



TORONTO STAFF REPORT

September 1, 2004

To: Policy and Finance Committee

From: City Clerk

Subject: Staff Report on the Toronto Election Finance Review Task Force
Recommendations

Purpose:

The City Clerk was requested to provide additional background information on the recommendations of the Toronto Election Finance Review Task Force.

Financial Implications and Impact Statement:

N/A

Recommendations:

It is recommended that this report be received for information.

Background:

City Council on July 20, 21 and 22, 2004 referred Clause No. 13 of Report No. 5 of the Administration Committee (Toronto Election Finance Review Task Force Recommendations) to the City Clerk for report, through the Policy and Finance Committee on September 15, 2004, to City Council on September 28, 2004.

Comments:

The City Clerk has been requested to report on the recommendations of the Toronto Election Finance Review Task Force. This report provides Members of Council with additional background information. However, given the political nature of the issues and the fact the City Clerk is responsible for the independent and impartial conduct of elections, it is not appropriate for the Clerk to make any recommendations on these issues to Council.

Municipal campaign financing rules became effective in Ontario on June 8, 1988 in response to the public's concern that developers were financing election campaigns and that candidates were using surplus election funds to buy cars, finance family vacations or building "war chests" for future elections. These rules, with minor amendments, are still in place today.

It is interesting to note that the provinces of British Columbia and Manitoba and the City of Vancouver are also currently undergoing a review of the municipal electoral process, including an examination of campaign financing provisions.

Writing on the influence of money in elections, Thomas R. Berger, O.C., Q.C., Commissioner, Vancouver Electoral Reform Commission, states on page 116 of his report:

"One of the most important concerns in any democratic system is the way money can be used to influence the vote. It is no longer seriously contended that the sheer amount of money spent on election campaigns is not a critical factor in determining the outcome. [See for instance Canada (Royal Commission on Electoral Reform and Party Financing), *Reforming Electoral Democracy: Final Report* (Ottawa: Minister of Supply and Services Canada, 1991) at pp. 324 and 339. This Commission, better known as the Lortie Commission, was established in 1989 to inquire into the Canadian electoral systems, and present a series of recommendations aimed at improving and preserving the democratic character of federal elections in Canada. The Lortie Commission's observations on electoral finance reform have led to strict federal government regulation in the area.]

In the recent decision of *Harper v. Canada*, Justice Bastarache, writing for the Supreme Court of Canada, described the purpose of controls on electoral finance. He said:

62 The Court's conception of electoral fairness ... is consistent with the egalitarian model of elections adopted by Parliament as an essential component of our democratic society. This model ... promotes an electoral process that requires the wealthy to be prevented from controlling the electoral process to the detriment of others with less economic power. The state can equalize participation in the electoral process in two ways... First, the State can provide a voice to those who might otherwise not be heard... Second, the State can restrict the voices which dominate the political discourse so that others may be heard as well. In Canada, electoral regulation has focussed on the latter by regulating electoral spending through comprehensive election finance provisions. These provisions seek to create a level playing field for those who wish to engage in the electoral discourse. This, in turn, enables voters to be better informed, no one voice is overwhelmed by another. (*Harper v. Canada* 2004 SCC 33.)"

Other Jurisdictions:

Staff have reviewed the election finance rules at the federal and provincial levels, the municipal level in other Canadian provinces and several United States jurisdictions of similar size to the City of Toronto.

The Province of Quebec has the most detailed legislative provisions governing municipal campaign activity, followed by Ontario, British Columbia and Nova Scotia. Some have very limited provisions, e.g. Newfoundland and Labrador only provides for mandatory disclosure of contributions and expenses while Saskatchewan and Alberta both permit a municipal council to pass a by-law to provide for financial disclosure of the campaign finances of municipal candidates. (No municipality in Saskatchewan has passed such a by-law while Edmonton in Alberta has enacted a by-law.) The remaining provinces – Manitoba, New Brunswick and Prince Edward Island – have no provisions to regulate the financing of municipal campaigns. (While Manitoba does not regulate municipal campaign activity, Winnipeg does so through provisions in its City Charter.)

There are extensive provisions at the federal and provincial levels and internationally to govern the activity of both political parties and candidates. The rules of these jurisdictions are explained in more detail under each of the Task Force’s recommendations.

Principles of the *Municipal Elections Act, 1996*:

In determining which of the recommendations it chooses to forward to the Minister of Municipal Affairs and Housing, Council may wish to consider the “principles” of the *Municipal Elections Act, 1996* (the “*MEA, 1996*”). While the principles are not specifically articulated in the *MEA, 1996*, the principles that were considered by Ministry staff during the development of the *MEA, 1996* were that:

- a. the secrecy and confidentiality of the individual votes is paramount;
- b. the election should be fair and non-biased;
- c. the election should be accessible to the voters;
- d. the integrity of the process should be maintained throughout the election;
- e. there be certainty that the results of the election reflect the votes cast; and
- f. voters and candidates should be treated fairly and consistently within a municipality.

Any amendments to the campaign financing provisions of the *MEA, 1996* should be judged against the principles of fairness, accessibility and transparency. Fairness – sometimes referred to as a “level playing field” – would ensure that the rules benefit all candidates equally. Accessibility would ensure that there are no legislative barriers that would prevent individuals from participating as a candidate in the political process. Transparency would ensure there is a full public disclosure of the election campaign financing activities of candidates.

In addition, as one of the nine priority areas adopted by Council is “increased public involvement in civic affairs”, Council may wish to consider the impact any legislative amendments may have on public involvement in municipal campaigns.

Framework:

In providing the following background information on the Task Force recommendations, staff have examined the campaign financing provisions of other jurisdictions and have analyzed each

of the recommendations in relation to the above noted principles of the *MEA, 1996*. Staff have undertaken to identify for Council’s consideration the major issues surrounding each of the Task Force recommendations. Staff have not addressed in this report the other issues that were referred to the Task Force but which it did not make recommendations on, e.g. the appropriate length of the campaign period.

Comments on the Task Force Recommendations:

Task Force Recommendation Number 1 – Contribution Limits

Task Force Recommendation	That the City of Toronto request an amendment to the Ontario Municipal Elections Act to limit contributions to all candidates for councillor by an individual, corporation or trade union to \$1000 with a maximum of \$750 to any one candidate and to \$2,500 for all candidates for the office of head of a municipality with a maximum of \$2,500 to any one candidate.
Administration Committee Action	recommends that Council delete this recommendation and replace it with the following: “The Minister of Municipal Affairs and Housing be requested to amend the <i>Municipal Elections Act, 1996</i> , as amended, to prohibit corporations or trade unions from making municipal election contributions.”
Legislative Provisions	<p>Limits on contribution amounts - Would require legislative amendment. The <i>MEA, 1996</i> and the <i>City of Toronto Act, 1997</i> do not limit the amount an individual can contribute to <u>all</u> candidates for an office, only limits the amount given to a <u>specific</u> candidate. (There used to be a \$5,000 limit on the amount contributed to all candidates for a municipal council or school board but this was removed in 1996 once larger council sizes became the norm with municipal amalgamations.)</p> <p>Banning corporate and trade union contributions - Would require legislative amendment. The <i>MEA, 1996</i> permits contributions from residents of Ontario, corporations carrying on business in Ontario and trade unions holding bargaining rights for employees in Ontario.</p>

