

Feasibility To Create A Candidate Protection Fund To Be Funded By Candidates In The 2010 Municipal Election

Date:	February 18, 2010
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	P:\2010\Internal Services\Cf\Ec10009 (AFS #11478)

SUMMARY

In its consideration to reimburse certain legal expenses incurred by Councillors while candidates in the 2006 Municipal Election, City Council requested a report to the March 1, 2010 Executive Committee on creating a candidate protection fund.

In the time available in response to Council's request, staff have reviewed possible options to protect candidates for costs arising from the 2010 Municipal Election which include establishing a fund and private independent insurance coverage.

A subsequent report to the June, 2010 Executive Committee meeting will be submitted by the City Manager on providing candidate protection.

RECOMMENDATIONS

The City Manager recommends that:

1. The City Manager report to Executive Committee on the availability of an insurance product that provides candidate protection.

Financial Impact

There are no financial implications arising from this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial implications.

DECISION HISTORY

City Council on January 26 and 27, 2010 requested the City Manager and City Solicitor to report to the Executive Committee for its March 1, 2010 meeting on creating a “candidate protection fund” to be funded by candidates in the 2010 municipal election, addressing any additional steps that are required to protect the integrity of the election process. Council’s decisions can be found at:
(<http://www.toronto.ca/legdocs/mmis/2010/cc/decisions/2010-01-26-cc45-dd.htm>)

COMMENTS

Candidates for municipal office during an election or bi-election may be the subject of compliance audits relating to their campaign expenses. Election campaigns can also create other exposures for candidates such as legal challenges, defamation law suits, etc. Some candidates desire or require legal representation during such processes. Council has asked for this report on creating a candidate protection fund to be funded by candidates to offset such various costs.

The issues that need to be resolved are:

1. Providing protection that is reasonably affordable to candidates.
2. Extent of the City’s involvement in administering, sponsoring or funding such protection plans.
3. Clarification of the extent to which the *Municipal Elections Act, 1996* (MEA) limits the City’s ability to support actions 1 and 2.

Staff have examined two options in the time available in response to Council’s request:

1. City Administered Candidate Protection Fund

A fund that would be contributed to by candidates in the municipal election in the City.

2. Candidate Insurance Coverage

Insurance coverage provided by an external insurer and accessed and funded directly by municipal candidates.

Candidate Protection Fund

Under this option, candidates would contribute on a voluntary basis to a fund which would in turn provide all or a portion of the costs relating to the legal expenses of candidates arising from or associated with their candidacy in the election.

Considerations in designing such a fund would include:

1. The governance structure of the fund and the extent to which the City is legally permitted to be involved in the operations and funding of the fund.
2. The contribution rates required to provide sufficient funds to offset projected eligible costs of candidates who opted in to the fund.
3. Eligible expenses and whether paid on an as incurred or reimbursement basis.

4. Caps and deductible levels for claims.
5. A mechanism to offset any overall fund shortfalls.

It must be noted that the City is currently prohibited from establishing a mandatory candidate protection fund or administering or funding any protection fund or insurance policy for candidates. As such staff are pursuing the option of identifying an insurance policy administered independently from the City and accessible by candidates.

Candidate Insurance Coverage

The insurance option would have the following features:

1. The City would work through its broker with the insurance industry to help to design a program of coverage. This would include:
 - a. Specifying the types of coverage being sought, including specific perils and expenses to which the coverage would apply, negotiating financial limits of coverage, and deductible and premium amounts.
 - b. Providing data with respect to numbers of candidates likely to register for the election.
 - c. Providing information on past costs incurred by candidates relating to the coverage being sought.
2. To the extent insurers were willing to provide coverage under the program so designed, the City would make details of the insurance program available to all candidates in the 2010 Municipal Election within the City.
3. Candidates would be able to access the coverage and fund the premium costs through their campaign expense budgets.
4. Any claims against insurance policies and the associated deductible amount would be the responsibility of the respective candidates.
5. Beyond the initial contact with the insurers in helping design the program and obtaining information on the number of candidates, the City would not be involved in the ongoing administration of the insurance program.

From the insurers' standpoint, they would likely examine the feasibility of offering such a program based on the projected frequency and size of claims and percentage of candidates that would take up the coverage if offered. Any program insurers would be willing to offer would include specific eligible risks to be covered and related limitations, deductible levels, possible caps on coverage amounts, and premiums to be charged.

Discussions have been initiated with the City's insurance broker to explore the world wide market place for such coverage. Preliminary indications are that the types of expenses to be insured are not typically underwritten by insurance companies. Also, premiums might be prohibitively excessive. There is a chance that the insurance market may not provide this coverage.

However, staff will engage in a more formalized process to define more closely the coverage expectations and provide the information that insurers would need to assess their risk and design a program that may satisfy the needs of candidates. Staff expects to

have indications from interested insurers for the terms and conditions of a candidate insurance policy in time to report to the June, 2010 Executive Committee meeting.

Summary:

Staff will actively explore the option of Candidate Insurance Coverage as identified above in conjunction with insurers. A subsequent report will be provided by the City Manager on the availability of an insurance product for candidate protection by June, 2010.

CONTACT

Len Brittain, Director, Corporate Finance

Tel: (416) 392-5380; Fax: (416) 397-4555; E-mail: lbrittai@toronto.ca

Jeff Madeley, Manager, Insurance & Risk Management, Corporate Finance

Tel: (416) 392-6301; Fax: (416) 397-4555; E-mail: jmadeley@toronto.ca

SIGNATURE

Joseph P. Pennachetti
City Manager