

**Municipal Election 2006 - Review of Financial Filings by
Members of City of Toronto Council**

June 14, 2007

 **TORONTO** Auditor General

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Members of City of Toronto Council**

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BACKGROUND

At its meeting of September 28, 29, 30 and October 1, 2004, City Council considered the recommendations of the Toronto Election Finance Review Task Force. As a result of these deliberations, Council recommended the following:

“That should the Province fail to enact the appropriate changes to the *Municipal Elections Act, 1996* prior to the 2006 election, The Auditor General, as part of his 2006/2007 work plan, review the financial statements filed by Members of Council after the 2006 election and report to Council, through the Audit Committee, on any other irregularities or inconsistencies contained therein.”

In accordance with Council’s directive, this review was included in the Auditor General’s 2007 work plan. Although the directive stated that our report should be directed to Council through the Audit Committee, one of the possible outcomes of the results of our review is that a compliance audit of a candidate’s financial filing could be requested by an elector. The deadline for requesting a compliance audit is July 2, 2007. It was not possible to complete our review, table the report with Audit Committee and have it before Council to meet this deadline. Therefore, we are presenting our report directly to the June 2007 meeting of City Council.

The municipal elections process including the filing of financial statements is governed by the *Municipal Elections Act, 1996* (the *Act*). It is the responsibility of each candidate to file a complete and accurate financial statement in accordance with the time frame provided for in the *Act*.

There are two types of financial statements:

- Financial Statement (Form 4) – to be completed by those candidates whose total contributions and total expenses are each equal to or less than \$10,000 and who do not wish to participate in the City’s contribution rebate program.

- Audited Financial Statement (Form 5) – to be completed by those candidates whose total contributions or total expenses are more than \$10,000 or who wish to participate in the City’s contribution rebate program.

According to the *Municipal Elections Act, 1996*, the City Clerk is responsible for verifying the following in relation to the candidate’s financial statements:

- that the appropriate documents have been filed on time;
- that the campaign period entered on the statement is correct (e.g., the date the nomination was filed and the date the campaign ended);
- that the Maximum Expense Limit entered on the statement is correct;
- that the total expenses shown on the face of the document does not exceed the maximum expense limit; and
- that, on the face of the document, any surplus over \$500 is forwarded to the City Clerk with the financial statement.

The City Clerk also checks to see that an auditor’s report has been completed and is signed by an auditor who is a licensed public accountant.

It is the candidate’s responsibility to correctly complete their campaign financial statements. It is the responsibility of a licensed auditor to attest to the accuracy of the financial statements.

The candidate’s financial statements are filed with the City Clerk and are public documents. These documents may be inspected by any person upon request at the office of the City Clerk.

Any elector who is entitled to vote in the City of Toronto's municipal election and believes that a candidate has contravened a provision of the *Act* relating to election campaign finances may file a request with the City Clerk for the candidate's financial statements to be subject to a compliance audit under section 81 of the *Municipal Elections Act, 1996*.

The application for a compliance audit can be made within 90 days of:

- the filing date;
- the candidate's last supplementary filing date, if any; or
- the end of the candidate's extension for filing, if any.

In accordance with the directive of the City Council, we have completed our review of financial statements for the 2006 election as filed by members of Council.

REVIEW OBJECTIVES, SCOPE AND METHODOLOGY

What Were the Objectives of this Review?

The objectives of our review were to:

- a) determine whether the financial statements filed by Members of Council were in compliance with the *Act*; and
- b) report on irregularities or inconsistencies noted during our review of the financial statements.

What Did the Review Include?

This review focused exclusively on the review of financial statements filed by the elected Members of Toronto City Council as at April 2, 2007, and included a review of the following:

- official signed copy of Audited Financial Statements, Form 5, submitted to the City Clerk;
- review of spending limits, contributions and expenses as reported on Form 5;
- where the Member of Council also submitted the financial statements electronically, a review and comparison of the electronic filing with the official hard copy submissions;
- limited review of contribution rebate receipts; and
- review of any other correspondence submitted in support of the official copy of the Form 5 filing.

What did the Review not include?

- verification of the information contained in the Audited Financial Statements, Form 5;
- review and examination of transactions and documentation such as bank statements, expense receipts, etc., supporting the financial statements filed; and
- review of electronic data entered/uploaded to the City of Toronto website by staff of the City of Toronto Elections and Registry Services Unit.