The following jurisdictions have banned or limited contributions from corporations and/or trade unions:

Table 1 – Canada – Federal Level

Jurisdiction	Legislative Provisions	Replacement Funding
Canada	Effective January 1, 2004, contributions from corporations and trade unions are banned with the sole exception of the ability of a corporation or trade union to donate a total of \$1,000 per year to the registered associations, nomination contestants and candidates of a political party and up to \$1,000 per year in total to an independent candidate.	<ul style="list-style-type: none"> • if the party receives 2% of the votes cast nationally or 5% of the votes cast in an electoral district, a payment of \$1.75 per vote received in the previous general election is made to the party • the percentage of the party’s election expenses eligible for reimbursement is increased from 22.5% to 50% • the threshold for the reimbursement of a candidate’s expenses is lowered from 15% to 10 % • the percentage of a candidate’s election expenses eligible for reimbursement is increased from 50% to 60% <p>(Note - the new public funding to replace the ban on corporate and trade union contributions is expected to cost approximately \$137 million over the four-year election cycle.)</p>

Table 2 – Canada – Provincial/Municipal Level

Jurisdiction	Legislative Provisions	Replacement Funding
Quebec and its municipalities and school boards	Only electors may make a campaign contribution to a provincial political party or to a provincial, municipal or school board candidate. These provisions have been in place since 1977. (Note – In a municipal election it is only the electors of the municipality that may make a contribution to candidates running in that municipality.)	Provincial: <ul style="list-style-type: none"> • an annual allowance calculated as the percentage of votes received in the last election x \$0.50 x number of electors in the Province • if a party receives 1% of the votes cast, a payment of 50% of incurred expenses to a maximum of \$0.60 per elector • if a candidate receives 15% of the votes, a payment of 50% of incurred expenses to a maximum of \$1.00 per elector
		Municipal: <ul style="list-style-type: none"> • if a candidate is elected or receives 15% of the votes, a payment of 50% of the incurred expenses plus the municipality pays the cost of the audit
Manitoba	Only residents of the province may make contributions to a political party or to a candidate. These provisions have been in place since 2000.	<ul style="list-style-type: none"> • no annual allowance • if a party receives 10% of the votes, a payment of 50% of the expense limit or 50% of the actual expenses • if a candidate receives 10% of the votes, a payment of 50% of the expense limit or 50% of the actual expenses
Northwest Territories	Trade unions are prohibited from making campaign contributions.	None.
Nunavut	Trade unions are prohibited from making campaign contributions.	None.
<p>Many provinces also provide direct funding to political parties and/or candidates even though they permit corporate and trade union contributions. Two provinces (Prince Edward Island and New Brunswick) also give annual allowances to the political parties. Two provinces (Ontario and Saskatchewan) reimburse a portion of the election expenses of the political parties. Six provinces (Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario and Saskatchewan) reimburse a portion of the candidates' election expenses.</p>		

Table 3 – United States

Jurisdiction	Legislative Provisions	Replacement Funding
United States	Corporations, labour organizations, national banks, federal government contractors and foreign nationals are prohibited from making contributions to candidates for President, Vice-President, Congress or the Senate. A campaign may, however, accept contributions from separate segregated funds (political action committees) established by corporations, labour organizations trade associations and national banks.	Public funding is only available from the federal government for eligible presidential candidates: <ul style="list-style-type: none"> • a matching payment of up to \$250 of an individual's contribution for the primary election • a \$20 million grant for the general election
City of New York	If the candidate is participating in the matching grant program, corporate donations are banned.	The grant program provides matching funds at a rate of \$4-to-\$1 for candidates that meet the program requirements.
Jurisdictions Limiting Corporate and/or Union Contributions		
City of Los Angeles	There are limits on the total amount of contributions from persons other than individuals: <ul style="list-style-type: none"> • for the office of councillor – a maximum of \$150,000 • for the office of City Attorney or Controller – a maximum of \$400,000 • for the office of mayor – a maximum of \$900,000 	

Table 4 shows the percentage of contributions from individuals, corporations and trade unions received by candidates during the 2003 election. (Figures are based on the financial statements filed by March 31, 2004. It does not include contributions received after December 31, 2003 by those candidates who have extended their campaign periods to eliminate a deficit.)

Table 4 – Breakdown of Contributions by Source – 2003 Toronto Election

Office	% of Individual Contributions	% of Corporate Contributions	% of Trade Union Contributions
Mayor	75.0	18.7	6.3
Average of Non-elected Mayoralty Candidates	65.7	33.9	0.4
Average of Councillors	45.0	50.7	4.3
Average of Non-elected Councillor Candidates	72.9	26.7	1.8
Average of Trustees	49.3	16.3	34.4
Average of Non-elected Trustees Candidates	56.0	19.9	24.1

As Table 4 demonstrates, individuals make the majority of campaign contributions. Most corporate donations were made to elected councillor candidates and trade union contributions were most prevalent to school board trustee candidates, both elected and non-elected.

Issues for Council to consider – ban on corporate and/or trade union donations:

Fairness:

- Will a ban on corporate and/or trade union contributions impact the public's confidence on the fairness and transparency of the political process? There is a perception that corporate and union donations may unduly influence the decision-making process, thereby eroding public confidence in the democratic process. In his address to the Standing Committee on Procedure and House Affairs during its consideration of Bill C-24, the Chief Electoral Officer of Canada stated that the contribution limits and banning of corporate and trade union donations "will do much to eliminate the perception of, or potential for, undue influence from political contributions". The Honourable Don Boudria, in his address to the Committee, stated that "recent surveys indicate that Canadians are concerned about corporate and union influence on the political process. According to Environics research, 81% of Canadians support limits on contributions."
- Will a ban on these contributions violate the principle of fairness? Corporations and trade unions pay property taxes to the City of Toronto. Accordingly, some assert they should have the right to support those candidates that represent their interests.
- Is it fair to allow some contributors to make multiple contributions? Permitting corporate and trade union donations allows business owners and union members to donate twice, once through the corporation or trade union and once as an individual contributor. In addition, as some corporations are comprised of a number of "associated companies", the possibility exists that these companies could make multiple contributions to a single candidate.

Transparency:

- Will a ban on corporate and/or trade union contributions simply drive this funding "underground"? For example, a corporation or trade union could simply provide funds to its employees or members with instructions to donate the money to a particular candidate. This would violate the principle of transparency, as there would be no disclosure of the actual source of the contribution.
- Does the current legislation provide for full transparency of contributors? As there are no requirements for the principals of a corporation to be identified on the financial statements of candidates, the public does not know who is behind the corporate donation.
- Can a ban on corporate and/or trade union contributions be effectively enforced? What mechanisms would need to be put in place to investigate and prosecute apparent violations?

Accessibility:

- Will a ban on corporate and/or trade union contributions still allow candidates sufficient capacity to fund their campaigns? What impact will this have on the principle of accessibility?

