



**INTEGRITY
COMMISSIONER REPORT
INFORMATION ONLY**

Report on Municipal Election Issues

Date:	October 9, 2007
To:	Executive Committee
From:	David Mullan, Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

This report draws to Executive Committee’s attention the Integrity Commissioner’s perspective on various issues that came to his notice during the 2006 Municipal Elections. In particular, it identifies the kinds of complaint that were filed under the *Code of Conduct Complaint Protocol* (“Complaint Protocol”) over the course of and in the wake of the Elections and difficulties encountered with the application of the *Code of Conduct for Members of Council* (“Code of Conduct”) in an election setting. It also draws the Committee’s attention to the limits on the jurisdiction of the Integrity Commissioner over the behaviour of incumbents during a municipal election campaign. Finally, it suggests that the enforcement mechanisms in the current provincial legislation are totally inadequate as a way of dealing with complaints arising in the course of a municipal election.

Financial Impact

This report has no financial impact.

DECISION HISTORY

This report was prepared at the request of the City Clerk as a complement to her two reports and that of the Auditor General to Council on the 2006 Municipal Elections.

ISSUE BACKGROUND

From the very beginning of my appointment as Integrity Commissioner, many predicted that my office would be very busy during the course of the next (2006) Municipal Election Campaign. In recognition of that prospect, the City Clerk, the Director of Elections & Registry Services, and I met to try to anticipate some of the problems that might arise and to develop a working protocol between my office and that of the Director with respect to election-based complaints. This report contains an account of that process and draws to the Committee's attention some of the problems that the Director and I encountered. I present it for the information of Council and as background to whatever recommendations for changes emerge from the various reports to Council of the City Clerk and the Auditor General.

COMMENTS

Complaints Received

During and in the immediate aftermath of the 2006 Municipal Elections, I received seven formal complaints against Members of Council that raised election issues.¹ Four of these were brought by or on behalf of persons running against the Member. I upheld one of those complaints, rejected two after a formal investigation, and dismissed the four others without conducting a formal investigation.

The complaint that I upheld concerned a Member acting inappropriately in trying to convince a Member of Parliament to withdraw her endorsement of or support for an incumbent Member. The two complaints that I investigated fully and rejected involved allegations of improper use of a City paid-for newsletter for campaign purposes and use of City paid-for resources to prepare a campaign card and to give the impression that the Member's campaign for re-election was supported by the Toronto Police Services or elements of that force.

The reasons for dismissal without a formal investigation varied. In some instances, the complainant presented insufficient evidence to justify further inquiries, or preliminary investigations revealed that was no substance to the complaint. This was so in the case of two allegations that an incumbent's staff worked on the incumbent's campaign while being paid by the City. In other instances, the matters complained about were beyond my jurisdiction because they raised *Municipal Elections Act* issues common to all candidates and for which there was an alternative complaint mechanism. Thus, for example, I rejected complaints against incumbents as beyond my jurisdiction that involved the conduct of an incumbent at a polling station, the improper location and removal of

¹ This does not include two complaints that I upheld against a Member for using City resources to promote an election sign business or a complaint that I received during the course of the campaign against an incumbent for earlier conduct that then became a campaign issue.

election signs, an allegedly false affidavit filed in support of relief from the costs of illegally placed campaign signs, and campaign financing issues coming within the Compliance Audit process.²

Limits on Jurisdiction

My jurisdiction over election-related complaints is limited. It is only in situations where the alleged conduct comes within the reach of a specific provision of the Code of Conduct that I have authority. That means that my office only has authority with respect to Council policies on conduct during elections that are directed specifically at Members *i.e.* incumbents *e.g.* Use of Corporate and Communications Resources During an Election Year. I do not have general authority to entertain allegations that candidates, whether incumbents or challengers, have violated provisions of the *Municipal Elections Act*. For those matters, the complaint mechanisms under the Act provide the only process for dealing with violations of the Act. (I comment on the adequacy of those mechanisms below.)

Within that narrow framework, the matters over which I took jurisdiction were complaints involving the use of a Member's Office Budget or Staff for election campaign purposes (Parts VI and VII of the current Consolidated Code of Conduct), improper behaviour towards City staff responsible for various aspects of the conduct of the election (Part XII), as well as a complaint of discreditable conduct on the part of one Councillor towards another related to his candidacy for re-election (Clause XIV).