How Did We Conduct this Review?

Our review methodology included the following:

- review of the *Act*;
- review of relevant election by-laws, Council directives and the Candidate's Guide published by the City's Elections and Registry Services Unit;
- interviews with staff of the Elections and Registry Services Unit;
- meetings with various Councillors and their staff to clarify and seek additional information on issues noted during our review of the financial statement filings;
- discussions with staff from the Ontario Ministry of Municipal Affairs and Housing; and
- other procedures deemed appropriate.

The review was conducted in accordance with generally accepted government auditing standards.

REVIEW RESULTS – WHAT DID WE FIND?

Responsibilities of the Candidate and the Auditor

It is the responsibility of each candidate to correctly complete their campaign's financial statements. Even though in many cases these financial statements are prepared by third parties, candidates are required to sign a formal declaration that "to the best of my knowledge and belief that these financial statements and attached supporting schedules are true and correct."

An auditor's report is required to be filed with the candidate's financial statements where the total expenses or contributions exceed \$10,000 or who wish to participate in the City's contribution rebate program. The responsibility of the auditor is to provide an opinion on the financial statements which states that the "financial statements present fairly, in all material respects, the financial position of the candidate's election campaign as at _____ and the income and expenses from the campaign period from _____ to _____ and the determination of surplus or deficit and the disposition of surplus in accordance with the accounting treatment prescribed by the Municipal Elections Act, 1996."

While the auditor has a specific role in the financial statement process, it is clear that the ultimate responsibility for the completion and accuracy of the financial statements rests with each candidate. A number of financial statement filings contained errors and/or inconsistencies. Council members are accountable for ensuring the accuracy of financial statement filings. The financial statements are those of the candidate and not the auditor even though the auditor may have been involved in their preparation. The types of errors identified are summarized in the following paragraphs and are specifically itemized in more detail in the attachment to this report.

Errors in Certain Financial Statements

During our review, it was clear that in a number of cases inadequate attention and scrutiny had been given to the preparation of financial statements. Certain mathematical errors were evident, many of which were basic in nature, and should have been identified and corrected either by the candidate or most certainly by the respective Councillors' auditor prior to the filing of the financial statements. Examples of these errors were as follows:

- Several instances where the financial statements and supporting schedules were not mathematically correct;
- Various amounts in the summary schedules not agreeing to supporting schedules;

- Various instances where income, contributions and/or expenses were omitted from the financial statements;
- Various schedules which were incomplete; and
- In cases where Councillors also submitted financial statements electronically, certain of the financial statements did not reconcile with the official hard copy filings.

A number of errors, in certain cases, resulted in the incorrect final reporting of campaign contributions received, total campaign expenses and the final surplus or deficit.

We have discussed the errors identified during our review with each individual Councillor. Clarification and/or an explanation relating to these errors has since been provided to the City Clerk. While this may have been an appropriate course of action for those Council members, it is important to note that the *Municipal Elections Act, 1996* does not allow a candidate to correct their financial statements once they have been filed with the City Clerk. That said, the City Clerk will accept any submission from a candidate which clarifies their financial statements with a request that she file the explanatory document with the candidate's financial statement. However, this submission will not legally have been filed within the time period established in the legislation. The financial statements filed with the City Clerk according to legislation is the final accounting of the candidate's election revenue, expenses and surplus or deficit.

The Electronic Filing of Financial Statements

The City Clerk in 2006 developed an electronic filing system which enabled all candidates to complete their financial statements on line. Approximately one third of the elected Members of Council submitted their financial statements electronically. Such electronic submissions will not accept information which is mathematically incorrect and, as such, it is possible to identify errors prior to the filing of financial statements. Consequently, if all elected candidates had submitted their information electronically, mathematical errors such as the ones identified during this review would have been avoided.

Recommendations:

- 1. Members of Toronto City Council, in preparing their financial statements, utilize the City's Electronic Financial Filing System. Any errors identified during this process be corrected prior to filing financial statements with the City Clerk.**
- 2. City Council request the Province to amend the *Municipal Elections Act, 1996* to provide that all candidates seeking election to Toronto City Council be required to use the City's Electronic Financial Filing System to file their financial statements.**

Campaign Contributions

The financial filing for municipal candidates requires a schedule showing the name, address and amount contributed for all contributors who have donated money, goods or services of more than \$100 to any one candidate. The *Act* sets out who may or may not contribute to a candidate's campaign and how much they are permitted to contribute. Other than the candidate or their spouse, the maximum amount that any one individual, or related group of companies, may contribute is \$750, (\$2,500 for mayoralty candidates). In addition, contributors must be Ontario residents.