Rather than an absolute ban on corporate and trade union donations, the recommendation of the Task Force was to limit contributions by an individual, corporation or trade union to \$1,000 for all councillor candidates and to \$2,500 for mayoralty candidates. As noted above, there used to be a \$5,000 limit on the amount donated by a contributor to all candidates for a municipal council but this was removed in 1996 once larger council sizes became the norm with municipal amalgamations.

A legislative amendment would be required to implement this recommendation as contributors donating \$100 or less are not publicly identified in the candidates' financial statements. To enforce a limit, all contributors would need to be publicly identified. In order to enforce a limit on contributions, it would be necessary to develop a database for all campaign contributions and to sort the data by contributor name and/or address. With the potential of in excess of 40,000 contributors, this would be an expensive and time-consuming exercise.

Issues for Council to consider – limit on total contributions:

Fairness:

- Will imposing a limit on total contributions be fair to all candidates? Would this recommendation benefit those candidates who began their fund-raising early in the election year?
- If a limit on total contributions were to be imposed, what should the appropriate limit be?
- Will imposing a limit on total contributions be fair to contributors? Limits may prevent some contributors from donating to a candidate they would otherwise like to support.

Transparency:

- Will a limit on total contributions simply drive this funding “underground”? For example, contributors could still donate money but the candidate would simply not report this contribution in his/her financial statement. This would violate the principle of transparency, as there would be no disclosure of the contribution.
- Can a limit on total contributions be effectively enforced? What mechanisms would need to be put in place to investigate and prosecute apparent violations?

Accessibility:

- Will a ban on corporate and/or trade union contributions still allow candidates sufficient capacity to fund their campaigns? What impact will this have on the principle of accessibility?

Task Force Recommendation Number 2 – Contributions of Goods and Services

Task Force Recommendation	That contributions of goods and services must be reported and properly received as campaign contributions using provincial laws as the standard.
Administration Committee Action	recommends that Council adopt this recommendation
Legislative Provisions	The <i>MEA, 1996</i> does require this.

The *MEA, 1996* requires that all contributions, whether in the form of money, goods or services, must be recorded in the candidate's records, a receipt must be prepared and the contribution must be reported in the financial statement. In addition, if the value of the good or service exceeds \$100, the name and address of the contributor must be listed on the statement.

Subsection 21(2) of the provincial *Election Finances Act* allows the individual, corporation or trade union donating a good or service having a value of less than \$100 to determine that it is not to be considered as a contribution for the purposes of the *Act*. Moving to the provincial rules would make discretionary what is now mandatory and would reduce the campaign paperwork for candidates that accept contributions of goods or services of less than \$100.

Issues for Council to consider:

Fairness:

- Could candidates use this provision to avoid reporting expenses that would otherwise be subject to the spending limit for the office? As a contribution of a good or service creates a corresponding expense under the *MEA, 1996*, moving to the provincial rules could give rise to this possibility, thereby violating the principle of fairness.

Transparency:

- Will this recommendation result in less public disclosure of contributions of goods and services than is currently the case in municipal election campaigns? If so, this would violate the principle of transparency.

Task Force Recommendation Number 3 – Debts of a Candidate

Task Force Recommendation	That the debts of a candidate remaining unpaid 12 months after voting day will be deemed to be a contribution unless the candidate can show that he/she cannot afford to pay these debts.
Administration Committee Action	recommends that Council receive this recommendation
Legislative Provisions	Would require legislative amendment as well as an amendment to the prescribed financial forms under Ontario Regulation 101/97.

	The <i>MEA, 1996</i> gives candidates almost two full years to raise the necessary money to fund their campaigns. In addition, the <i>MEA, 1996</i> allows any deficit to be brought forward into the next election campaign provided the candidate is running for the same jurisdiction.
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In federal and provincial elections in Canada, any unpaid debts of a candidate become the responsibility of the constituency association.

The only municipal legislation regulating unpaid debts of candidates in Canada is found in Quebec. The political party is responsible for assuming any debt of a candidate endorsed by the party. If an independent candidate is elected and has not paid his or her election debts by December 31 of the election year, he or she loses the right to attend council meetings until such time as the debts are paid (section 509 of Quebec's *Elections and Referendums in Municipalities Act*).

Table 5 indicates the deficit position of candidates in the 2003 election, based upon the financial statements received to date.

Table 5 – Candidate Deficits – 2003 Toronto Election

Office	Number of Candidates	Total Deficit (\$)	Average Deficit (\$)
Mayor	N/A	N/A	N/A
Non-elected Mayoralty Candidates	12	-379,869	-31,656
Councillors*	10	-78,368	-7,837
Non-elected Councillor Candidates	56	-180,327	-3,220
Trustees	15	-20,427	-1,362
Non-elected Trustees Candidates	12	-26,584	-2,215

* Note – 9 of the 10 Councillors in a deficit position were elected for the first time in the 2003 election.

39 candidates are still fund-raising to eliminate a deficit and have until December 31, 2004 to raise funds. The final financial statements are not due until March 1, 2005. Therefore, it is premature to draw any conclusions as to the final deficit positions of candidates.

Issues for Council to consider:

Fairness:

- Will this be fair to new candidates who may experience more difficulties in raising sufficient money to fund their election campaigns?

Transparency:

- Will this violate the principle of transparency? Candidates who find themselves personally responsible for their campaign debts may need to accept funds from individuals, corporations and trade unions after the end of the campaign period. The names of these contributors would not be subject to public scrutiny, as they would not be reported in the financial statements of the candidates. To avoid this possibility, should these candidates be required to file financial statements until their debt is eradicated?

Accessibility:

- Will adoption of this recommendation serve to prevent some individuals from seeking elected office? If so, this would violate the principle of accessibility.

Task Force Recommendation Number 4 – Campaign Surpluses

Task Force Recommendation	That the City of Toronto request an amendment to the Ontario Municipal Elections Act to require that surpluses become the property of the municipality or local board, as the case may be, if they are not used in the election for which they were raised.
Administration Committee Action	recommends that Council adopt this recommendation, subject to deleting the words “or local board, as the case may be”, so as to read: The Task Force recommends that the City of Toronto request an amendment to the Ontario Municipal Elections Act to require that surpluses become the property of the municipality if they are not used in the election for which they were raised.
Legislative Provisions	Would require a legislative amendment to make this a mandatory provision. The <i>MEA, 1996</i> only provides this as an option for those municipalities that have adopted a contribution rebate program. Otherwise, the Clerk holds the surplus in trust for use by the candidate in the next election provided the candidate is running for the same jurisdiction.

In provincial and federal elections in Canada, the candidate’s surplus is paid over to the applicable political party or the constituency association. Any surplus of an independent candidate is paid to the relevant Chief Electoral Officer.

The City of Winnipeg and British Columbia municipalities require the surplus of a candidate to be paid over to the Clerk to be held in trust for the next election. The City of Edmonton requires the candidates to hold their own surplus for the next election – if they do not run, they must pay the funds to a Canadian registered charity. In the City of Vancouver the political party retains any municipal candidate surplus. In Quebec, municipal candidates endorsed by a political party are required to pay the surplus to the party. An independent candidate has the option of paying

the surplus to the Clerk or dispose of the funds for political, religious, scientific or charitable purposes.

