

April 22, 2002

To: Chair and Members, City of Toronto Administration Committee

From: Councillor Michael Walker

Subject: 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:

- Sixty per cent of donations to successful Toronto candidates in the 2000 municipal election were from corporations.
- 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 9 was 90 per cent, and the average among those 9 was 84 per cent.

- Only 4 Councillors raised over 80 percent of their donations from individuals.
- Corporations receive the lion's share of public money rebated to financial contributors.
- Not all financial contributions are required to be recorded by candidates.
- Contributions of "soft money" can be used to hide unreported contributions.
- Some candidates spent more on excluded fundraising expenses alone than the legal spending limit for an entire campaign.
- Expenses by sitting candidates on items excluded from reporting requirements can be open to abuse.
- Some candidates build war chests by raising far more money than they can legally spend. 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.
- Complaints of election finance violations are administered without independence or impartiality.
- The City's compilation of election finance information is inadequate.
- 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:

- 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.
- The requirement of the issuance of receipts by candidates for all financial donations.
- The requirement of the public reporting by the City of all recorded contributions.
- Means to compel the reporting of soft money contributions, including the use of candidate affidavits.
- Means to eliminate the potential abuse of spending on excluded items that are essentially election campaign expenses.
- The need for an independent and impartial complaint resolution process free from political involvement.
- 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.

- The adequacy of print and online advertisement of public electoral information, and the need for funding that will eliminate public user fee charges.
- The establishment of a permanent independent municipal body charged with reporting, monitoring and resolution of all aspects of campaign financing.
- 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.

3.10 The merits of campaign finance legislation specific to the needs of Toronto or Ontario's large urban municipalities.

4. The Committee direct that the Task Force give consideration to the proposals contained in this report from Councillor Walker.

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 \$2500.00.

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 3 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 \$3500 (\$5500 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.