

Consolidated Clause from Report No. 10 of the Administration Committee, which was before the Council of the City of Toronto at its meeting held on October 1, 2 and 3, 2002.

3a**Municipal Campaign Finance Reform**

(City Council on October 1, 2 and 3, 2002, struck out and referred this Clause back to the Administration Committee for further consideration, together with the following proposed motions, and the Mayor was requested to write to the Minister of Municipal Affairs and Housing requesting the Province not to finalize the legislation related to this matter until after the City of Toronto Council meeting scheduled to be held on October 29, 2002:

Moved by Councillor Moscoe:

“That the Clause be amended by amending Part (IV) of the recommendation of the Administration Committee by:

(1) deleting from Part (a) the words ‘if allowed’, so that Part (a) shall now read as follows:

‘(a) that rebates only be issued for contributions of legal tender; and’;

(2) striking out Part (b); and

(3) inserting the following new Parts (b) and (c):

‘(b) inclusion of factors in the rebate program that will provide adjustments for inflation; and

(c) the adequacy of limits on campaign expenditures and adjustments that will account for inflationary increases in costs;’.”

Further moved by Councillor Moscoe:

“That the Clause be amended to provide that the composition of the Toronto Election Finance Review Task Force include the originator of the municipal election rebate plan, Bernard Nayman, C.A., and the Nayman Report, originally submitted to the former City of North York Council, be provided to the Task Force.”

Moved by Councillor Hall:

“It is further recommended that the City’s previous request of the Province of Ontario, approved by City Council on November 6, 7 and 8, 2001, by its adoption, as amended, of Clause No. 1 of Report No. 15 of The Administration Committee, headed ‘Municipal Elections Act, 1996 - Amendments and Election 2000 Report’, to amend the Municipal Elections Act to require the City Clerk to have voters prove that they meet citizenship and residency requirements, again be submitted to the Minister of Municipal Affairs and Housing for support prior to the 2003 municipal election.”

Further moved by Councillor Hall:

“It is further recommended that the Toronto Election Finance Review Task Force be requested to review and respond to the Discussion Paper on Municipal Elections Act Reform 2002, at the same time as the Task Force reviews the 19 issues raised in the joint report dated June 11, 2002, from the Chief Administrative Officer, the City Solicitor and the City Clerk.”

Council also adopted the following recommendations:

“It is recommended that:

- (1) the City Clerk be requested to provide each Member of Council with a copy of the legislation at this meeting; and*
- (2) the Minister of Municipal Affairs and Housing and the Association of Municipalities of Ontario be advised of City Council’s schedule in this regard.”*

(City Council at its Special Meeting held on July 30, 31 and August 1, 2002, deferred consideration of this Clause to the next regular meeting of City Council scheduled to be held on October 1, 2002.)

The Administration Committee recommends that:

- (I) City Council establish a Toronto Election Finance Review Task Force to consider longer term election finance issues;**
- (II) the Terms of Reference respecting the Toronto Election Finance Review Task Force, contained in Appendix “C” embodied in the joint report (June 11, 2002) from the Chief Administrative Officer, the City Solicitor and the City Clerk be approved; and the City Clerk be directed to commence the nomination process for the appointment of members thereto;**

- (III) the following recommendation contained in the aforementioned joint report be referred to the proposed Toronto Election Finance Review Task Force for consideration:**
- “(1) should City Council wish to request amendments to the Municipal Elections Act to address any of the issues numbered 1 to 19 in the comments section of this report, Council direct the City Clerk to forward its request to the Minister of Municipal Affairs and Housing so that the request can be considered before the 2003 election;”;**
- (IV) as part of the considerations of the Municipal Campaign Finance Reform, the Toronto Election Finance Review Task Force be requested to consider:**
- (a) that rebates, if allowed, only be issued for contributions of legal tender; and**
- (b) the elimination of the contribution rebate program;**
- (V) City Council direct the City Clerk to report back with recommendations in September 2002 on the entire contribution rebate program as part of the 2003 municipal election by-law report taking into account the issues raised in the aforementioned joint report; and**
- (VI) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.**

The Administration Committee submits the following joint report (June 11, 2002) from the Chief Administrative Officer, the City Solicitor and the City Clerk:

Purpose:

To report to the Administration Committee on the establishment of a Toronto Election Finance Review Task Force. This report also informs councillors that requests to amend the Municipal Elections Act, 1996 before the 2003 Election must be forwarded to the Minister immediately. This would not provide time for a task force to be established and review the recommendations. Additionally, it directs the City Clerk to report back in September on the Contribution Rebate Program.

Financial Implications and Impact Statement:

None. Should a Task Force be established, any associated costs and staff support would be found within the City Clerk's budget.

