candidate. 1996, c. 32, Sched., s. 70 (8).

Proposed Amendment to Section 70

Cash

70. (8) A contribution of money in cash of \$25 or more shall not be made to or accepted by or on behalf of a candidate.

Maximum, each candidate

71. (1) A contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election. 1996, c. 32, Sched., s. 71 (1).

More than one office

71. (2) If a person is a candidate for more than one office, a contributor's total contributions to him or her in respect of all the offices shall not exceed \$750. 1996, c. 32, Sched., s. 71 (2).

Exception, candidates and spouses or same-sex partners

71. (3) Subsections (1) and (2) do not apply to contributions made to a candidate's own election campaign by the candidate or his or her spouse or same-sex partner. 1996, c. 32, Sched., s. 71 (3); 1999, c. 6, s. 43 (6).

Proposed Amendment to Section 71

Maximum Total Contribution by Contributor (additional subsection)

71. (4) A contributor's total contributions in respect of all the offices in a municipality shall not exceed \$2500.

Restrictions re fund-raising functions

73. A fund-raising function shall not be held,

(a) for a person who is not a candidate; or

(b) outside the candidate's election campaign period. 1996, c. 32, Sched., s. 73.

Only during election campaign period

76.(1) An expense shall not be incurred by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 76 (1).

76.(2) An expense shall not be incurred by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 76 (2).

Proposed Amendment

The method of enforcement of these sections of the Act must be clarified to avoid situations such as occurred during the mayoral election in Toronto in 2003 when one candidate's "Friends" raised and spent a large amount of money before the commencement of the candidate's election campaign period.

Restriction: use of own money

74. (1) A contributor shall not make a contribution of money that does not belong to the contributor. 1996, c. 32, Sched., s. 74 (1).

Proposed Amendment

The method of enforcement of this section of the Act must be clarified to avoid situations such as allegedly occurred in Toronto when a lobbyist is alleged to have given money to his secretary to donate to a candidate.

Surplus held in trust by clerk

79. (4) If the candidate's financial statement or supplementary financial statement shows a surplus exceeding \$500 and the election campaign period has ended at the time the statement is filed he or she shall, when the statement is filed, pay the total surplus to the clerk with whom the candidate's

nomination was filed, and the clerk shall hold the amount in trust for the candidate. 1996, c. 32, Sched., s. 79 (4).

Release of amount if campaign recommences

79. (7) If the candidate's election campaign period recommences under rule 5 of subsection 68 (1), the clerk shall pay the amount held in trust to the candidate, with interest. 1996, c. 32, Sched., s. 79 (7).

Release of amount at next regular election

79. (8) If, in the next regular election or in an earlier by-election, the candidate is nominated for an office on the same council or local board, the clerk shall pay the amount held in trust to the candidate, with interest. 1996, c. 32, Sched., s. 79 (8).

Amount to become property of municipality or local board

79. (9) If subsection (8) does not apply, the amount becomes the property of the municipality or local board, as the case may be. 1996, c. 32, Sched., s. 79 (9).

Proposed Amendments

Delete subsection 79. (8)

Revise subsection 79. (9) as follows:

Amount to become property of municipality or local board

79. (8) If subsection (7) does not apply, the amount becomes the property of the municipality or local board, as the case may be.

By-law re contribution rebates

82. (1) A municipality may, by by-law, provide for the payment of rebates to individuals, corporations or trade unions who made contributions to candidates for office on the municipal council. 1996, c. 32, Sched., s. 82 (1); 2002, c. 17, Sched. D, s. 33 (1).

Proposed Amendment

82. (1) A municipality may, by by-law, provide for a program of matching grants to be made to candidates for contributions by individuals to the candidates for office on the municipal council.

Same, resolution

82. (2) A local board may, by resolution, provide for the payment of rebates to individuals, corporations or trade unions who made contributions to candidates for office on the local board. 1996, c. 32, Sched., s. 82 (2); 2002, c. 17, Sched. D, s. 33 (2).

Proposed Amendment

82. (2) A local board may, by by-law, provide for a program of matching grants to be made to candidates for contributions by individuals to the candidates for office on the local board.

Same

82. (3) The by-law or resolution shall establish the conditions under which an individual, corporation or trade union is entitled to a rebate. 1996, c. 32, Sched., s. 82 (3); 2002, c. 17, Sched. D, s. 33 (3).

Proposed Amendment

82. (3) The by-law or resolution shall establish the conditions under which a candidate is entitled to matching grants.

Same

82. (4) The by-law or resolution may provide for the payment of different amounts to different individuals, corporations or trade unions on any basis. 1996, c. 32, Sched., s. 82 (4); 2002, c. 17, Sched. D, s. 33 (4).

Proposed Amendment

82. (4) The by-law or resolution may provide for the payment of different amounts of matching grants for different amount of contributions up to a maximum matching grant of \$150 for any individual but no matching grants shall be paid for contributions by corporations or trade unions .

Same

82. (5) The by-law or resolution may provide that all or part of the amounts held in trust under section 79 become the property of the municipality or local board, as the case may be. 1996, c. 32, Sched., s. 82 (5).

Note: Subsection 82. (5) would be redundant if the amendments proposed for section 79 are adopted. Also Section 82.1 may require revisions if the suggested amendments are adopted.

