

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON JULY 21, 2015
FROM:	CATHY SAUNDERS CITY CLERK
SUBJECT:	Province of Ontario Consultation - <i>Municipal Elections Act</i>

RECOMMENDATION

That, on the recommendation of the City Clerk, this report BE SUBMITTED to the Province of Ontario in order to identify potential changes to the Municipal Elections Act.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Item #7 – Corporate Services Committee – June 15, 2015

BACKGROUND

Municipal Council, at its meeting of June 25, 2015 resolved:

“That the following actions be taken with respect to the Province of Ontario’s review of the Municipal Elections Act, the Municipal Conflict of Interest Act and the Municipal Act, 2001:

- a) the Civic Administration BE DIRECTED to make the necessary arrangements to provide and communicate opportunities for the public to participate in the Province of Ontario’s call for public comment with respect to the above-noted review;
- b) the Civic Administration BE DIRECTED to develop an appropriate process to solicit and submit suggestions from individual Councillors, and from The Corporation of the City of London, as a municipality, with respect to the above-noted review; and
- c) the Province of Ontario BE ADVISED that the Municipal Council supports providing municipalities with the option to use ranked balloting for the 2018 municipal election.”

Given that the Province recently announced an extension to the deadline for the provision of comments regarding the Municipal Conflict of Interest Act and the Municipal Act (now October 31, 2015), the comments provided within this report have been limited to the Municipal Elections Act. This will allow the City of London to take advantage of the additional time now available to refine its submission related to the Municipal Conflict of Interest Act and the Municipal Act. A report on the latter legislation will be brought forward at a later date.

In the spring of 2015, the Province of Ontario announced that they would be undertaking a public consultation process to receive feedback as to whether the Municipal Elections Act, 1996 (MEA) meets the needs of residents. The deadline for the submission of comments is July 27, 2015. However, the provincial representatives have confirmed that our comments would be accepted by the Province after the July 28, 2015 Municipal Council meeting, so that the Municipal Council can formally approve its submission.

The Province is focusing on the following five areas of the MEA and has sought comment specifically in those areas:

- Campaign finance
- Third party advertising
- Accessibility
- Enforcement
- Ranked ballots

The Clerk’s statutory responsibility for conducting elections, and resultant contact with elected officials, candidates, election staff and the general public, places the Clerk in an opportune position for identifying

potential improvements to benefit the public, the candidates and those responsible for carrying out elections.

The following outlines suggested areas of improvement for the MEA.

Campaign Finance

The campaign finance sections of the MEA are likely the most confusing sections to interpret for candidates, the public, and elections staff. The regulations are complex and, in some instances, appear contradictory.

In reviewing common questions from candidates, the electorate, and our own administration, the Civic Administration has found several areas of campaign finance that could be reviewed for consistency and clarification:

- Provision of clear and consistent definitions with respect to campaign expenses and exemptions in one section of the MEA.
- Greater clarity between the time period after the close of a campaign (December 31) and the time to file Form 4 – Financial Statement and Auditor’s Report at the end of March.
- Greater clarity on how a candidate should close their campaign. Currently there is no clear direction on how to handle finances past the December 31st date when the campaign is closed, but there are still invoices, fees and costs incurred to prepare financial statements.
- An amendment to section 78 of the MEA to clearly provide that the Clerk shall not accept a candidate’s financial statement and auditor’s report that is not in the correct form, properly signed, and commissioned or filed within the requisite time period.
- While the Act allows for filing Form 4 – Financial Statement and Auditor’s Report electronically with the passing of a by-law under section 78(7), there are sections of the Act that contradict that statement and indicate that the form must be commissioned with original signatures. The legislation needs to be consistent throughout in this regard.
- Consideration should be given to making the nomination fee non-refundable or raising the prescribed percentage of votes for a candidate to receive a refund. Under section 34, the nomination fee of the candidate is to be refunded if the candidate withdraws from office, is elected to office or receives more than the prescribed percentage (2%) of the votes cast of the election of the office. This may help to ensure candidates give serious consideration to whether or not they wish to run for office, and in what ward, prior to filing their nomination papers.
- Within the Municipal Elections Act, there are penalties for candidates that automatically take effect (failure to file financial statement) and others that do not and require an elector to apply for review (Compliance Audit). Consideration should be given to implementing immediate penalties for overt contraventions of the Act related to campaign finances, especially prior to the Election taking place.

Third Party Advertising

Under the current legislation, there are no regulations with respect to third party advertising for an individual’s candidacy. The Civic Administration has not encountered significant concerns or inquiries regarding third party advertising in the administration of elections in the City of London. However, it has been raised in other municipalities and at the provincial level where total third party advertising spending grew from just over \$6 million during the 2011 campaign to almost \$8.7 million in 2014. At the provincial level, third parties that spend over \$500 or more on election advertising are required to register with and report to the Chief Electoral Officer on their election advertising expenses. If these total \$5,000 or more, the reports must be audited. It is recommended that a similar provision be included in the MEA on third party advertising at the municipal level. Strict rules and regulations would have to be in place that would place the onus on the persons/businesses conducting the advertising since it would be difficult for both the candidate and staff administering the election to oversee and enforce such a provision.

Accessibility

From an administrative perspective, the legislation should remain flexible in terms of methods for casting ballots. Such flexibility allows for Clerks to conduct a fair and accessible election for electors and candidates.