Recommendations:

It is recommended that:

- (1) should City Council wish to request amendments to the Municipal Elections Act to address any of the issues numbered 1 to 19 in the comments section of this report, Council direct the City Clerk to forward its request to the Minister of Municipal Affairs and Housing so that the request can be considered before the 2003 election;
- (2) City Council direct the City Clerk to report back with recommendations in September 2002 on the entire contribution rebate program as part of the 2003 municipal election by-law report taking into account the issues raised in this report;
- (3) should City Council wish to establish a Toronto Election Finance Review Task Force to consider longer term election finance issues, the terms of reference in Appendix "C" be approved and the City Clerk be directed to commence the nomination process for members; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting of April 30, 2002, the Administration Committee took the following action with respect to a communication (April 22, 2002) attached as Appendix "A" to this report:

- “(1) the Committee approve in principle the establishment of a Toronto Election Finance Review Task Force;
- (2) the Committee request the Chief Administrative Officer, the City Solicitor and the City Clerk, in consultation with appropriate staff including the Director of Election Services, to report on the establishment of a Toronto Election Finance Review Task Force; such report to include membership, chairmanship, terms of reference and financial implications; and submit to the September 10, 2002, meeting of the Administration Committee;
- (3) the Committee direct that the Task Force Terms of Reference include consideration of, inter alia, the following matters:
 - (3.1) the prohibition of campaign contributions from corporations, numbered companies, unions and organizations so that contributions are permissible only by individual resident electors;
 - (3.2) the requirement of the issuance of receipts by candidates for all financial donations;

- (3.3) the requirement of the public reporting by the City of all recorded contributions;
 - (3.4) means to compel the reporting of soft money contributions, including the use of candidate affidavits;
 - (3.5) means to eliminate the potential abuse of spending on excluded items that are essentially election campaign expenses;
 - (3.6) the need for an independent and impartial complaint resolution process free from political involvement;
 - (3.7) the need for improvement in the adequacy of current and historic City of Toronto statistical information gathering, including a routine process for reporting to Council on all aspects of recently conducted elections;
 - (3.8) the adequacy of the print and online advertisement of public electoral information, and the need for funding that will eliminate public user fee charges;
 - (3.9) the establishment of a permanent independent municipal body charged with reporting, monitoring and resolution of all aspects of campaign financing;
 - (3.10) the merits of campaign finance legislation specific to the needs of Toronto or Ontario's large urban municipalities;
 - (3.11) the financial impacts to the City of any potential changes; and
 - (3.12) a review of practices in other jurisdictions;
 - (4) the Committee direct that the Task Force give consideration to the proposals contained in this report from Councillor Walker; and
 - (5) the Committee direct that the Task Force schedule its work in order that its proposals can be considered and implemented, as appropriate, either by Council, or through Provincial legislation and/or regulation, in time for the municipal election in November 2003;" and
- “(II) requested the Chief Administrative Officer to review the evaluation of the Provincial Election Expenses Commission which previously scrutinized municipal election financing and the development and execution of Provincial legislation governing Municipal Election Financing.”

This action was reported to City Council at its meeting of May 21, 22 and 23, 2002, in Clause No. 27(c) of Report No. 6 of The Administration Committee (Other Items Considered by the Committee).

At its meeting of November 6, 7 and 8, 2001, City Council adopted, with amendments, Clause No. 1 of Report No. 15 of The Administration Committee advising that the Committee had:

- “(2) referred the communication (September 6, 2001) from Councillor David Soknacki, entitled “Municipal Campaign Finance Reform” to the City Clerk for report thereon to the Administration Committee;” (attached as Appendix “B”)

Comments:

The Administration Committee has directed staff to prepare terms of reference for a Task Force to be established to consider election campaign finance reform issues and report back to the Committee at its September 10, 2002, meeting.

The majority of issues that have been raised require legislative amendments. Historically, the Province does not enact amendments to election legislation in the year of an election, which begins on January 2, 2003. Staff of the Ministry of Municipal Affairs and Housing have advised that the window of opportunity for legislative amendments to the *Municipal Elections Act, 1996* (the “Act”) is early summer of 2002. If Council wishes to have these issues considered in time for the 2003 municipal election, they must be communicated to the Minister of Municipal Affairs and Housing immediately.

The Task Force could still be established to review issues and provide recommendations to City Council on election financing reform in the longer term.

A few of the issues raised could be dealt with by Council in the absence of any legislative amendments through a campaign contribution program should Council decide to implement such a program for the 2003 municipal election. The City Clerk will be reporting in September on a 2003 contribution rebate program.

Review of Issues Raised in Appendices “A” and “B”:

The following comments refer to the recommendations in the attached appendices and provide further background information.

- (1) The prohibition of campaign contributions from corporations, numbered companies, unions and organizations so that contributions are permissible only by individual resident electors.

This would require a legislative amendment. The *Act* currently permits campaign contributions to be made by residents of the Province of Ontario, corporations carrying on business in Ontario and trade unions that hold bargaining rights for employees in Ontario.

However, should Council decide to implement a contribution rebate program for the 2003 municipal election, Council could provide that only individuals living in the City of Toronto, not corporations/trade unions or non-resident contributors are entitled to a rebate. The Town of Ajax, which is the only other Ontario municipality that has a rebate program, only pays rebates to eligible electors of the Town of Ajax, excluding candidates and their spouses.

The following table indicates the amount of contributions made during the 2000 municipal election to all candidates and candidates elected to office from corporations/trade unions versus individuals.

	Contributions made to all Candidates for Office on City Council*	Contributions made to Candidates Elected to Office on City Council*
Corporations/Trade Unions	\$2,372,471	\$1,970,180
Individuals	\$1,992,013	\$1,334,402
Total	\$4,364,484	\$3,304,582

* Only includes those candidates that participated in the City of Toronto's contribution rebate program. (Some candidates choose to finance their own campaigns or do not raise sufficient funds to warrant the cost of having their financial statement audited in order to participate in the program.)

Rebates totalling \$1,247,680 were paid with respect to the 2000 election.

- (2) The requirement of the issuance of receipts by candidates for all financial donations.