Under the *MEA, 1996*, a candidate with a surplus from a previous election, who has no intention of running in the current election, may file a nomination paper and then withdraw the nomination in order to protect his or her surplus for a future election.

Table 6 indicates the surplus position of candidates in the 2003 election based upon the financial statements filed to date. (33 non-elected mayoralty candidates, 2 councillors, 92 non-elected councillor candidates, 17 trustees and 56 non-elected trustee candidates ended their campaign with a zero balance.)

Table 6 – Candidate Surpluses – 2003 Toronto Election

Office	Number of Candidates	Total Surplus (\$)	Average Surplus (\$)
Mayor	1	9,313	9,313
Non-elected Mayoralty Candidates	1	30,146	30,146
Councillors	32	487,842	15,245
Non-elected Councillor Candidates	41	128,704	3,139
Trustees	8	6,658	832
Non-elected Trustees Candidates	16	2,055	128

With the exception of the one non-elected mayoralty candidate surplus, the general trend is that candidates that are elected have higher surpluses than their non-elected counterparts.

Issues for Council to consider:

Fairness:

- Is it fair to all candidates that some are able to start their election campaigns with significant funds already in place?
- Is this recommendation fair to contributors? A contributor donates to a candidate for a specific election campaign – the contributor may or may not necessarily wish to support the same candidate in a future election.

Transparency:

- Will requiring surpluses to be paid over to the City of Toronto limit excessive fund-raising as there would be no benefit for candidates to raise more than they are legally allowed to spend?

Accessibility:

- Will adoption of this recommendation make seeking elected office more accessible for new candidates? Some may perceive this as being fairer to new candidates as all candidates would be starting their campaigns at zero.

Task Force Recommendation Number 5 – Excluded Expenses/Campaign Spending Limits

Task Force Recommendation	That the City of Toronto request an amendment to the Ontario Municipal Elections Act to include the cost of holding fund-raising functions and the cost of holding parties and making other expressions of appreciation after the close of voting as campaign expenses and thus subject to the maximum expenditure limit and that the General Regulation under the Municipal Elections Act be amended to provide that the limits on expenses be calculated on the same basis as that used in the Provincial Election immediately prior to the municipal election plus 25%. The Task Force also recommends that the costs of court cases and recounts not be included as campaign expenses.
Administration Committee Action	<p>recommends that Council adopt this recommendation subject to deleting the words “and that the General Regulation under the Municipal Elections Act be amended to provide that the limits on expenses be calculated on the same basis as that used in the Provincial Election immediately prior to the municipal election plus 25%”, and replaced with the words “and that the maximum expenditure limit be amended to provide that the limits on expenses be calculated on the same basis as that used in the 2003 Municipal Election plus 25% and any adjustment for inflation as may be deemed necessary”, so as to read:</p> <p>The Task Force recommends that the City of Toronto request an amendment to the Ontario Municipal Elections Act to include the cost of holding fund-raising functions and the cost of holding parties and making other expressions of appreciation after the close of voting as campaign expenses and thus subject to the maximum expenditure limit and that the maximum expenditure limit be amended to provide that the limits on expenses be calculated on the same basis as that used in the 2003 Municipal Election plus 25% and any adjustment for inflation as may be deemed necessary. The Task Force also recommends that the costs of court cases and recounts not be included as campaign expenses.</p>
Legislative Provisions	Would require legislative amendment as well as an amendment to Ontario Regulation 101/97. The <i>MEA, 1996</i> defines what the excluded expenses are and requires candidates to properly classify their expenses between those subject to the spending limit and those

	<p>that are excluded. The <i>MEA, 1996</i> defines audit and accounting fees, interest on bank loans, fund-raising expenditures, voting day parties, recount expenses, controverted election expenses and the nomination filing fee as excluded expenses.</p> <p>Ontario Regulation 101/97 prescribes the following expense limits:</p> <ul style="list-style-type: none"> • for the office of mayor - \$7,500 plus 70 cents per elector • for all other offices - \$5,000 plus 70 cents per elector entitled to vote for the office
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Costs for fund-raising and voting day parties are excluded expenses at both the federal and provincial levels in Canada.

The City of Winnipeg is the only municipal jurisdiction outside of Ontario that has spending limits for the offices and the costs of fund-raising and audits are excluded from these limits.

Table 7 gives a breakdown of the expenses subject to the spending limit and those not subject to the spending limit by candidates in the 2003 election based upon the financial statements received to date.

Table 7 – Breakdown of Campaign Expenses by Type – 2003 Toronto Election

Office	Number of Candidates	Expenses Subject to the Spending Limit (\$) and % of Total Expenses	Expenses Not Subject to the Spending Limit (\$) and % of Total Expenses	Total Expenses
Mayor	1	1,112,685 67.4%	538,196 33.6%	1,650,881
Non-elected Mayoralty Candidates	46	3,103,396 63.1%	1,816,777 36.9%	4,920,173
Councillors	44	1,058,356 57.8%	773,774 42.2%	1,832,130
Non-elected Councillor Candidates	179	1,540,469 78.4%	423,647 21.6%	1,964,116
Trustees	39	121,824 90.7%	12,529 9.3%	134,353
Non-elected Trustees Candidates	84	143,389 80.9%	33,942 19.1%	177,331

Mayoralty candidates, both elected and non-elected, spent approximately one-third of their campaign funds on the expenses not subject to the spending limits. Councillors spent almost double the amount on the excluded expenses compared to their non-elected counterparts.

Issues for Council to consider:

Fairness and Transparency:

- Will removing the costs for fund-raising and post-election parties from the excluded expenses provide clarity in the reporting of election expenses? There was a compliance audit conducted on a City of Ottawa councillor based upon allegations he had allocated the entire cost of a brochure as a fund-raising expense by including a sentence requesting donations to his campaign. The auditors concluded he had improperly classified this as an excluded election expense. As the resultant court case was dismissed by the judge on a technicality, there is no case law on this issue. Would it be possible for a candidate to improperly classify expenses as excluded expenses as a way to avoid the spending limits for the office? If so, this would violate the principles of fairness and transparency. How could this be investigated and enforced?

Accessibility:

- Will adoption of this recommendation result in reduced spending on election campaigns, thereby benefiting new candidates who may not have the same access to fund-raising? If so, this would respect the principle of accessibility.

Task Force Recommendation Number 6 - Financial Reporting

Task Force Recommendation	That the reporting of revenues and expenditures should be made more transparent by implementing mandatory electronic filing, providing definitions for expense categories, the use of more detailed report forms (including Form 5) by all candidates, and a continuation of the requirement that audits be conducted for campaigns with \$10,000 or more in revenues or expenditures.
Administration Committee Action	supported this recommendation in principle and requested the City Clerk and Chief Financial Officer and Treasurer to report to Council on July 20, 2004 on the financial implications of this recommendation
Legislative Provisions	Would require legislative amendment as well as an amendment to the prescribed financial forms under Ontario Regulation 101/97. The <i>MEA, 1996</i> permits a council to enact a by-law to permit electronic filing, but it is not mandatory for candidates to comply. The <i>MEA, 1996</i> also permits candidates who raise or spend less than \$10,000 to file a simple financial statement.