Enforcement

Consideration should be given to ensuring penalties are substantial enough, and take effect quickly enough, to proactively dissuade contravention of the legislation and therefore help ensure a fair election. In those cases where contraventions occur, the legislation should provide clear enforcement tools and processes.

Ranked Ballots

The Province has committed to providing municipalities with the option of using ranked ballots as early as the 2018 as an alternative to the current system. It is our understanding that this would only apply to municipal elections and not school board elections.

The Civic Administration is supportive of giving electors more choice and sees the benefits that ranked balloting can provide: reducing strategic voting and negative campaigning and encouraging more candidates to remain in the race until Voting Day without the threat of “vote splitting” between like-minded candidates. The legislation needs to provide a solid framework and clear direction for the successful implementation of this method of voting. The regulations need to provide adequate safeguards and protection of validity of results should the election result in a recount. There are a few items the legislation will need to provide clarity on that have been expressed by the Civic Administration and other municipalities on the introduction of ranked balloting:

- The first item of clarification towards implementing Ranked Ballots is voting technology. The Civic Administration is uncertain if vendors’ equipment and software can accommodate Ranked Ballots in time for the 2018 Municipal Election. The cost to acquire equipment is also unknown at this time. It should be noted that elections staff will be attending a second working group discussion with the Province, municipal Clerks, and election equipment and software vendors on July 21, 2015 to discuss this issue. A detailed testing and auditing strategy of all integrated technology must be completed before this change is implemented. It is important to maintain the integrity of the election. Further, it would greatly beneficial if the Province could certify equipment and software vendors who provide this service as an additional security check and balance. Further, the software that produces the results may take additional time and results will take longer to process and display, which may be perceived negatively by the public and candidates
- Tight deadlines between the close of nominations and Voting Day may also be an issue for ordering and testing ballots and voting equipment through logic and accuracy processes.
- Public acceptance and support of the change is a key factor in the successful implementation of Ranked Ballots. There must be adequate education and outreach to the electorate so that they understand the process and how their Council is being elected and how their votes are being counted. Assistance and support from the Province with common education tools, guides and promotion literature would be extremely important in successfully implementing ranked ballots.

General Comments

Based on questions and feedback during the election process, and previous experience, some further suggestions for improvement are noted below:

- Amend the MEA to include a statement of the principles of the Act. These principles are established by common law and are articulated in the case *Di Biase v. Vaughan (City)* [2007] O.J. No. 5490. Including the principles in the MEA would provide clarity and aid the public, municipalities, clerks, candidates and the courts in interpreting the MEA. The statement of principles of the MEA is as follows:
 - i. The secrecy and confidentiality of the voting process is paramount;
 - ii. The election shall be fair and non-biased;
 - iii. The election shall be accessible to the voters;
 - iv. The integrity of the process shall be maintained throughout the election;
 - iv. There is to be certainty that the results of the election reflect the votes cast;
 - vi. Voters and candidates shall be treated fairly and consistently; and
 - vii. The proper majority vote decides the election.
- Align the start of the Nomination Period with the Determination of the School Board Members. This would include amending the regulations under the Education Act to provide that the determination and distribution of members of the school board be completed prior to the commencement of the nomination period under the MEA. Ontario Regulation 412/00: Elections to and Representation on District School Boards provides that the report setting the determination and distribution of members

of the board to be sent by April 3 in the year of the election. This date should be modified such that the determination is made before the start of the nomination period.

- The timing between the close of nomination period and election date is too short from an administrative perspective. In 2014, nominations closed on Friday, September 12 and Voting Day was Monday, October 27. The first day of advance voting took place on Saturday, October 11. In the City of London following the close of nominations, the City Clerk must coordinate final approval of ballots, place order of ballots and have close to 400,000 paper ballots printed and shipped for testing before the first weekend in October. With a limited amount of printers qualified for printing ballots in the Province and many other municipalities using the same providers, there is a rush to get everything complete in time for logic and accuracy testing of ballots and all vote tabulators. In 2009, the changes made to the MEA moved the election date up three weeks, but did not move other dates to reflect this change. Consideration to moving back the close of nominations a few weeks to accommodate the work between close of nominations and Voting Day would be greatly beneficial to Clerks administering elections.
- Amend the MEA to provide municipalities to establish their own methods for providing notice to candidates under the MEA. The current requirements in the MEA for notice by registered mail are costly and outdated.
- Shorten the Nomination Period to avoid confusion as to the “Campaign Period” for the candidate; avoid the electorate’s confusion with respect to candidates, as candidates may withdraw and resubmit nomination papers for different positions throughout the Nomination Period; and to provide the Municipal Clerk sufficient time to prepare and test ballots prior to Advance Polls. It is recommended that Nomination Day be changed to June 30th. The public has also expressed dissatisfaction with the long period for campaigning, including the installation of campaign signs.
- Change Voting Day to be closer to the end of the term of Council (November 30th) to avoid a lengthy transition period between terms of Council.
- Accuracy of the Voters’ List and the timing of its release to municipalities continues to be a significant concern and challenge. Further the legislation needs to be modified to facilitate updating of the list to ensure information is current. That should include a provision to require Nursing Homes to provide an up to date list of residents.
- Consideration should be given to making Election Day concurrent with a professional activity day for local school boards so that access to school facilities for voting purposes does not cause access for safety issues.

PREPARED BY:	RECOMMENDED BY:
SARAH CORMAN MANAGER, LICENSING AND ELECTIONS	CATHY SAUNDERS CITY CLERK