This would require a legislative amendment. The *Act* requires candidates to issue a receipt for all contributions of money, goods or services (including cash donations less than \$25) with the sole exception of a donation of \$10 or less received at a fund-raising function, which is defined under the *Act* as not being a contribution. However, the total amount of these donations must be reported as revenue of the fund-raising event.

- (3) The requirement of the public reporting by the City of all recorded contributions.

This would require an amendment to Ontario Regulation 101/97, as amended. The financial forms are prescribed by the Minister of Municipal Affairs and Housing, not the City Clerk, and exclude the names/addresses of contributors donating \$100 or less.

It should be noted that candidates participating in the City's campaign contribution rebate program are required under the City's by-law to submit with their financial statement

copies of all contribution receipts, including those for donations of \$100 or less. These receipts are available for public inspection in the Clerk's office.

- (4) Means to compel the reporting of soft money contributions, including the use of candidate affidavits.

To compel candidates to file an affidavit would require a legislative amendment and/or an amendment to the financial forms contained within Ontario Regulation No. 101/97, as amended. A contribution of a good or a service is to be treated in the same manner as a contribution of cash, i.e., the market value of the good or service must be determined, a receipt issued for that amount and the contribution must be reported. Failure to do so could give rise to a compliance audit request by an eligible elector.

This is one of the issues being dealt with in the City of Ottawa's legal action against a councillor arising out of a compliance audit. The councillor allegedly did not report the market value of office space he received free of charge. A court date has not yet been scheduled to hear this matter.

However, should Council decide to implement a contribution rebate program for the 2003 municipal election, Council could provide that only contributions of money are eligible for a rebate, not contributions of goods or services. The Town of Ajax has this stipulation in its by-law. Candidates sometimes treat what would normally be "volunteer unpaid labour" as a receipted contribution so the individuals working on their campaign can get a rebate back from the City. The *Act* specifically excludes volunteer unpaid labour from the definition of a contribution.

- (5) Means to eliminate the potential abuse of spending on excluded items that are essentially election campaign expenses.

This would require a legislative amendment as the only way to eliminate potential abuse is to remove certain expenses from the excluded expenses category, e.g. fund-raising expenses. The *Act* defines what the excluded expenses are and requires candidates to properly classify their expenses between those subject to the spending limit and those that are excluded. An improper classification of an expense could be the grounds for a compliance audit request by an elector.

This is one of the issues being dealt with in the City of Ottawa's legal action against a councillor arising out of a compliance audit. The councillor allegedly reported the entire cost of a brochure as a fund-raising expense as it contained a request for contributions. The auditors who conducted the compliance audit are of the opinion that in order to qualify as a fund-raising expense, the brochure should have been linked to a specific event. A court date has not yet been scheduled to hear this matter.

- (6) The need for an independent and impartial complaint resolution process free from political involvement

This would require a legislative amendment. Council has already dealt with this issue. On December 4, 5 and 6, 2001, Council adopted the following recommendation and forwarded it to the Minister of Municipal Affairs and Housing:

“It is recommended that the Province of Ontario be requested to amend the Municipal Elections Act, 1996, to provide that the City of Toronto Council would be required to establish an arms-length committee that would receive and make decisions on compliance audit requests, the membership of such committee to be at the discretion of Council and be comprised of individuals, other than City of Toronto staff, who have knowledge of the election campaign finances provisions of the Act and are representative of the community.”

- (7) The need for improvement in the adequacy of current and historic City of Toronto statistical information gathering, including a routine process for reporting to Council on all aspects of recently conducted elections.

This would require a legislative amendment and an amendment to the financial forms contained in Ontario Regulation No. 101/97, as amended. The *Act* only requires the Clerk to verify limited information on the financial statements, e.g. whether or not, on the face of the document, the candidate exceeded the expense limit for the office. The prescribed financial statement and auditor’s report (form 5) under the *Act* provides for broad classifications of expenses and the financial statement (form 4) provides for no breakdown of expenses.

Election Services’ budget would be impacted if staff were required to summarize the candidates’ contributors and expenses; e.g., additional staff resources would be required and a software program would need to be developed. (There were 419 candidates in the 1997 election and 311 in the 2000 election.)

Election Services does conduct an extensive post-mortem after a regular election and prepares a report for Council. The Election 2000 report went to Administration Committee in September 2001 and on to Council in October 2001. Councillors were invited to participate in this post-mortem via interviews, although not all chose to do so.

Prior to the 2000 municipal election, elections were conducted by the clerks of the six former municipalities with no amalgamation of statistics amongst the municipalities. Unfortunately, the majority of the historical records from the former municipalities, both manual and electronic, have disappeared. Election Services staff have details/statistical information from the 2000 municipal election and the 1998, 1999 and 2001 by-elections which are available to the public.

- (8) The adequacy of the print and online advertisement of public electoral information, and the need for funding that will eliminate public user fee charges.

This would require a legislative amendment. The *Act* only permits inspection of election documents in the Clerk's office. In addition, the *Act* specifically forbids the posting of the voters' list in a public place or on the Internet or being made available in any other print or electronic medium of mass communication.

With respect to the dissemination of general election information to the public, Election Services staff establish an election website during an election period. It contains information for candidates, electors, the media and potential election employees, e.g., the Candidate's Guide, candidate contact information, a mapping program to advise electors where they would go to vote, questions and answers, employment opportunities and election results. During the period September 1, 2000, through to election day (November 13, 2000) the website showed an average of 285,388 hits per day, with 966,855 hits on election day itself.