In our review of the financial filings of a number of Councillors we noted instances where:

- listed contributions exceeded allowed limits or contributions were accepted after the campaign period end date;
- listed contributions included a number of contributions from the same address leading to the possibility that there may be corporate relationships in contravention of the *Act*;
- differences between amounts on the list of contributions and the contribution rebate forms;

- one contribution from outside the Province; and
- unrecorded contributions.

We have determined through discussions with certain Councillors or their representatives relating to potential excess contributions that they were not aware that there was a contravention of the *Act*. In all such circumstances, they indicated that they would take immediate steps, including the refund of the excess contribution, to remedy any contravention. While we acknowledge that this course of action is appropriate, the *Act* requires each candidate to file an accurate financial statement by the filing date and does not provide for revision of the document after this date.

Recommendation:

- 3. City Council request the Province to amend the *Municipal Elections Act, 1996* to allow candidates the opportunity, within certain criteria, to correct errors or omissions in financial statements which have been filed with the City Clerk.**

Nomination Filing Fee

Candidates for City of Toronto Council are required to pay a filing fee of \$100 (in the case of the Mayor, \$200). The *Act*, section 67 (2) 9 requires the nomination filing to be recorded as an expense of the candidates campaign.

Since this fee is paid personally by the candidate prior to the opening of a campaign bank account, many Councillors did not record it as a campaign expense. Also, Councillors did not record the use of their own funds as a contribution since such a contribution would have to occur before the nomination is actually filed and, therefore, would be an illegal contribution according to the *Act*. The fee is subsequently refunded to elected candidates and many accepted the City Clerk's cheque as a refund of the nomination filing fee which they paid personally. This

treatment of the nomination filing fee by elected Councillors has, for the most part, been consistent with elections of prior years.

It is apparent that this section of the *Municipal Elections Act, 1996* requires clarification as there are inconsistencies in relation to the nomination filing fee provisions in the *Act*. It is important that this matter be further clarified in any amendment to existing legislation.

Recommendation:

- 4. City Council request the Province to amend the *Municipal Elections Act, 1996* pertaining to the nomination filing fee, to clarify the manner in which the fee is to be accounted for in the candidate's financial statement.**

Penalties for Non-Compliance

The importance of filing accurate and complete financial statements is paramount as the prescribed penalties contained within section 80 of the *Municipal Elections Act, 1996* are significant including the forfeiture of office. The *Act* provides that any person who contravenes a provision of the *Act* is guilty of an offence. In addition to the conviction under the *Provincial Offences Act* and a fine, the *Municipal Elections Act, 1996* provides more serious penalties for certain campaign finances. These penalties include forfeiture of office and prohibition from running in the next municipal election.

It is apparent that in a number of circumstances certain Council members are in non-compliance with the *Municipal Elections Act, 1996*. Errors and omissions in the financial statements filed with the City Clerk, which have resulted in the accounting of total income and/or expenses and/or determination of an incorrect surplus or deficit, technically is a contravention of the *Act*.

Legislation does allow for any elector to request a compliance audit if he/she feels that a candidate has violated or contravened a section of the *Act*. Toronto City Council has established a Compliance Audit Committee and delegated all of its authority to this Committee to hear and

make determinations on these applications. The provisions relating to compliance audit requirements are included in section 81 of the *Municipal Elections Act, 1996*.

CONCLUSION

This review was conducted at the request of City Council. As indicated in the section of the report entitled Review Objectives, Scope and Methodology, the scope of this review was limited and focused almost exclusively on the content and accuracy of each candidate's financial statements. This review did not include an analysis of any documentation supporting the revenue and expenses disclosed in the financial statements. Even though the review was limited in scope, the review identified a relatively large number of errors or inconsistencies in the financial statements. The penalties for incorrect financial statement filing are significant. Consequently, it is extremely important that the preparation, review and audit of these financial statements are conducted with an appropriate level of attention. In our view, in certain circumstances, this has not been the case.