Election Primer 2014
Presented by Eric M. Davis
1. A few things about myself:

- LSUC Certified Specialist in Municipal Law/Land Use Planning and Development
- Two-time provincial candidate in the riding of Kitchener-Waterloo
- Really enjoy elections – especially when I’m not the candidate
By the Numbers

- In the 2010 elections, more than 8,000 candidates ran for positions on councils and school boards in Ontario

- In 2014, Ontarians will elect approximately 2,800 council members and 700 school trustees across the province
1. **January 2, 2014** – Nomination and Campaign Period Begins

2. **September 12, 2014** – Nomination Day (Last Day to be Nominated) & Final Day for Withdrawal of Candidacy

3. **October 27, 2014** – Voting Day

4. **December 1, 2014** – School Board Term Begins

5. **December 31, 2014** – Campaign Period Ends

6. **March 27, 2015** – Financial Filing Deadline

7. **November 30, 2018** – School Board Term Ends
Topics

1. Campaigning
2. Recounts
3. Campaign Finances
Campaigning
Campaigning - Signs

- The *Municipal Elections Act, 1996* does NOT regulate signs – check with your local municipality (i.e. a sign by-law)

- A candidate has to remove their signs after Voting Day
Campaigning - Debates

- The *Municipal Elections Act*, 1996 does NOT require candidate debates to be held and the municipal clerk is not responsible for organizing meetings or debates.

- Debates could be organized by community groups, media outlets, candidates or any other interested person.
Campaigning - Slates

- The *Municipal Elections Act, 1996* does NOT prohibit “like-minded” candidates from campaigning on the same platform or identifying themselves as a group or slate.

- However, each candidate must keep their campaign finances separate and any joint expenses (e.g. signs with two candidate’s names on them) must be divided between the campaigns.
Campaigning – Voting Date

- The Municipal Elections Act, 1996 does NOT prohibit campaigning on voting day.

- Unlike federal or provincial elections, there are no “blackouts” for municipal and school board elections.

- However, the Act does prohibit campaign material inside a voting place – this could include the entire property of a building that has a voting place inside it (including the parking lot).
Campaigning – Voting Place

- Candidates and scrutineers are allowed to stay in a voting place to observe, but are not allowed to interfere with voters, attempt to influence how they vote, or ask a voter how they voted.
- If acclaimed, stay out.
- Can arrive 15 minutes before voting place opens to inspect ballot boxes, the ballots, etc. - may not delay opening of voting place.
- Entitled to place a seal on the ballot box so that ballots in the box cannot be removed without breaking the seal.
Campaigning – Counting the Votes

- If a municipality is going to use voting machines or vote counting equipment, the clerk must have the process and procedures for use of this equipment by **June 1, 2014**

- Vote counting begins after the close of voting at **8:00 p.m.**

- If the votes are counted manually, a candidate and their scrutineers are entitled to view the ballots as they are counted, but are not allowed to touch the ballots
Campaigning – Counting the Votes (cont’d)

- Candidates/scrutineers may object to a ballot or how it is counted

- The deputy returning officer (DRO) is responsible for deciding whether to accept the objection and must keep a list of all the objections raised

- After the votes have been counted, the DRO will prepare a statement showing the results, and seal all the other election documentation, including the ballots, inside the ballot box
Campaigning – Counting the Votes (cont’d)

➢ The sealed ballot box and statement of results will then be delivered to the clerk, who will compile the results and declare who has been elected.
Recounts
Recounts - Ties

- If two or more candidates get the same number of votes, and they can’t all be elected, there is an **automatic recount**

- The recount must be held within **15 days** of the clerk declaring the results of the election

- If the recount shows that there’s still a tie, then the election will be decided by a race around the world! The Queen herself will drop the checkered flag.
Recounts – Ties (cont’d)

➢ That was a joke. I’m just making sure you’re still paying attention.

➢ If there’s still a tie, the election will be decided by lot (drawing a name out of a hat) – the pinnacle of democracy

➢ Except for a tie, all other recounts must be requested
Recounts – Requests/Applications

- A recount can be requested by a council or a school board.

- Councils and boards have **30 days** after the clerk declares results to do this.