In addition, for the 2000 municipal election, an election tabloid was produced and delivered to every household in the City that contained general election information and contact numbers for additional information. This tabloid was available in the eleven languages as directed by Council as well as in Braille.

The 50 cents per page fee for copies is in accordance with Council By-law No. 451-1998 and balances the public's access to documents with cost recovery. Any change to the fee will negatively impact Election Services' budget. It is appropriate to charge Council Members the fee as it is an election expense and should not normally be paid out of their office budgets in accordance with the City's policy on the use of corporate resources for election purposes. A report on this issue will be going to Administration Committee in September. Any form/document may be viewed free of charge in the Clerk's office.

- (9) The establishment of a permanent independent municipal body charged with reporting, monitoring and resolution of all aspects of campaign financing.

Part of this issue would require a legislative amendment. Council has already dealt with this issue. On December 4, 5 and 6, 2001, Council adopted the following recommendation and forwarded it to the Minister of Municipal Affairs and Housing:

"It is recommended that the Province of Ontario be requested to amend the Municipal Elections Act, 1996, to provide that the City of Toronto Council would be required to establish an arms-length committee that would receive and make decisions on compliance audit requests, the membership of such committee to be at the discretion of Council and be comprised of individuals, other than City of Toronto staff, who have knowledge of the election campaign finances provisions of the Act and are representative of the community."

If Council decides to establish a Toronto Election Finance Review Task Force, Council could refer municipal campaign finance issues to it for consideration and recommendations to Council. Draft terms of reference for such a Task Force are attached as Appendix "C".

- (10) The merits of campaign finance legislation specific to the needs of Toronto or Ontario's large urban municipalities.

This would require new legislation or a legislative amendment. It is unknown if the Province would be agreeable to implementing specific election legislation pertaining to large urban municipalities.

- (11) The financial impacts to the City of any potential changes.

The financial impacts of any potential changes would be dependent upon the scope of the changes implemented. The City Clerk would need to report back on this issue once the changes were known.

- (12) A review of practices in other jurisdictions.

This is a matter that could be referred to the Task Force for review and comment should Council decide to establish such a Task Force.

- (13) Requested the Chief Administrative Officer to review the evaluation of the Provincial Election Expenses Commission which previously scrutinized municipal election financing and the development and execution of Provincial legislation governing Municipal Election Financing.

This would require a legislative amendment. The former Commission on Election Finances (now part of Elections Ontario) specifically requested the Province to be removed from the municipal election process during the redrafting of the municipal election legislation in 1996.

- (14) The need for a limit on how much money candidates can raise.

While the April 22, 2002 communication also discussed the issue of candidates raising more money than they are entitled to spend, this was not one of the specific recommendations of the communication. To implement this would require a legislative amendment. The *Act* limits the amount a candidate can spend, not the amount he or she can raise.

However, should Council decide to implement a contribution rebate program for the 2003 municipal election, the *Act* provides that Council could require that any candidate surpluses become the property of the City.

- (15) Once a candidate has registered with a municipality for the next municipal election, that candidate may be allowed to fundraise on a regular basis as long as the candidate files all of the necessary interim reports with the municipality's Election Office.

This would require a legislative amendment. The *Act* only contemplates the filing of a financial statement at the conclusion of the election campaign period, not interim reports. If a candidate is in a deficit at the end of the campaign period, he or she may continue to fundraise for one additional year provided that he or she files a supplementary financial statement covering each six-month period of the extended campaign period.

- (16) The itemized disclosure of all campaign finance returns include an appendix with photocopies of receipts for all incurred expenses.

This would require an amendment to Ontario Regulation No. 101/97, as amended. The financial forms are prescribed by the Minister of Municipal Affairs and Housing and do not require a candidate to submit copies of invoices.

However, should Council decide to implement a contribution rebate program for the 2003 municipal election, Council could require that candidates would have to submit copies of invoices as a condition of participating in the program.

- (17) For donations of more than \$100 from numbered companies, all individuals or corporations owning more than 50 percent of the donating corporation's common shares must be listed, as well as the general nature of the business, otherwise the donation will not be allowed.

This would require a legislative amendment as well as an amendment to the prescribed financial forms under Ontario Regulation No. 101/97, as amended. Neither the *Act* nor the prescribed forms currently require this information to be provided.

- (18) Campaign deficits from prior elections may not be carried forward as a justifiable expense in the financial filing of the following election. An unpaid deficit from the previous election by the closing of nominations for the next election will void the nomination papers of the candidate.

This would require a legislative amendment as well as an amendment to the prescribed financial forms under Ontario Regulation No. 101/97, as amended. The *Act* provides that a candidate may deduct a deficit from the immediate preceding campaign from the current campaign surplus. It should be noted that it would be impossible for the Clerk to ascertain whether or not a candidate had any unpaid bills from the prior election.

- (19) Candidates are allowed to fundraise to any limit. However, amounts greater than twice the allowable election limit will be forfeit to the municipality's treasurer, at the time of filing the election financial return.

This would require a legislative amendment. The *Act* provides that a candidate's surplus is held in trust by the Clerk and is released back to the candidate, with interest, if he or she files a nomination in the next election for office on Toronto City Council.

However, should Council decide to implement a contribution rebate program for the 2003 municipal election, the *Act* provides that Council could require that any candidate surpluses become the property of the City.

Conclusions:

The majority of issues that have been raised require legislative amendments. If Council wishes to have these issues considered in time for the 2003 municipal election it will need to send this request to the Ministry of Municipal Affairs and Housing immediately.