There are financial disclosure requirements at the federal and provincial levels as well as for municipal elections in Winnipeg, Edmonton, British Columbia, Nova Scotia, Newfoundland and Labrador.

It is estimated to cost approximately \$280,000 to develop and support an application to provide for the electronic filing of election campaign financial statements for candidates in Toronto's municipal elections. The Candidate's Guide prepared by the City Clerk does contain a detailed description of each section of the financial statements, including definitions of the expense categories.

Issues for Council to consider:

These issues are explained in detail in the City Clerk's report dated July 16, 2004 – Financial Implications of the Electronic Filing of Election Campaign Financial Statements and for the Production of Contributor Lists, attached as Appendix A.

Fairness and Accessibility:

- Will the adoption of this recommendation violate the principles of fairness and accessibility? A move to mandatory electronic filing and/or more detailed reporting forms will increase the complexity of a campaign, could cause a significant increase in the costs of a campaign and would place an additional burden on candidates, especially those who conduct a simple campaign. Is it fair to expect all candidates to provide in-depth reporting when they may be running a simple campaign? Would this serve as a barrier to some seeking elected office?
- Will this create concerns with the electronic dissemination of individual contributor information such as name and address? While section 88 of the *MEA, 1996* requires that this information shall only be used for election purposes, and staff require anyone purchasing election documents/statements to sign a statement to this effect, there exists the possibility that the information could be used in a manner other than what it was intended for.
- Is this recommendation fair to candidates in all 445 municipalities in the province? The *MEA, 1996* is public legislation that applies to elections in all Ontario municipalities. Outside of the major urban centres, many municipal campaigns are very basic. Imposing this requirement on all municipalities and candidates could create hardships.

Task Force Recommendation Number 7 – Joint Campaigns

Task Force Recommendation	That joint campaigns be recognized in the Municipal Elections Act, be subject to written agreements between the participants, that a joint bank account be opened with specific rules set out for the operation of the account and a provision that all joint expenditures be paid only through this account on an equitable basis, that the agreement be filed
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	at the time the bank account is opened, and that a separate filing be made for each joint account and each participant should attach a copy of the filing to the participant's return.
Administration Committee Action	recommends that Council receive this recommendation
Legislative Provisions	Would require legislative amendment as well as an amendment to the prescribed financial forms under Ontario Regulation 101/97. The <i>MEA, 1996</i> does not contain any provisions recognizing joint campaigns.

Staff could not find any Canadian jurisdiction that has legislative provisions to regulate joint campaigns.

Issues for Council to consider:

Fairness:

- Are joint campaigns widespread enough in the province of Ontario to justify legislative change? Election Services staff are aware of the Toronto practise of some councillor candidates to share elections signs and fund-raising functions with school board candidates. However, the *MEA, 1996* is public legislation that applies to elections in all Ontario municipalities.
- Are joint campaigns “equitable” in those situations where one candidate has a higher spending limit, for example if a mayoralty candidate conducted a joint campaign with a councillor candidate? For the same exposure in the ward, the councillor candidate would only need to pay for 50% of the cost of the election signs, brochures or telephone polling. Some may assert this is not treating all candidates equitably, one of the principles of the *MEA, 1996*.

Transparency:

- Would regulating joint campaigns and requiring disclosure of the contributions and expenditures protect the public interest?

Accessibility:

- Would it encourage more individuals to run for office by limiting the money needed to run a campaign? This would respect the principle of accessibility.

Task Force Recommendation Number 8 – Independent Election Finance Review Board

Task Force Recommendation	That an independent Election Finance Review Board be established to act as an oversight body which will review all data based on all returns filed, compile aggregate data for reports to Council, recommend amendments to the legislation, financial reporting system and rebate program for approval by Council, and review and report to
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	Council on complaints concerning possible infractions of Council’s guidelines concerning election finance issues.
Administration Committee Action	recommends that Council receive this recommendation
Legislative Provisions	Would require legislative amendment. The <i>MEA, 1996</i> only permits a council to establish a compliance audit committee.

There is some overlap between this recommendation and recommendation (9) – transfer responsibility for the monitoring and enforcement of the *MEA, 1996* to Elections Ontario. It appears that the Task Force was intending the Election Finance Review Board to be an “oversight” body and Elections Ontario to be an “enforcement” body.

Federally and provincially, the Chief Electoral Officer serves as an oversight body, reviews all financial statements filed by political parties and candidates and prepares summaries of the campaign financial activities of political parties and candidates.

Municipally, the only Canadian jurisdiction to have such a role is the City of Winnipeg. The Campaign Expenses and Contributions Officer is appointed by Council to examine the audited financial statements and report to Council on any apparent failure of a candidate to comply with Winnipeg’s financial disclosure by-law.

Election Services staff presently perform many of these functions – staff compile data for reports to Council, make recommendations on amendments to the legislation (including the financial reporting system) and draft a contribution rebate by-law for approval by Council. In addition, Council established a Compliance Audit Committee to consider and make decisions on requests for compliance audits of candidates’ financial activities.

Issues for Council to consider:

Transparency:

- Would the establishment of an independent body be a duplication of effort given the current responsibilities of Election Services staff?
- If such a body was established, should members of the Election Finance Review Board receive remuneration for their services?

Task Force Recommendation Number 9 – Elections Ontario

Task Force Recommendation	That the Municipal Elections Act be amended to provide that monitoring and enforcement of the provisions of the Municipal Elections Act be the responsibility of Elections Ontario and that sufficient power be given to Elections Ontario to provide appropriate enforcement of the provisions of the Municipal Elections Act.
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Administration Committee Action	recommends that Council adopt this recommendation
Legislative Provisions	Would require legislative amendment. The <i>MEA, 1996</i> only permits a council to establish a compliance audit committee.

Federally, the Commissioner of Canada Elections is responsible for ensuring the *Canada Elections Act* is complied with. The Commissioner has authority to investigate and initiate legal action into any instance of illegal activity. Provincially, the Chief Electoral Officer has authority to investigate allegations of illegal activities.

Municipally, a court application may be filed in British Columbia and Quebec for allegations of improper activity in municipal elections and, as explained above, the City of Winnipeg has a Campaign Expenses and Contributions Officer.

The City Clerk does not have any enforcement or investigative powers under the *MEA, 1996*. Concerns have been expressed that the present enforcement system, i.e. an elector needing to either request a compliance audit or take a candidate to court under the *Provincial Offences Act*, is inappropriate and ineffective. For many, it is unfair to expect an individual to bear the cost of prosecution. In those few instances where the police have been asked to investigate, as was the case with a contributor giving funds to an employee to donate to specific candidates in the 2000 election, the police did not lay any charges even though they concluded the action was a breach of the law. This may lead some to conclude that it is waste of time and money to investigate allegations of inappropriate behaviour by a candidate.

There may be a cost involved from Elections Ontario for its investigation and enforcement that would need to be negotiated.

Issues for Council to consider:

Fairness:

- Is it fair to expect an elector to bear the cost of initiating court proceedings against a candidate, as is the current case? While the current system acknowledges the seriousness of making accusations against a campaign, it is extremely cumbersome, and potentially expensive if a lawyer is retained, for an elector to initiate legal action under the *Provincial Offences Act*.

