

Complying with Campaign Finance Rules in the Municipal Elections Act



Overview

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Part I: Spending Rules

Contributions

Contributions

- ❖ Definition: “money, goods and services given to and accepted by or on behalf of a person for his or her election campaign”
- ❖ May only be accepted:
 1. by or on behalf of a candidate
 2. during the election campaign period
 3. if they do not exceed \$25 in cash
- ❖ Contributions Cap: no more than \$750 per candidate and no more than \$5000 to two or more candidates for office on the same council or board

What Qualifies as a Contribution?

Contributions	Not Contributions
Admission fees for fundraising functions	Value of voluntary labour
Goods and services sold at above market value at a fundraiser	Donations of \$10 or less received at a fund-raising function (still must be accounted for)
Discounted goods and services purchased for the campaign (difference from FMV = contribution)	Broadcast advertising provided without charge and equally to all candidates

Who Can Contribute?

Can ONLY be made by	Cannot be made by
Candidate's and their spouses	Federal or provincial political parties or any candidates or associations endorsed by these parties
Individual residents of Ontario	The Crown in right of Canada or Ontario
Corporations carrying on business in Ontario	Municipalities or local boards
Trade Unions holding bargaining rights in Ontario	

Expenses

Expenses

- ❖ Definition: “costs incurred for goods or services by or on behalf of a person wholly or partly for use in his or her election campaign.”
- ❖ Expenses may only be incurred
 1. by or on behalf of a candidate
 2. during the candidate's campaign period
- ❖ Within 10 days after nomination day the clerk will calculate the maximum amount of expenses that can be incurred after nomination day and before voting day.

Maximum Expense Amount

❖ How it is calculated

1. Office of head of council of a municipality = \$7,500 + \$.85/elector entitled to vote for the office
2. Other offices = \$5000 + \$.85/elector entitled to vote for the office

❖ the maximum expense amount is motivated from a desire to level “the playing field [and] prevent a candidate backed by deep pockets from outspending his or her opponents and thus potentially skewing the results of the election . . . [and of ensuring] that elections cannot be ‘bought’ ”: *Braid v. Georgian Bay (Township)*, 2011 OJ NO 2818 (SCJ), at paras. 12 and 22

What Qualifies as an Expense?

Expenses (count toward limit)	Expenses (do not count toward limit)
Goods retained from a previous election	Audit and accounting fees
Value of contributions of goods and services	Cost of fund-raising functions
Nomination filing fee	Close of voting appreciation events
Interest on candidate's campaign loan	Recount expenses Controverted elections expenses
Awareness raising events where funds are solicited incidentally	Compliance audit expenses
Promotional materials where funds are solicited incidentally	Disability expenses resulting from candidacy

Fundraising

- ↗ Fundraising function means an event or activity held by or on behalf of a candidate for the purpose of raising funds for his or her campaign
- ↗ Fund-raising functions cannot be held
 1. for someone who is not a candidate
 2. outside of the candidate's election campaign period
- ↗ Costs of fundraising do not count toward expense limits, but fundraising can't be campaigning in disguise
- ↗ Public awareness events are not fundraising
- ↗ Promotional materials are not fundraising

Determining the Campaign Period

- ↻ Begins: date nomination is filed
- ↻ Ends: December 31st for regular elections or 45 days after voting day for by-election
 - ↻ day of, if withdrawn
 - ↻ nomination day, if rejected
- ↻ Can be extended in the case of a deficit
- ↻ Can be recommenced if expenses relating to compliance audits and controverted elections are incurred
- ↻ Multiple offices in the same election
 - ↻ General vote: Deemed to be one campaign for last office for which candidate is nominated but campaign period begins on the date of the first nomination.

Surplus & Deficits

Post-Election Surplus and Deficits

- ❖ Definitions: “A candidate has a surplus if the total credits exceed the total debits, and a deficit if the reverse is true”
- ❖ Credits are the sum of
 1. Candidate’s contributions
 2. Amounts of \$10 or less donated
 3. Interest earned on campaign accounts
 4. Revenue earned from the sale of election materials
- ❖ Debits are the sum of
 1. Candidate expenses
 2. Any deficit from the previous regular election, or by-election, for the same office

In the Event of a Surplus

1. A candidate may refund themselves for contributions made by the candidate or his or her spouse
2. Remaining surplus is to be paid to the clerk, to be held in trust until:
 1. the campaign period has ended;
 2. it is no longer possible to recommence the campaign period; and,
 3. the period for commencing a recount, controverted elections application or a compliance audit has expired and none has been commenced,at which point the surplus becomes the property of the municipality

Part II: Oversight & Penalties

Compliance Audits

Step 1: Application

- ❖ Any elector entitled to vote in an election who believes, on reasonable grounds, that a provision of the Act was contravened, may apply in writing to the clerk for a compliance audit
- ❖ Application must be made within 90 days after the later of
 1. the last filing date for financial statements
 2. the expiry of any filing extension
- ❖ Within 10 of receiving the application the clerk must forward the application to the compliance audit committee



Step 2: Committee Review

- ❖ The committee is appointed by council or the local board before October 1st of an election year and is comprised of 3 – 7 members
- ❖ Committee members cannot be
 - ❖ Employees or officers of the municipality or local board
 - ❖ Members of council or local board
 - ❖ Any candidates in the election for which the committee is established
- ❖ Within 30 days of receiving the application the committee must consider the application and decide whether to grant or reject it