The issues that have been identified that could be dealt with through the contribution rebate program will be brought forward in September as part of the 2003 municipal election by-law report.

The Toronto Election Finance Review Task Force could still be established to review issues and provide recommendations to City Council in the longer term.

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List of Attachments:

Appendix “A” – April 22, 2002, communication from Councillor Walker.
Appendix “B” – September 6, 2001, communication from Councillor Soknacki.
Appendix “C” – Terms of Reference for the Toronto Election Finance Review Task Force.

Appendix “A”

(Communication (April 22, 2002) from Councillor Michael Walker, entitled
“A Proposal for a Toronto Election Finance Review Task Force”.)

Executive Summary:

Elections are fundamental to democracy. So too are the processes that regulate the financing of those elections.

It is clearly good public policy to encourage the involvement by the citizenry in the election of their representatives, this being a practical expression of public support for the principle of representative democracy. When such involvement is financial, it can serve to facilitate

candidacies, support the debate of issues, widen interest in elections generally, and defray system-wide costs.

However, it is plain that money is an important currency of politics. As a result, it is essential to ensure that financial involvement in electioneering is subject to clear and transparent rules for the giving and receiving of money and other value, and that these do not permit or facilitate any perception of impropriety or favouritism.

It is fair to ask whether the current regime for election financing measures up to such a standard. It is reasonable to conclude that it does not.

Since its establishment as an amalgamated municipality in 1997, there has been no concerted effort to review the adequacy, fairness, or modernity of legislation, regulation and administrative processes that govern the financing of elections in the City of Toronto. The scheduled municipal election November 2003 now makes such an exercise timely and appropriate.

The work undertaken by my office highlights a number of findings that call out for review and reform:

- (i) sixty per cent of donations to successful Toronto candidates in the 2000 municipal election were from corporations;
- (ii) nine successful Toronto candidates in the last municipal election received more than 80 per cent of their reported financing from corporations. The highest among those nine was 90 per cent, and the average among those nine was 84 per cent;
- (iii) only four Councillors raised over 80 percent of their donations from individuals;
- (iv) Corporations receive the lion's share of public money rebated to financial contributors;
- (v) not all financial contributions are required to be recorded by candidates;
- (vi) contributions of "soft money" can be used to hide unreported contributions;
- (vii) some candidates spent more on excluded fundraising expenses alone than the legal spending limit for an entire campaign;
- (viii) expenses by sitting candidates on items excluded from reporting requirements can be open to abuse;
- (ix) some candidates build war chests by raising far more money than they can legally spend. The top ten successful candidates in the last election each raised an average of \$77,692, more than three times the allowable spending limit in a typical ward;

- (x) complaints of election finance violations are administered without independence or impartiality;
- (xi) the City's compilation of election finance information is inadequate; and
- (xii) the City's user charges for public election finance data are inappropriate.

This report recommends that Council establish a Toronto Election Finance Review Task Force. This Task Force would be charged with the responsibility of reporting to Council on a variety of matters that can be considered and implemented, as appropriate, in time for the November, 2003 municipal election.

These matters include:

- (i) the prohibition of campaign contributions from corporations, numbered companies, unions and organizations. Contributions should be made by qualified individuals only, a practice that is already in place in Quebec;
- (ii) the requirement of the issuance of receipts by candidates for all financial donations;
- (iii) the requirement of the public reporting by the City of all recorded contributions;
- (iv) means to compel the reporting of soft money contributions, including the use of candidate affidavits;
- (v) means to eliminate the potential abuse of spending on excluded items that are essentially election campaign expenses;
- (vi) the need for an independent and impartial complaint resolution process free from political involvement;
- (vii) the need for improvement in the adequacy of current and historic City of Toronto statistical information gathering and reporting, including a routine process for reporting to Council on all aspects of recently conducted elections;
- (viii) the adequacy of print and online advertisement of public electoral information, and the need for funding that will eliminate public user fee charges;
- (ix) the establishment of a permanent independent municipal body charged with reporting, monitoring and resolution of all aspects of campaign financing; and
- (x) the merits of campaign finance legislation specific to the needs of Toronto or Ontario's large urban municipalities.

Recommendations:

It is recommended that:

- (1) the Committee approve in principle the establishment of a Toronto Election Finance Review Task Force.
- (2) the Committee request the Chief Administrative Officer, in consultation with appropriate staff including the Manager of Election Services, to report on the establishment of a Toronto Election Finance Review Task Force; such report to include membership, chairmanship, terms of reference and financial implications;
- (3) the Committee direct that the Task Force Terms of Reference include consideration of, inter alia, the following matters:
 - (3.1) the prohibition of campaign contributions from corporations, numbered companies, unions and organizations so that contributions are permissible only by individual resident electors;
 - (3.2) the requirement of the issuance of receipts by candidates for all financial donations;
 - (3.3) the requirement of the public reporting by the City of all recorded contributions;
 - (3.4) means to compel the reporting of soft money contributions, including the use of candidate affidavits;
 - (3.5) means to eliminate the potential abuse of spending on excluded items that are essentially election campaign expenses;
 - (3.6) the need for an independent and impartial complaint resolution process free from political involvement
 - (3.7) the need for improvement in the adequacy of current and historic City of Toronto statistical information gathering, including a routine process for reporting to Council on all aspects of recently conducted elections;
 - (3.8) the adequacy of the print and online advertisement of public electoral information, and the need for funding that will eliminate public user fee charges;
 - (3.9) the establishment of a permanent independent municipal body charged with reporting, monitoring and resolution of all aspects of campaign financing; and
 - (3.10) the merits of campaign finance legislation specific to the needs of Toronto or Ontario's large urban municipalities; and

- (4) the Committee direct that the Task Force give consideration to the proposals contained in this report from Councillor Walker; and
- (5) the Committee direct that the Task Force schedule its work in order that its proposals can be considered and implemented, as appropriate, either by Council, or through Provincial legislation and/or regulation, in time for the municipal election in November, 2003.