Transparency:

- Will adoption of this recommendation serve the public interests and increase the public's confidence that candidates will be held accountable for any improper activity?

Accessibility

- Is the current process set out in the *MEA, 1996* and the *Provincial Offences Act* understandable and accessible to the average person?

Task Force Recommendation Number 10 – Booklet and CD of Contributors

Task Force Recommendation	That a booklet and a CD listing all the contributors and their contributions be published by the City Clerk’s office after the first financial filing at the end of March in the year following an election and that, for reporting purposes, the statistics for corporations and trade unions be separated.
Administration Committee Action	supported this recommendation in principle and requested the City Clerk and Chief Financial Officer and Treasurer to report to City Council on July 20, 2004 on the financial implications of this recommendation
Legislative Provisions	<p>Would require legislative amendment and an amendment to Ontario Regulation 101/97. The <i>MEA, 1996</i> only permits examination of the forms in the Clerk’s office. Copies may be purchased provided they are used only for election purposes. The financial disclosure forms are prescribed by the Minister of Municipal Affairs and Housing and do not require the reporting of the contributor’s name & address for contributions of \$100 or less. (Candidates participating in the City’s rebate program are required to submit with their financial statements copies of all receipts issued, including those of \$100 or less.)</p> <p>Note – The provincial <i>Election Finances Act</i> prohibits the publishing of contributors’ addresses.</p>

Federally and provincially, the names of contributors (but not addresses) and the amounts contributed are available on the web sites. Those municipal jurisdictions that require financial disclosure (British Columbia, Edmonton, Winnipeg, Quebec, Nova Scotia and Newfoundland and Labrador) only provide for public inspections of the forms in the municipal office.

Issues for Council to consider:

Many of these issues are explained in detail in the City Clerk’s report dated July 16, 2004 – Financial Implications of the Electronic Filing of Election Campaign Financial Statements and for the Production of Contributor Lists, attached as Appendix A. It is estimated to cost approximately \$45,000 to prepare and produce 100 CDs and booklets.

Fairness:

- Will adoption of this recommendation create concerns with the electronic dissemination of individual contributor information such as name and address? While section 88 of the *MEA, 1996* requires that this information shall only be used for election purposes, and staff require anyone purchasing election documents/statements to sign a statement to this effect, there exists the possibility that the information could be used in a manner other than what it was intended for.

Task Force Recommendation Number 11 – Rebate or Grant Program

Task Force Recommendation	Referred to Administration Committee without recommendation - That the Municipal Elections Act be amended to permit either a rebate program or a grant program at the discretion of the local municipality.
Administration Committee Action	supported this recommendation in principle and requested the City Clerk to report further on this to City Council on July 20, 2004
Legislative Provisions	Would require legislative amendment. The <i>MEA, 1996</i> only permits a rebate program.

Federally and provincially, tax credits are available to those making donations to political parties or candidates. The only municipal jurisdiction outside of Ontario that has a contributor payment program is found in Quebec that has a tax credit system – the maximum tax credit is \$105.

To staff's knowledge, the only jurisdiction that provides a matching grant program for municipal elections is the City of New York. Details of the matching grant program of the New York City Campaign Finance Board (the Board) are outlined in the City Clerk's report dated July 16, 2004 – Matching Grant Program for Municipal Election Candidates, attached as Appendix B.

A grant program has the potential of being more costly for the City, dependent upon the parameters set by Council. The Board paid out \$42,116,750 to 199 candidates in the 2001 New York City election. The City of Toronto had 44 candidates for mayor and 199 for councillor, for a total of 243 candidates, in the 2003 election. Total contributions received by these 243 candidates to date were \$9,328,267, with 39 candidates continuing to fund-raise to eliminate their deficits. To date, the City has received 16,553 rebate applications from 12,645 contributors out of a possible 43,222 contributions made to all candidates. Using the same parameters as New York City, i.e. a \$250 ceiling on the matching grant and a \$4-to-\$1 match rate, the current potential payout for these 12,645 contributors would be \$12,645,000, assuming they had each contributed \$250 or more. Reducing the match rate to \$3-to-\$1 reduces the potential payout to \$9,483,750. For comparison purposes, the current payout under the 2003 election contribution rebate program is \$2,886,535.

The Board does not have responsibility for the administration of the election and has a staff of 64 to monitor the program. The City's Election Services Unit has a staff complement of 14 whose prime focus in the months leading up to the election is the administration of the election, not the management of a campaign financing program. Additional staff would need to be hired to manage the grant program during this time period. (As the City's existing contribution rebate program is managed in the year following the election, staff have the time to devote to the program administration.)

In order to protect the public funds, the candidates' financial statements must be carefully reviewed to ensure compliance with the legislation and program rules. Fines must be levied against candidates who break the rules. The Board has a number of lawyers and accountants on

staff for this purpose. As it would be a potential conflict for the City's auditors to review the financial statements of Members of Council and for the City's lawyers to prosecute Members, it would be necessary to hire external lawyers and accountants for this purpose.

Issues for Council to consider:

Fairness:

- Should municipalities be in the business of providing direct funding to candidates rather than giving campaign rebates to contributors? The current rebate program refunds the contributors who have made a conscious decision to make a campaign contribution to a particular candidate. A matching grant program would require taxpayers to directly fund the election campaigns of candidates.
- If a municipality provides public funding, should it be mandatory for campaign surpluses to be paid over to the municipality to offset the cost of the public funding?

Transparency:

- Will there be adequate safeguards to protect the public money? With a matching grant program, the money is paid out to the candidates during the election campaign. There is no guarantee the candidate will file the required financial statements at the end of the campaign period. In order to recover the public funds, candidates must be taken to court which can be a costly and time consuming process. Under the current rebate program no rebates are paid to contributors unless the candidate has filed his or her financial statement.

Accessibility:

- Will a matching grant program create administrative and financial burdens for candidates? The program can be onerous for candidates with the requirement for numerous audited financial statements to be filed throughout the campaign period.
- If a matching grant program were to be adopted, what parameters should be established to support the principles of fairness, accessibility and transparency?

Conclusions:

Across Canada there is a movement towards "democratic renewal". The House of Commons has recently enacted legislation to impose strict limits on contribution amounts, particularly with respect to corporate and trade union contributions. There are reviews of election laws currently being conducted in the provinces of Ontario, Manitoba and British Columbia and the City of Vancouver. Campaign finance reform is an integral part of these reviews. For example, the provinces of British Columbia and Manitoba and the City of Vancouver are now examining whether campaign financing rules need to be introduced in order to create a level playing field for all candidates and to restrict the influence of money on election campaigns. (There are no campaign financing provisions in effect in these jurisdictions at the municipal level other than a requirement for post-election financial disclosure.)

This report provides further detail on the recommendations of the Toronto Election Finance Review Task Force. Each of the issues has been examined in terms of the experience in other jurisdictions and the principles of the *Municipal Elections Act, 1996*.

Historically, the province does not enact amendments to election legislation in the year of an election, which begins on January 3, 2006. 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* is the spring of 2005. If Council wishes to have these issues considered in time for the 2006 municipal election, they must be soon communicated to the Minister of Municipal Affairs and Housing.