Time for filing

33. (4) The nomination may be filed,

(a) on any day in the year of the regular election that is before nomination day, at a time when the clerk's office is open; or

(b) on nomination day, between 9 a.m. and 5 p.m. 1996, c. 32, Sched., s. 33 (4).

Proposed Amendment to Subsection 33. (4)

33. (4) The nomination may be filed,

(a) on any day in the year of the regular election that is after the last day of May and before nomination day, at a time when the clerk's office is open; or

(b) on nomination day, between 9 a.m. and 5 p.m.

Formal requirements

33. (2) The nomination shall,

(a) be in the prescribed form;

(b) be accompanied by a declaration of qualification in the prescribed form, signed by the person being nominated; and

(c) be accompanied by the prescribed nomination filing fee. 1996, c. 32, Sched., s. 33 (2); 2002, c. 17, Sched. D, s. 11.

Proposed Amendment (additional paragraph)

33. (2) (d) include the names, addresses and signatures of 50 persons qualified to vote for the office who support the person being nominated except for the office of head of council of a municipality, in which case the number shall be 100 persons.

17. (2) A person is entitled to be an elector at an election held in a local municipality if, on voting day, he or she,

(a) resides in the local municipality or is the owner or tenant of land there, or the spouse or same-sex partner of such owner or tenant;

(b) is a Canadian citizen;

(c) is at least 18 years old; and

(d) is not prohibited from voting under subsection (3) or otherwise by law. 2002, c. 17, Sched. D, s. 5 (2).

Proposed Amendment to 17. (2) (b)

(b) is a Canadian citizen or landed immigrant;

Financial statement and auditor's report

78.(7) The council of a local municipality may pass a by-law authorizing electronic filing under this section subject to such conditions and limits as are set out in the by-law. 2002, c. 17, Sched. D, s. 29 (4).

Proposed Amendment to 78.(7)

78. (7) The council of a local municipality shall pass a by-law requiring electronic filing under this section subject to such conditions and limits as are set out in the by-law. 2002, c. 17, Sched. D, s. 29 (4).

Contribution Limits

71. (1) A contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election. 1996, c. 32, Sched., s. 71 (1).

Proposed Amendment to 71. (1)

71(1)(a) A contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election.

71(1)(b) A candidate shall not accept a contribution exceeding a total of \$750 from any single contributor.

A new subsection (c) should be added to Section 92(5) [which provides that “A candidate is guilty of an offence...if he or she...”] to read:

(c) accepts a contribution from a single contributor that exceeds what is permitted under s.71.

Compliance audit

81. (2) The application shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office, within 90 days after the later of the filing date, the candidate's last supplementary filing date, if any, or the end of the candidate's extension for filing granted under subsection 80 (6), if any; it shall be in writing and shall set out the reasons for the elector's belief. 1996, c. 32, Sched., s. 81 (2); 2002, c. 17, Sched. D, s. 32 (1).

Proposed Amendment to 81. (2)

81. (2) The application shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office, within six months after the later of the filing date, the candidate's last supplementary filing date, if any, or the end of the candidate's extension for filing granted under subsection 80 (6), if any; it shall be in writing and shall set out the reasons for the elector's belief. 1996, c. 32, Sched., s. 81 (2); 2002, c. 17, Sched. D, s. 32 (1).

APPENDIX II SAMPLE MATCHING GRANT PROGRAM

A municipal by-law might contain the following requirements for participation by a candidate in the matching grant program:

1. At least 50 individuals have contributed at least \$25 each to the candidate's campaign for all offices except that of head of a municipality.
2. At least 100 individuals have contributed at least \$25 each to the candidate's campaign for the office of head of a municipality.
3. The candidate has submitted the required forms showing the names and addresses of the contributors and the amount of their eligible contributions on the dates set out in the by-law.
4. Only contributions of money from individuals will be contributions eligible for matching grants. Contributions from corporations and trade unions would be prohibited and thus not be eligible for matching grants. The matching grant program is designed to encourage individuals with limited resources to participate in the electoral process.
5. A candidate must report all contributions, including goods and services, received up to the time of submitting the required forms. No matching grants will be paid which would increase the candidate's campaign funding to beyond the allowable campaign expenditure limits.
6. Surpluses are substantially funded by the municipality and thus will become the property of the municipality or local board, as the case may be, if they are not used in the election for which they were raised.

The schedule of matching grants could be as follows:

- Individual contributions of \$25 to \$50 – matching grant equal to three times the contribution.
- Amounts of individual contributions over \$50 – no matching grants.
- Contributions of goods and services – no matching grant.
- Maximum matching grant for one individual's total contributions to one candidate - \$150.

The matching grants listed above could actually reduce the amount of rebates paid under the current City of Toronto rebate program where the maximum rebate is \$1000 as opposed to a maximum matching grant of \$150. However, under the above matching grant program, a candidate with an allowable campaign expenditure limit of \$40,000 could raise this amount from 200 contributions of \$50 or 400 contributions of \$25 along with the matching grants.

$$200 \times \$50 = \$10,000 \text{ plus matching grant of } \$30,000 = \$40,000$$

$$400 \times \$25 = \$10,000 \text{ plus matching grant of } \$30,000 = \$40,000$$