The Case For Reform:

Corporations Dominate Election Financial Contributions. They Contributed 60 Per Cent of the Financing of Successful Toronto Campaigns, and Received the Lion's Share of Public Rebate Benefits:

The Municipal Elections Act permits candidates for City Council to solicit donations from qualified Ontario electors. Candidates can accept donations of up to \$750.00 per candidate. The maximum donation that a candidate for Mayor can accept is \$2,500.00.

The Government of Ontario recognizes the importance of promoting individual financial contributions in election campaigns. If the municipality chooses, it may offer tax credit or cash rebates to contributors. If the contribution \$100 or less, the rebate or credit is \$75. If it exceeds \$100 and is less than \$400, the rebate or credit is \$75 for the first \$100, plus 50 per cent of the amount contributed above \$100. For larger contributions, the rebate or credit is \$225 plus one-third of the amount contributed above \$400, or \$350, whichever is less.

In Toronto, the primary benefit of these actions is derived not by individuals, but by corporations. In fact, corporations are by far the dominant source of electoral financing in the City of Toronto.

Based on our own research on the 2000 municipal election, successful candidates in the City of Toronto raised over \$1.9 million from corporations, \$700,000 from individuals, and less than \$60,000 from trade unions. That means that 60 percent of all candidate monies raised was from corporations, while 37 percent was raised from individuals and approximately three percent was raised from trade unions. On the reasonable assumption that many personal contributions were made on behalf of a corporate interest, the corporate dominance is even greater.

Nine Successful Toronto Candidates Raised More Than 80 Per Cent of Their Financing From Corporations:

In nine cases of successful campaigns run in the last municipal election, more than 80 per cent of candidate donations were received from corporations. If the public policy intent of the election tax credit and rebate expenditure is to encourage individual involvement in campaign financing, it is not working. It cannot be that the public policy intent is to allow undue corporate domination of election financing. Such domination only serves to create perceptions of corporate influence on, and ownership of the municipal agenda.

It is essential that the Task Force consider the prohibition of campaign contributions from corporations, numbered companies and unions. Contributions should be made by qualified individuals only. This is a practice that is already in place in jurisdictions such as Quebec.

Not All Financial Contributions Are Recorded:

Donations of \$10 or less donated at a fundraising event are not required to be recorded by candidates. Cash donations up to \$25 dollars can be accepted without reporting. Contributions greater than \$25 must be in the form of a cheque, money order or credit card.

The basis for this lack of recording for small cash payments is likely the desire to free candidates from the administrative burden of issuing receipts. The operating assumption is that such donations are too small to act as an influence on candidate behavior or decision making.

This seems to be a dated concept. It is appropriate that the Task Force review this matter, with a view to requiring the issuance of receipts for all donations of any size.

Not All Financial Contributions Are Reported:

Audited Statements prepared by the City Clerk on election contributions exclude all contributions below \$100. This appears to have no public policy basis, and no obvious public benefit.

It is appropriate that the Task Force review this matter with a view to the complete public reporting of all recorded contributions.

Contributions of “Soft Money” Are Hidden And Unreported Contributions:

Most financial contributors contribute finances, for which reporting requirements apply. However, others contribute financial value, for which reporting is required but often avoided. A typical example is a contribution in campaign office space at reduced commercial rents. This is an issue because it may represent an assumed interest on the part of the contributor that is not publicly recorded or accountable.

It is appropriate that the Task Force review the means available to compel the reporting of soft money contributions, including the use of candidate affidavits.

Expenditures on Items Not Subject to Spending Limits Are Open to Abuse:

Election finance law currently distinguishes between candidate costs subject to a legal spending limit and costs not so subject. Costs such as accounting and the auditing of financial statements are excluded from the spending limit on the grounds that while necessary, they offer no direct electoral benefit to the candidate.

However, the status of other excluded costs is questionable, and subject to potential abuse. The exclusion of expenses relating to fundraising is a case in point. A ward-wide fundraising letter from a candidate seeking donations is excluded, but it can have the same effect as a campaign brochure and receive much wider distribution.

In fact, some candidates spent more on such excluded fundraising expenses alone than the legal spending limit for an entire campaign.

A significant number of politicians spent more money on costs not subject to the legal spending limit than they did on their entire election campaigns.

It is appropriate that the Task Force report on ways to eliminate the abuse of spending on excluded items that are essentially election campaign expenses.

Candidates Raise More Money Than They Can Spend:

There is a limit on the amount that candidates for City Council can spend on an election campaign. This limit is based on a formula of \$3,500 (\$5,500 for Mayoralty candidates) plus 50 cents per eligible elector per ward. In a typical ward with 40,000 eligible electors, for example, this would amount to some \$23,500.

Many successful candidates raised substantially more than this formulaic amount, representing monies that can not be used for the purposes they were raised. The top 10 successful candidates in the last election each raised an average of \$77,692 – more than three times the allowable spending limit in a typical ward. In fact, many Councillors raised enough money in the last election to fund their next three election campaigns.