- If a candidate requests a recount and the council or board refuses, then the candidate can apply to the Superior Court of Justice for an order to hold a recount.
Recounts – Requests/Applications (cont’d)

- Anyone who is an eligible elector may also apply to the Court for a recount – must be made within 30 days

- Recounts must be conducted in the same way that the votes were originally counted, unless the recounted is ordered by the Court

- If the votes were counted using a machine, the council or board may NOT request that the recount be conducted by hand
If a recount is ordered by the Court, the Judge may order the votes be counted in a different manner if the judge believes that the way the votes were counted the first time was a factor.
Campaign Finances
Campaign Finances

- A candidate’s campaign must end on December 31 unless the candidate has a deficit and informs the clerk in writing that they are going to extend their campaign.

- Once a candidate’s campaign has ended, the candidate should close their campaign bank account and prepare their campaign financial statement.
Campaign Finances – Record Keeping

- Each candidate is responsible for keeping records of the financial activities related to their campaign.
- The *Municipal Elections Act, 1996* does NOT require a candidate to use any specific accounting system – one should consult with an auditor or accountant.
- A candidate is required to keep all financial records of their campaign until **December 2018** (when the next council or school board takes office).
Each candidate must keep the following records:

- The receipts issued for every contribution including when the contribution was accepted and the date the receipt was issued
- The value of every contribution, whether it is in the form of money, goods or services, and the contributor’s name and address
- All expenses, including the receipts obtained for each expense
Each candidate must keep the following records:

- Any claim for payment of an expense that the campaign disputes or refuses to pay
- The funds raised and expenses incurred from each separate fundraising event or activity
- The monies received at a fundraising event or activity by donations of $10 or less
- The terms of any loan received from a bank or other recognized lending institution
Campaign Finances – Campaign Period

- Candidates are only allowed to accept contributions or incur campaign expenses during their campaign period.
- The campaign begins on the day a candidate files their nomination.
- In most cases, the campaign will end on December 31.
Once a candidate has filed their nomination form, they are required to open a separate bank account for their campaign.

A candidate is NOT permitted to use their personal bank account for campaign finances.

All contributions – including contributions made by the candidate – must be deposited into the campaign bank account.

All expenses must be paid from the campaign bank account.
Campaign Finances – Contributions

- Campaign contributions are any **money, goods or services** that are given to a candidate for use in their campaign, including money and goods that the candidate contributes themselves.

- If a candidate is given a special discount on something, the **difference** between what the candidate was charged and what an average person would be charged is considered to be a **contribution**.
For example, if a candidate has signs left over from a previous campaign and they are used again, the current market value of the signs (i.e. what it would cost that candidate to buy those signs today) is considered to be a contribution that a candidate makes to their campaign.

Again, for example, if a candidate or their spouse guarantees a campaign loan, and the campaign is unable to repay the full amount, any unpaid balance is considered to be a contribution by the guarantor.
Campaign Finances – Not Contributions

- Volunteer labour
- A cash donation of $10 or less received at a fundraising event – may accept such donations without keeping track of who gave them
- Value of free political advertising (i.e. available to all candidates)
- If a candidate obtains a campaign loan from a bank or a recognized lending institution, the amount of the loan is not considered to be a contribution
Campaign Finances – Who Can Contribute

➢ A candidate can accept contributions from:
  ➢ Individuals who are normally resident in Ontario
  ➢ Corporations that carry on business in Ontario
  ➢ Trade unions that hold bargaining rights for employees in Ontario
  ➢ A candidate and their spouse

➢ If a candidate is going to accept contributions from a business, they must ensure that the business is a corporation
Other kinds of businesses, such as sole proprietorships or LLPs, are not eligible to make contributions.

Fair warning: the City of Toronto has passed a by-law banning contributions of money, goods and services from corporations and trade unions.

This ban applies to the municipal election – it does not apply to any school board candidates.
Campaign Finances – Who Can’t Contribute

- The following individuals and organizations are NOT allowed to make contributions to a municipal or school board campaign:
  - A federal political party, constituency association, or registered candidate in a federal election
  - A provincial political party, constituency association, or a registered candidate or leadership contestant
  - A federal or provincial government, a municipality or a school board
Campaign Finances – Contribution Limits

- There is a **$750 limit** that applies to each person, corporation and union who contributes to a candidate’s campaign.

- The limit for the Mayor of the City of Toronto is **$2,500**.