Step 3: Audit & Report

- A licensed auditor is appointed by the committee to review the candidate's records and determine whether or not he or she has complied with the Act
- The auditor is permitted to
 1. access all relevant books, papers, documents or things of the candidate and of the municipality or local board
 2. exercise all powers set out in s.33 of the *Public Inquiries Act*
- The auditor prepares a report and gives a copy to
 1. the candidate
 2. the council or board
 3. the clerk and secretary (in cases of local boards)
 4. the applicant
- The clerk forwards a copy of the report to the committee within 10 days

Step 4: Committee Decision to Act

- ❖ The committee has 30 days to review the report
 1. If there is an apparent contravention
 - the committee may decide to commence a legal proceeding against the candidate
 - auditor's cost are paid by the municipality or local board
 2. If there is no apparent contravention
 - the committee will determine whether or not the applicant had reasonable grounds to submit the application
 - if no reasonable grounds are found the auditor's costs can then be recovered from the applicant

Offenses & Penalties

Regulatory Offenses

❖ Under the Act it is an offence to

1. contravene any provision of the Act (s.94)
2. incur expenses in excess of the maximum amount (s.92(5))
3. file Financial Statements or Auditor's Reports that are incorrect (s.92(5))
4. obstruct an auditor's investigation (s.93)

❖ General Penalties Available

1. Fine of up to \$25,000
2. Forfeiture of office
3. Imprisonment for a term of not more than six months, if the presiding judge finds that the individual knowingly committed the offence.

Additional Penalties

1. Fine: If the expenses incurred exceed the maximum amount, the candidate is liable to a fine equal to the excess
2. Office Forfeiture: the candidate forfeits their elected office until the next regular election if they:
 - Fail to file required financial statements and auditor reports
 - Fail to pay surplus amounts to clerk
 - file financial statements or auditor reports that are incorrect *
 - incur expenses that are more than the maximum amount*

Saving provision: If acting in good faith, offense inadvertently committed, or caused by error of judgement, penalty will not apply to these * offences

Due Diligence

Take all reasonable care in the circumstances to avoid committing the offence

1. What are your obligations?
2. How do you avoid breaching the Act?
3. How can you be sure the system in place is effective?

Candidate Duties

1. Open a campaign account
 - all contributions deposited into it
 - all expenses drawn against it
2. Keep receipts for every expense and records of receipts issued for every contribution
3. Until the end of term in office keep records of
 - the value and form of goods and services contributed and expensed
 - the total income from fundraising functions as well as the gross amount received from donations of \$10 or less
 - the terms of any loan taken out to finance candidacy



Candidate Duties

4. Provide proper directions to persons authorized to incur expenses and accept or solicit contributions on behalf of the candidate
5. Return money received in contravention of the Act to donor, if not possible, to Clerk
6. File a financial statement and if total expenses exceed \$10, 000, a licenced auditors' report, with the Clerk

Contribution Checklist

- Money or goods and services
- Contributed only to the candidate or on their behalf
- Only during the campaign
- No more than \$25 in cash from any person
- No more than \$750 from any person (including associated companies)
- Person includes corporations, but not partnerships
- Less than \$10 can be accepted at a fundraiser without counting as a contribution (receipt) – but the total of all \$10 or less contributions must be recorded and accounted for

Valuation Checklist

Goods or Services	Value of Contribution	Value of Expense
Rent	FMV – amount actually paid	FMV
Event facility	FMV – amount actually paid	FMV
Labour	Volunteers are not counted as contributions	Not an expense

Expense Checklist

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Due Diligence System

- ❑ People helping with money must understand the obligations and be trained to ensure they comply with the Act
- ❑ Set rules and procedures based on the checklists
 - For example, no cash over \$25 can be accepted
 - For example, no deposits to any account except the campaign account
 - For example, no material is purchased for the campaign from personal money – only from the campaign account
 - For example, money from corporations, not partnerships
- ❑ Write the rules down and make sure everyone has a copy (that includes you)

Due Diligence Follow-up

- ❑ Make sure the system is working
 - Are people following the rules (are you)?
 - If not, fix the problem
- ❑ Remember, even if convicted, if the breach was inadvertent the penalty may not include being removed from office

Who am I?

Tony Fleming is a Partner in the Land Use Planning, Development and Environmental Group and the Municipal Group at Cunningham Swan. Tony is recognized by the Law Society of Upper Canada as a Certified Specialist in Municipal Law (Local Government/ Land Use Planning and Development). As a Certified Specialist, Tony has demonstrated expertise in the fields of municipal law and land use planning and development law.

Tony provides advice to municipalities and private sector companies on all aspects of land use planning and development as well as environmental law. Tony appears regularly before the Ontario Municipal Board, the Assessment Review Board and the Environmental Review Tribunal. In addition, Tony appears in all levels of Ontario Courts on administrative law matters, including prosecuting and defending by-laws.

Prior to joining Cunningham Swan, Tony was Senior Legal Counsel with the City of Kingston. Tony focused on providing advice on land use planning and development and environmental law with the City of Kingston, building on his experience in private law firms in Toronto where Tony practised as a land use planning and environmental lawyer. Tony has defended large and small corporations and municipalities against Ministry of the Environment orders and manages regulatory investigations and prosecutions (Environment, Labour and Fisheries and Oceans).

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