Monies raised that are surplus to the formula are banked by the City and returned to the candidate if they register in the next election. If they do not register, the monies are transferred to the City's general revenues. This means that there are contributors whose contribution is never put to the use it was intended, and who are unaware of the disposition of their money. It is an odd twist that some campaign contributors are actually funding general City revenues.

It is fair to review the public benefit of such banking. Sitting Councillors can build significant war chests that put challengers at a substantial disadvantage. Contributors may not be aware that their contributions will not be used in the current campaign. Surpluses may encourage sitting candidates to minimize their activities during successive campaigns.

Complaints are Administered Without Independence or Impartiality:

Following the 2000 municipal election, there were a number of allegations that successful candidates for Toronto City Council had violated Ontario election laws. These had to do with donations in lieu-of-money, fundraising activities and donations in excess of the legal limit. They were dealt with by City Council. A number of difficulties arose as a result of this process.

First, there is no formal procedure in place for the investigation of complaints. Second, the allegations were brought by unsuccessful candidates, and it can be reasonably assumed that they

were, at least in part, politically motivated. Third, since all Members of Council could be subject to the same sort of allegation, they are arguably in a conflict of interest in passing judgement on one another. These all point to the inadvisability of politicians judging other politicians without benefit of established procedure.

It is appropriate that the Task Force to review the need for an independent and impartial review and resolution process independent from political involvement, to be carried out by a permanent, independent municipal body.

The Compilation and Availability of Election Data is Inadequate:

The Elections Services Office of the City of Toronto can not provide basic statistical information in any detail having to do with Toronto's most recent elections. It does not compile or maintain system-wide data on contributions by source or expenditures by type. It does not compile or maintain historic data for comparative or analytical purposes.

Further, The Municipal Elections Act does not require municipalities to conduct any "post-mortem" analysis or reporting on elections, and no such analysis takes place.

The Office levies a fee of 50 cents per page to all parties seeking public information on election financing. This charge is extended to all persons, including Members of Council. While this practice may be the result of inadequate funding, it represents a barrier to public knowledge and involvement.

It is appropriate that the Task Force review the adequacy of current and historic City of Toronto statistical information gathering, including a routine process for reporting to Council on all aspects of recently conducted elections.

It is appropriate that the Task Force also review the adequacy of the print and online advertisement of electoral information, and the need for funding that will eliminate user fee charges.

A Toronto Election Finance Review Task Force:

This report recommends that Council establish a Toronto Election Finance Review Task Force, and that the membership, chairmanship, terms of reference and financial implications of such an undertaking be reported on by the Chief Administrative Officer.

In that regard, it is proposed that the Chair of the Task Force be a well-respected member of the public with a record of impartiality and fairness. A suitable Chair would be a retired judge or politician, or member of the clergy.

Councillors should not have a majority position on the Task Force. The Task Force should consult widely and openly, and all its reports should be made available to all Members of Council and to the public.

The Task Force should consult with the Toronto District School Board, seek out its views on election financing matters affecting its candidates, and report as it sees fit on these matters.

The Task Force should schedule its work in order that its proposals can be considered and implemented, as appropriate, either by Council or through Provincial legislation or regulation, in time for the municipal election in November 2003.

The Task Force should also make recommendations on the merits of a permanent independent body charged with the responsibility of monitoring and reporting on matters relating to election financing, including complaint resolution.

As in many matters affecting the management of public affairs in Toronto, there is a dominant provincial role in legislation affecting the financing of elections. It is appropriate that the Task Force either include formal provincial representation or gain provincial staff support and input.

It is also appropriate that the Task Force review the merits of separate election campaign legislation applicable either to the City of Toronto, or to the large urban municipalities of Ontario.

Appendix "B"

(Communication (September 6, 2001) from Councillor David Soknacki,
entitled "Municipal Campaign Finance Reform.")

Purpose:

To ask the Administration Committee to approve the following recommendations, and request the City of Toronto Council to forward them to the Minister of Municipal Affairs and Housing, asking for the necessary amendments to *the Municipal Elections Act 1996*.

Financial Implications:

None.

Recommendations:

It is recommended that:

- (1) once a candidate has registered with a municipality for the next municipal election, that candidate may be allowed to fundraise on a regular basis as long as the candidate files all of the necessary interim reports with the municipality's Election Office;

- (2) the itemized disclosure of all campaign finance returns include an appendix with photocopies of receipts for all incurred expenses;
- (3) for donations of more than \$100 from numbered companies, all individuals or corporations owning more than 50 percent of the donating corporation's common shares must be listed, as well as the general nature of the business, otherwise the donation will not be allowed;
- (4) campaign deficits from prior elections may not be carried forward as a justifiable expense in the financial filing of the following election. An unpaid deficit from the previous election by the closing of nominations for the next election will void the nomination papers of the candidate; and
- (5) candidates are allowed to fundraise to any limit. However, amounts greater than twice the allowable election limit will be forfeited to the municipality's Treasurer, at the time of filing the election financial return.

History:

The disclosure of the source campaign contributions has been a significant issue of public concern in recent municipal elections. Progressive changes have been put in place recently, such as the ability of candidates to issue tax receipts, which helps to maintain a more accountable system in the eyes of the public. Further to this, by not allowing candidates to carry forward a deficit from the immediately preceding election, as noted in Recommendation No. (4) above, a system of accountability is created.