- The maximum total amount that a contributor can give to candidates in the same jurisdiction (i.e. running for the same council or the same school board) is **$5,000**.
Campaign Finances – Contribution Limits (cont’d)

- Only a contribution that is $25 or less can be made in cash
- All contributions above $25 must be made by cheque, money order or by a method that clearly shows where the funds came from
- For a candidate, there are no limits on how much they and their spouse can contribute to their campaign
- Contributions made by a candidate or their spouse do not count towards the $5,000 limit
Campaign Finances – Contribution Limits (cont’d)

- If a candidate’s campaign ends with a surplus, the candidate can withdraw the value of contributions that they and their spouse made from the surplus.

- If the candidate still has a surplus once they have withdrawn their contributions, the remaining surplus must be turned over to the clerk.

- A candidate is NOT permitted to refund contributions made by anyone other than themselves or their spouse.
Campaign Finances – Contribution Rebates

- Contributions to municipal and school board campaigns are NOT income tax-deductible

- Municipalities have the authority to establish programs to provide rebates to contributors
The spending limit for a campaign is calculated based on the number of electors who are eligible to vote for the office a candidate is running for.

The formula to calculate the limit is:
- For head of council: $7,500 plus $0.85 per eligible elector
- For council member or trustee: $5,000 plus $0.85 per eligible elector

When a candidate files their nomination, the clerk will give them an estimate of their spending limit – this estimate will be based on the number of electors in the last election.
Within 10 days after the close of nominations, the clerk must give each candidate a final spending limit which is based on the number of electors on the voters’ list for the current election.

If the spending limit that a candidate received when they filed their nomination is higher than the final spending limit received in September, then the estimate becomes the official spending limit.
Campaign Finances – Spending Limits (cont’d)

➢ Most expenses will be subject to the spending limit

➢ The following expenses are NOT subject to the spending limit:
  – Expenses related to holding a fundraising event or activity
  – Expenses related to parties and other expressions of appreciation after the close of voting
  – Expenses relating to a recount
The following expenses are NOT subject to the spending limit (cont’d):

- Expenses relating to a court action for a controverted election
- Expenses relating to a compliance audit
- Expenses incurred by a candidate with a disability that are directly related to the candidate’s disability and would not have been incurred if not for the election
- Audit and accounting fees
The spending limit covers expenses that a candidate incurs between the beginning of their campaign and Voting Day.

Expenses incurred between the day after Voting Day and the end of the campaign are not subject to the spending limit.

If you incur and expense before Voting Day but don’t get around to paying for it until after Voting Day, it would still be subject to the spending limit.
Campaign Finances – Compliance and Enforcement

➢ There are 3 contraventions of the Act where penalties apply automatically:
  – A candidate fails to file a financial statement or apply to the Court for an extension by the filing deadline
  – A candidate’s financial statement shows that they exceeded their spending limit
  – A candidate fails to turn over their surplus to the clerk when they file their financial statement
The penalty is that the candidate forfeits their office (if they won the election) and becomes ineligible to run or be appointed to fill a vacancy until after the 2018 election.
Campaign Finances – Compliance Audit

- Each municipality and school board must appoint a compliance audit committee.
- If an eligible elector believes that a candidate has contravened the election finance rules, they may apply for a compliance audit of the candidate’s campaign finances.
- An application for a compliance audit must be submitted to the municipal clerk who conducted the election within 90 days of the deadline to file the campaign financial statement.
Campaign Finances – Compliance Audit (cont’d)

- The compliance audit committee will consider the application and decide whether to grant or reject the application.

- The candidate may appeal the committee’s decision to the Ontario Court of Justice within 15 days of the decision.

- If the committee grants the application, they will appoint an auditor to conduct a compliance audit of the candidate’s campaign finances.
The auditor will produce a report, which the candidate is entitled to receive

The compliance audit committee will meet to consider the auditor’s report

If the report concludes that there is an apparent contravention of the Act, the committee will decide whether to commence legal action
The compliance audit committee does not have any authority to set penalties.

Only the Court can decide if a candidate has actually contravened the Act and, if so, which penalties should apply.

A prosecution related to the 2014 election must be commenced before December 1, 2018.
Campaign Finances – Penalties

- If a candidate is convicted of an offence, they may be subject to the following penalties:
  - A fine of up to $25,000
  - Ineligibility to vote or run in the next general election
  - Up to 6 months in prison
  - Forfeiture of elected office, if the judge finds that a winning candidate committed the offence knowingly

- If a candidate is convicted of exceeding the spending limit, they may also be fined the amount by which they exceeded the limit
Questions?

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