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Ulli S. Watkiss
City Clerk

List of Attachments:

- Appendix A - City Clerk's report dated July 16, 2004 – Financial Implications of the Electronic Filing of Election Campaign Financial Statements and for the Production of Contributor Lists
- Appendix B - City Clerk's report dated July 16, 2004 – Matching Grant Program for Municipal Election Candidates

Appendix A

TORONTO STAFF REPORT

July 16, 2004

To: City Council

From: City Clerk and Chief Financial Officer and Treasurer

Subject: Financial Implications of the Electronic Filing of Election Campaign Financial Statements and for the Production of Contributor Lists

Purpose:

To report to Council on the financial implications of two of the Toronto Election Finance Review Task Force's recommendations - the electronic filing of election campaign financial statements and the preparation and production of contributor lists.

Financial Implications and Impact Statement:

The estimated costs to develop and support an application to provide for the electronic filing of election campaign financial statements are approximately \$280,000. To prepare and produce 100 booklets and CDs containing a listing of all the contributors to municipal candidates would cost approximately \$45,000. There is no funding available in the 2006 election reserve to cover these costs. If Council wishes to adopt either of these recommendations from the Toronto Election Finance Review Task Force, the City Clerk will include the costs in the City Clerk's 2005 budget submission.

Recommendations:

It is recommended that this report be received for information.

Background:

The Administration Committee, in considering the recommendations of the Toronto Election Finance Review Task Force contained in the City Clerk's report (June 8, 2004), requested the City Clerk and Chief Financial Officer and Treasurer to report on the financial implications of the following recommendations:

- “(f) the Task Force recommends that the reporting of revenues and expenditures should be made more transparent by implementing mandatory electronic filing, providing definitions for expense categories, the use of more detailed report forms (including Form 5) by all candidates, and a continuation of the requirement that audits be conducted for campaigns with \$10,000 or more in revenues or expenditures; and

- (j) the Task Force recommends that a booklet and CD listing all the contributors and their contributions be published by the City Clerk’s office after the first financial filing at the end of March in the year following an election and that, for reporting purposes, the statistics for corporations and trade unions be separated;”

Comments:

Electronic Filing

The *Municipal Elections Act, 1996* (the “*Act*”) was amended in late 2002 to permit a municipal council to pass a by-law to authorize the electronic filing of the campaign financial statements, subject to such conditions and limits as are set out in the by-law. To staff’s knowledge, to date no municipal council in Ontario has enacted such a by-law.

To make electronic filing of the financial statements mandatory – as suggested by the Election Finance Task Force – would require an amendment to the *Act*. Currently, section 78 of the *Act* permits a candidate to file a paper copy of the financial statements.

It should be noted there are a number of issues that would need to be resolved in order to implement electronic filing, including:

- (a) electronic filing will increase the complexity of a campaign and could cause a significant rise in the costs of a campaign. If the province were to make electronic filing a mandatory requirement, this would place an additional burden onto candidates, especially those who conduct a simple campaign;

- (b) the conflict with section 14 of the *Act* which requires all election documents to bear an original signature – both the candidate and the auditor are required to sign the financial statement;

- (c) the financial statements are provincially prescribed forms and require the candidate to take a declaration before a commissioner for taking oaths;

- (d) should City Council choose to have a campaign contribution rebate program for the 2006 municipal election, a mechanism to deal with the need for candidates participating in the program to submit paper copies of the receipts for comparison purposes with the rebate applications (contributors of \$100 or less are not required to be publicly listed on the provincially prescribed financial statement);

- (e) the Clerk would need to provide for two parallel mechanisms – electronic filing and the current paper-based system – as not all candidates are computer literate and would want to file electronically;
- (f) would need to develop a users’ manual and provide technical on-line or call centre support to candidates (costs included in cost estimate);
- (g) the web site access will require review and approval by the Corporate Access and Privacy office in accordance with the City’s Corporate Web Policy to ensure the proposed application is compliant with the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (h) it is suggested a "focus group" of candidates and current politicians should be established to flesh out the requirements/issues from the candidates’ perspective to ensure the application is “user friendly”.

It should be noted that if this electronic file is created, it is subject to distribution pursuant to subsection 88(5) of the *Act*. Contributors would need to be advised that their personal information could be distributed in electronic format. The Corporate Access and Privacy office has suggested a communication strategy be developed to advise potential contributors of this possibility.

Should there also be a desire on Council’s part to post the electronic financial information on the City’s web site to provide for more transparency to the public, the following issues would also need to be addressed:

- (a) legislative amendments would be required to post the statements on the web site (currently the *Act* only permits public examination of election documents in the Clerk’s office);
- (b) Election Services staff would need to liaise with Corporate Access and Privacy staff to ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act*,
- (c) assistance from Corporate Information and Technology and Corporate Communications is needed to develop the site; and
- (d) the electronic information would need to be filtered to remove sensitive information such as the addresses of individual contributors prior to posting on the web site (which is currently the practice at both the provincial and federal level).

Outside of the legislative framework issues, there are two possible systems for the delivery of electronic filing of the financial statements:

- (1) through a stand-alone electronic filing application that could be made available from a download link on the City’s web site or on CD; or

- (2) through a secure web site access.

With respect to the stand-alone application, there are currently no commercial applications available that would meet the financial filing requirements prescribed by the *Act*. Election Services staff met with Corporate Information and Technology (I&T) staff to determine the most cost effective and efficient system development given the Corporation's current IT resources. Based on the information provided, staff concluded there are numerous security concerns with using a stand-alone application, e.g. there can be no certainty that it was actually the candidate who submitted the financial statement. It is therefore recommended that if Council wishes to provide for electronic filing, that it be done through a secure web site access.

Corporate Information and Technology staff have estimated it will cost approximately \$190,000 to develop and support an application to provide for electronic filing, broken down as follows:

\$135,000	application development (180.5 person days)
\$ 32,000	application on-going maintenance and sustainment
\$ 8,000	additional disk space on the City's server to store the information
\$ 16,000	technical call centre support for candidates through the City's existing HELP desk (88 person days)

I&T staff recommend using the Domino web environment as the access point for candidates to sign into and file their financial statement. Domino licensing costs are \$130 per user plus \$28.60 per year in maintenance charges for three years (the Clerk is required to retain the financial statements for the three-year term of Council). Assuming 380 candidates (which was the actual number of candidates in the 2003 municipal election, including the candidates who withdrew), the licensing costs could be as high as \$82,004. While the licensing costs may be lower as not all candidates would want to electronically file their statements, staff have no way of knowing in advance how many candidates would avail themselves of this opportunity.

Production of Contributor List

There are a number of factors affecting the costing of the preparation and production of a booklet and/or a CD containing a list of all contributors to candidates, including:

- (a) the number of candidates;
- (b) the number of contributors;
- (c) the number of contributions;
- (d) whether or not Council decides to authorize electronic filing of the financial statements and, if so, how many candidates would file electronically; and
- (e) the number of booklets and CDs to be produced.

The following analysis is based upon the average number of candidates (370), contributors (26,939) and contributions (32,698) in the 1997, 2000 and 2003 elections (complete statistics are not yet available for the 2003 election). The figures are taken from the City's campaign contribution rebate database and have been adjusted to reflect the fact that not all candidates participate in the program, e.g. trustee candidates. For the purposes of this analysis, it has been

assumed that candidates not participating in the rebate program would have, on average, 50 contributors each.