Conclusion:

These additional campaign finance reforms will continue the progress in modernizing Ontario's election system, by allowing it to evolve into a more transparent and open one, which holds all participants, both candidates and election officials accountable in the eyes of the general public.

Appendix "C"

Proposed Terms of Reference for the Toronto Election Finance Review Task Force

(1) Name:

The name of this Task Force is the "Toronto Election Finance Review Task Force".

(2) Duration:

The Task Force is intended to be established by January 2003 and will present a final report to Toronto City Council by October 2003. The Task Force will meet as needed with meetings to be scheduled at the call of the Chair.

(3) Mandate:

The mandate of the Task Force is to examine all aspects of municipal election campaign financing and make recommendations to City Council on legislative amendments and process improvements that will enhance the public accountability of candidate financial disclosure. It is not within the mandate of the Task Force to review the administrative procedures for the conduct of an election that are delegated to the City Clerk under the *Municipal Elections Act, 1996*.

(4) Membership:

The Task Force will be composed of no more than fifteen (15) members, drawn from City Councillors and representatives of stakeholder groups. This will include up to five (5) members of City Council with the balance drawn from the following stakeholder groups:

- (a) audit - external auditors with experience in auditing the financial statements of municipal candidates (2 members);
- (b) academic - college/university professors with expertise in political science, local government administration or urban studies (2 members);
- (c) government - representatives of the Ministry of Municipal Affairs and Housing and Elections Ontario (2 members);
- (d) members of ratepayers' groups/community groups with an interest in municipal election campaigns (2 members); and
- (e) residents of the City of Toronto with an interest in municipal election campaigns (2 members).

In the event any of the organizations mentioned in (a), (b) or (c) decline to participate, additional members will be drawn from (d) and/or (e).

(5) Membership Selection:

The five (5) Council members will be appointed by Council on the recommendation of the Striking Committee. The City Clerk will circulate information on the establishment of the Task Force to all Members of Council requesting they indicate their interest in being appointed to the Task Force and report to the Striking Committee.

The Institute of Chartered Accountants will be contacted by the City Clerk to request it nominate two members with experience in auditing municipal financial statements to sit on the Task Force.

On the basis of programs/areas of study offered, York University and Ryerson University will be contacted by the City Clerk to request they each nominate one professor with

expertise in political science, local government or public administration or urban studies to sit on the Task Force. In the event one of these universities declines to participate, the University of Toronto will be contacted as an alternate.

The Minister of Municipal Affairs and Housing and the Chief Election Officer of Ontario will be contacted by the City Clerk to request they each nominate one member with experience in election campaign finance to sit on the Task Force.

Election Services staff will work with the City's Nominations and Appointments Administrator and Communications staff to communicate to ratepayers'/community groups and the general public the opportunity to sit on the Task Force. Outreach initiatives will include a newspaper advertisement, the City's web site and letters to those citizens and ratepayers'/community groups who have previously indicated an interest to City staff to sit on an advisory committee/focus group.

The selection process will be based upon clearly understood and equitable criteria and members will be selected on the basis of the following:

- (a) experience working on a task force or similar setting;
- (b) demonstrated knowledge and understanding of municipal election campaign financing issues;
- (c) history of public service, such as volunteer work;
- (d) proven ability to consult and communicate with members of the public;
- (e) availability and willingness to attend meetings;
- (f) excellent oral and written communication skills;
- (g) proven analytical and decision making skills; and
- (h) ability to work in a team setting, including an interest and capacity to work through consensus.

If necessary, due to the volume of applications received from ratepayers'/community groups and the public, City staff will interview applicants who meet the above cited qualifications and prepare a short list for Council's consideration through Administration Committee.

A listing of proposed members for the Task Force will be brought forward to City Council for consideration by its December 2002 meeting.

- (6) Chair:

The Task Force members will select a Chair from amongst its members at its first meeting.

(7) Staffing and Resources:

The City Clerk will provide secretarial support to the Task Force. Other staff, drawn from the Chief Administrative Officer's Office and Election Services, will resource the Task Force as necessary to conduct research, develop and implement communications and outreach strategies, facilitate a community consultation process and assist in the writing of the final report.

The Task Force will require \$5,000 to do its work. These funds will be found within the City Clerk's operating budget. This will cover:

- (a) meeting costs (e.g. mailings);
- (b) stakeholder consultation and other communication costs, including newspaper advertisements; and
- (c) preparation of documents, including the final report.

(8) Consultation Process:

All meetings of the Task Force will be open to the public and the media and the City's web site will be used to communicate the meeting schedule.

Written submissions by residents, community groups and other interested individuals will be encouraged. Public service announcements and the City's web site will be used to keep the public informed of the Task Force's progress.

The Task Force will conduct one public meeting to obtain input from members of the public on election campaign reform. The City Clerk will advertise this public meeting in community newspapers. This notice will advise the public that if they are unable to attend the meeting, they can file a written submission.

(9) Reporting:

The Task Force will prepare a report for Council's consideration by October 2003. The report will include any recommendations for legislative amendments to the *Municipal Elections Act, 1996* that, in the Task Force's opinion, are necessary to improve the accountability of municipal candidates' election financing.

Mr. Jim Harris appeared before the Administration Committee in connection with the foregoing matter, and filed copies of four campaign pamphlets issued by Mayor Lastman during the 2000 Municipal Election.

Councillor Michael Walker, St. Paul's, also appeared before the Administration Committee in connection with the foregoing matter.