Politically Motivated Complaints

I fully realise that incumbents were and are very concerned about politically-motivated complaints during the time leading up to the election and during the election campaign itself. Indeed, it is almost inevitable that the majority of complaints during the campaign will come from opposing candidates. That does not make them necessarily frivolous, vexatious, without substance, or the product of bad faith. Indeed, it is opponents who are often in the best position to identify election campaign violations of the Code of Conduct. I do, however, have under consideration at the direction of Council a proposal to the effect that all complaints against incumbents within six months of the election date be held in abeyance until after the election. I intend to report to Council on that issue this calendar year as part of a wider omnibus report.

Newsletters

One of the complaints with which I dealt involved a Councillor's newsletter. In the course of investigating that complaint (which I ultimately dismissed), I became convinced that a number of the "pre-election" newsletters that Members of Council issued came very close to being campaign literature even though they did not make

² To the extent that these examples number more than three, the explanation lies in the fact that, within the three complaints that I dismissed for lack of jurisdiction, there were multiple elements.

specific reference to the upcoming election or call directly on constituents to vote for them. At times, they consisted almost entirely of lists of accomplishments attributable to the member over the previous three years. Also, the numerous photographs of the Member and the graphical presentation of those photographs were much more in the mode of an election campaign brochure than a newsletter paid for by the City and aimed at providing news.

I believe that this whole issue of pre-election newsletters should be re-evaluated some time prior to the next municipal elections in 2010. It is not surprising that opposing candidates and others form the impression that a City paid-for newsletter issued as late as September 29 in an election year amounts to inappropriate subsidization of the incumbent's campaign. At the very least, Council should revisit the staff proposal that the Administration Committee and Council rejected in 2006 to have an earlier cut-off date of August 1 for the distribution of newsletters paid for out of a Councillor's office budget, a recommendation that I endorsed.

Role of Business Improvement Areas in Municipal Election Campaigns

Another issue that I believe requires policy review is the role that Boards of Management of Business Improvement Areas ("BIAs") play in municipal elections. It is my understanding that, at present, BIAs are entitled to publicly endorse candidates in municipal elections but not to contribute funds provided by the City to a candidate's campaign or to opposing a candidate's campaign. Given that the Ward Councillors are *ex officio* members of the Boards of Management of BIAs, this provides potentially fertile territory for a Member of Council, through her or his role on the BIA, to secure endorsement and channels of favourable publicity from an organization that the City supports and regulates. Once again, in the interests of creating a level playing field as between incumbents and opponents, I believe that the relevant by-law should ban BIA endorsement of candidates in municipal elections. Similarly, there should also be a ban on BIAs staging public events during an election campaign that feature a particular candidate (including incumbents). Staging or sponsoring all candidates meetings should mark the limits of a BIA's involvement in a municipal election campaign.

Election Misconduct Complaint Mechanisms

At present, the *Municipal Elections Act* does not provide a mechanism that allows genuine complaints of misconduct on the part of any candidate to be dealt with speedily during the course of the election itself. Given the number of inquiries that my office fielded during the course of the election campaign and the level of frustration when I informed those making them that their only recourse was under the Act, it is obvious that this is a totally unsatisfactory situation.

The current complaint mechanism involves swearing out an information for the purpose of an eventual hearing by an Ontario Court of Justice judge. This is a cumbersome process and is certainly not a way of having any complaint dealt with when it really

matters *i.e.* during the course of the election campaign. Moreover, as experience shows, very few, if any complainants persist to the point of carrying through with that process in the aftermath of the election. There are similar problems with the post-election Compliance Audit procedures.

There should be a summary process to deal with violations of the Act and subordinate election rules when they occur with the objective of at least shutting down continuing violations and preventing the recurrence of past offences. Without such a restraint, there is every possibility within the existing system that any candidate (incumbent or challenger) can defy the governing rules with impunity, safe in the knowledge that there are unlikely to be consequences after the event because of the practical impediments to making a successful complaint.

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SIGNATURE

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