The cost estimate for 100 booklets and CDs is approximately \$45,000, broken down as follows:

\$35,000	data entry staffing costs (salary and benefits), based on 233 person days to enter the 32,698 contributions, assuming 3 minutes per entry
\$ 5,000	staffing costs for data verification and preparation of file
\$ 4,500	printing costs for 100 booklets, based upon 50 entries per page
\$ 200	cost to produce 100 CDs

The City's existing campaign contribution rebate database could be used for this purpose, thereby eliminating the need to develop a new database. However, additional temporary staff would need to be hired for this purpose as Election Services staff are managing the campaign contribution rebate program at the time the data entry would need to be done.

It should be noted that the provincially prescribed financial statements only require candidates to publicly list the names, addresses and amounts of contributors donating more than \$100. Accordingly, in the absence of an amendment to these forms, this will not be a total listing of all contributors.

Conclusions:

Should City Council wish to implement a program for electronic financial filing for candidates in the 2006 municipal election, Council must request the Minister of Municipal Affairs and Housing to amend the *Municipal Elections Act, 1996* and Ontario Regulation 101/97 to address the issues identified in this report. It is estimated to cost approximately \$280,000 to develop and support an application to provide for the electronic filing of election campaign financial statements. To prepare and produce 100 booklets and CDs containing a listing of contributors to municipal candidates would cost \$45,000. There is no funding available in the 2006 election reserve to cover these costs. If Council wishes to adopt either of these recommendations from the Toronto Election Finance Review Task Force, the City Clerk will include the costs in the City Clerk's 2005 budget submission.

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City Clerk

Joseph P. Pennachetti
Chief Financial Officer and Treasurer

Appendix B

TORONTO STAFF REPORT

July 16, 2004

To: City Council
From: City Clerk
Subject: Matching Grant Program for Municipal Election Candidates

Purpose:

To provide information on a matching grant program as opposed to a contribution rebate program for municipal election candidates.

Financial Implications and Impact Statement:

There is no financial impact arising from this report.

Recommendations:

It is recommended that this report be received for information.

Background:

The Administration Committee, in considering the recommendations of the Toronto Election Finance Review Task Force contained in the City Clerk's report (June 8, 2004), took the following action:

II submitted the motion contained in the following recommendation [1(k)] without recommendation and requested the City Clerk to report further on this to Council on July 20, 2004:

“(k) the Task Force referred to the Administration Committee without recommendation a motion – That the Municipal Elections Act be amended to permit either a rebate program or a grant program at the discretion of the local municipality;”

Comments:

The *Municipal Elections Act, 1996* (the “Act”) authorizes a municipal council to pass a by-law to provide for the payment of rebates to individuals, corporations or trade unions who make contributions to candidates. City Council has had a contribution rebate program for the 1997, 2000 and 2003 elections. A matching grant program, whereby funds are distributed to a candidate, would require legislative amendments to the *Act* as subsection 70(4) prohibits a municipality from making a contribution to a municipal candidate.

To staff’s knowledge the only jurisdiction in North America that has adopted a public matching grant program is the City of New York, which has had a program since February 1988. The program provides public matching funds to qualified candidates who agree to abide by strictly enforced contribution and spending limits. In addition, the candidates must disclose exactly where contributions come from and how they are spent. Program participants are not allowed to accept corporate or political committee contributions. The program is designed to limit the role and influence of private money in the political process, increase the value of small contributions and enable those without ties to moneyed interests to run competitive campaigns.

Staff have reviewed the Executive Summary of the 2001 election prepared by the New York City Campaign Finance Board (the Board) for information on the program and have spoken to Board staff.

According to the Board’s web site, the program is designed to:

- “1. Make candidates and elected officials more responsive to citizens, rather than special interests;
2. Help credible candidates, who may not have access to “big money”, run competitive campaigns;
3. Reduce the opportunity for campaign contributors to influence candidates and elected officials;
4. Level the political playing field by enabling all serious candidates, whether challengers or incumbents, to compete on more equal footing;
5. Provide easily accessible and comprehensive information on candidates’ campaign finances.”

In order to qualify for the program, candidates must meet a two-part threshold to demonstrate they have significant community support:

1. raise a certain amount of money from individual New York residents; and

2. collect a certain number of contributions of \$10 or more from within the area they are running in.

For the 2001 elections, the thresholds for mayoralty candidates were \$250,000 in contributions and 1,000 contributions from residents, those for city councillor candidates were \$5,000 in contributions and 50 contributions from residents. The deadline for filing for approval to participate in the program is June 1 of the election year.

The Board does not pay matching funds to a candidate unless the candidate has an opponent on the ballot. In addition, to prevent unnecessary spending of public funds in races where there is little competition, participants are only entitled to 25% of the maximum amount of public funds available unless they satisfy one of the following requirements:

1. the candidates are opposed by a candidate participating in the program;
2. their opponent(s) have spent or received contributions in an amount greater than one-fifth of the expenditure limit for the office; or
3. the candidate submits a "Statement of Need" detailing the reasons for additional public funds.

Program participants must file a total of eleven financial disclosure statements to document their campaign activity, beginning on July 15 in the year before the election through to January 15 in the year after the election. The Board's 64 staff review the statements for compliance with the law and program rules prior to dispersing any funds. Fines are imposed for violations and, if necessary, lawsuits are filed against participants to recover funds previously dispersed.

Candidates are also required to participate in a series of public debates as a condition of receiving the matching grants.

The New York City Campaign Finance Board has a staff of 64 to monitor and enforce the program, it does not have responsibility for the administration of the election. In order to protect the public funds, the financial statements from candidates are carefully reviewed to ensure compliance with the legislation and program rules. Fines are levied against candidates who break the rules. The Board has a number of lawyers and accountants on staff for this purpose.

For the 2001 election, \$4 in public funds were given to participants for every \$1 in contributions raised from New York residents. Funds are matched up to \$250 per contributor with a maximum of \$1,000 in public funds matched per individual contributor. In those cases where a program participant is running against a non-participant, the matching rate is increased to \$5-to-\$1 once the non-participant spends more than half of the Board's established spending limit for the election. As of December 17, 2003, a total of \$42,116,750 had been paid out to 199 candidates in the 2001 election.

Without knowing the exact parameters of a provincially authorized made-in-Toronto matching grant program, it is impossible to provide an accurate estimate

of costs for a matching grant program. However, if the City of Toronto adopted a program with the similar provisions and costing as the New York City model, based on the 2003 municipal election financial figures from candidates, the potential payout would be approximately \$16,023,000 based on the information to date.

Conclusions:

Amendments would be required to the *Municipal Elections Act, 1996* to permit a matching grant program. While there are merits to the program, i.e. the limitation of the role and influence of private money in the political process, it is very onerous program to administer to ensure that public funds are not being misused – the New York City Campaign Finance Board has a staff of 64 to monitor and enforce the program.

A grant program has the potential of being more costly for the City, dependent upon the parameters set by Council and the staff required to administer and enforce the program.

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