



LEGAL SERVICES

Report LS-2010-022

To: Mayor and Members of Council

From: Nadia Koltun
Town Counsel/Director of Legal Services

Meeting: 8 June 2010

**Subject: *MUNICIPAL ELECTIONS ACT, 1996*
LIMITATIONS ON CONTRIBUTIONS**

RECOMMENDATION

That Report LS-2010-022 regarding Municipal Elections, Act, 1996, Limitations on Contributions be received; and

That the Town Clerk be instructed to forward Report LS-2010-022 and Council's Resolution in respect of the Report to the Minister of Municipal Affairs and Housing and request that the Minister provide clarification of the issue raised in the Report regarding limitations on contributions and review or amend the Municipal Elections Act.

That the Town Clerk be instructed to post a copy of Report LS-2010-022 on the Town's website and to provide a copy of the Report to all registered candidates for the 2010 municipal election.

ORIGIN/BACKGROUND

Report ADM-2010-007 in regard to the *Municipal Elections Act 1996*, received by Council by Resolution 2010-117, at its meeting on 1 March 2010, addressed the contributions available under the Act to candidates running for both local council and regional council office. The Report provided that "a contributor can provide \$5,000 to the local (lower tier) council and a further \$5000 to the regional (upper tier) council.

The purpose of this report is to discuss more fully the implications of this statement in Report ADM-2010-007.

DISCUSSION

1. Maximum Amounts for Contributors

The *Municipal Elections Act, 1996* contains the following provisions regarding the amount of contributions that an individual contributor can make.

Section 71(1) sets out a \$750 limit per candidate as follows:

A contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election.



Section 71 (2) sets out a \$750 limit for offices as follows:

If a person is a candidate for more than one office, a contributor's total contributions to him or to her in respect of all the offices shall not exceed \$750.

Section 71 (2.1) sets out a \$5,000 limit per council as follows:

A contributor shall not make contributions exceeding a total of \$5,000 for two or more candidates for office on the same council or local board.

2. The Issue

Section 71 (2.1) raises the question whether in Caledon in respect of candidates for the office of Regional Councillor, a contributor can contribute \$5,000 for their election to the local Caledon Council and at the same time have the benefit of contributing \$5,000 to other candidates for their election to Regional Council. Pursuant to section 1 (7) paragraph 2 of the Regional Municipality of Peel Act, 2005, Regional Councillors from Caledon *must be members of the Town council elected by wards as members of both the council of the Regional Municipality and the Town council.* Accordingly, the candidates for Regional Council in Caledon run for office on, and sit on, two councils.

Based on this legislation, a scenario can be suggested whereby in Caledon a contributor provides \$3000 (4x\$750) in total contributions to the candidates running for both local and regional Council and specifies that the \$3000 represents his/her contribution to the candidate's campaign for election to local council. Is this contributor then able to provide a second contribution of a maximum of \$5,000 to candidates running for Regional council in Mississauga or Brampton because he/she specified that the \$3000 was his/her contribution to the Caledon candidate's local campaign? Based on a narrow literal interpretation of the words in section 71(2.1), the answer would appear to be 'yes'. The chart attached as Schedule A sets out this scenario as the literal interpretation of section 71 (2.1). In addition, Schedule B sets out this scenario so as to include contributions to the candidates running for the office of mayor.

An alternative interpretation of section 71(2.1) can be suggested, if one speculates regarding the intent of the Municipal Elections Act, 1996. It might be presumed that it was the intent of the Municipal Elections Act, 1996 that a contributor should be limited to one \$5,000 contribution to all the candidates running for election to all the councils at the local government level as if all municipalities in Ontario were structured as single-tier municipalities. If this presumption is correct, then the issue of multiple councils and their subsequent effect on contribution limits does not arise. This presumption is consistent with the provisions of section 71(2) which indicates that if a candidate is running for more than one office, there is a limit of \$750 in respect of all of the offices. (This would be termed the "purposive" interpretation of the Act as opposed to the literal meaning of the Act.) Based on the purposive interpretation, the contributor would be limited to a total of \$5,000 to be directed to all the members of Caledon council and of Regional council.

Based on the purposive interpretation, in the scenario outlined above, after contributing \$3,000 to the Caledon candidates running for Regional council, the contributor would have \$2,000 available to contribute either to the candidates running only for local Caledon Council or \$2,000 for those candidates running for Regional Council in Mississauga or Brampton. The chart attached as Schedule A sets out this scenario as the purposive interpretation of section 71 (2.1).



Due to a lack of clarity in the Municipal Elections Act, 1996, it is uncertain which is the preferred interpretation; however, the purposive interpretation would appear to pose less risk for the candidate and for the contributor.

3. Implications

The implications of the issue raised in regard to section 71(2.1) is that contributors who wish to contribute to candidates who are running for office on both Regional and Caledon Council should indicate at the time of their contribution whether the contribution is to the candidate's campaign for local council or the candidate's campaign for Regional council. Similarly, the candidate should record the contributions received in this manner.

FINANCIAL IMPLICATIONS

There are no direct financial implications to the Town contained in this report.

LEGAL IMPLICATIONS

The legal implications of Report LS-2010-022 are contained in other sections of the report.

NEXT STEPS

1. Contributors, and candidates running for both local and Regional Council in Caledon, are advised to obtain independent legal advice.
2. Town Clerk will forward Report LS-2010-022 and Council's Resolution in respect of the Report to the Minister of Municipal Affairs and Housing for his review, clarification, and amendment of the Municipal Elections Act, 1996, if appropriate.
3. Town Clerk will post a copy of Report LS-2010-022 on the Town of Caledon's website and will provide a copy of the Report to all registered candidates for the 2010 municipal election.

CALEDON COMMUNITY WORK PLAN

Not applicable

POLICIES/LEGISLATION

Municipal Elections Act, 1996

CONSULTATIONS

Ralph Walton, Director, Local Government Policy Branch, Ministry of Municipal Affairs and Housing

Patrick O'Connor, Regional Solicitor and Director, Legal and Risk Management, Region of Peel

Clay Connor, Legal Counsel, City of Brampton

Mary Ellen Bench, City Solicitor, City of Mississauga

Karen Landry, Town Clerk



ATTACHMENTS

Schedule A – chart regarding application of section 71 (2.1)

Schedule B – chart regarding application of section 71 (2.1) including Mayor's office

CONCLUSION

Due to a lack of clarity in the Municipal Elections Act, 1996, it is advisable that candidates running for office on both the local Caledon council and Regional council obtain independent advice in regard to the issue of the maximum election campaign contributions permitted.

Prepared by:
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Approved by:
Name: Douglas Barnes
Title: Chief Administrative Officer



Schedule A to Report LS-2010-022

APPLICABLE TO
CANDIDATES RUNNING FOR BOTH LOCAL AND REGIONAL COUNCIL
LITERAL INTERPRETATION OF SECTION 71 (2.1)

Donation	Remaining Funds
\$3,000.00 (4 x \$750.00) Contributor specifies contribution is for local council campaign	\$2,000.00 for candidates running for local council only PLUS \$5,000.00 for candidates in Mississauga and Brampton who are running for Regional Council

PURPOSIVE INTERPRETATION OF SECTION 71 (2.1)

Donation	Remaining Funds
\$3,000.00 (4 x \$750.00) Contributor specifies contribution is for local council campaign	\$2,000.00 TO BE SPLIT BETWEEN candidates running for local Caledon Council only and candidates in Mississauga and Brampton who are running for Regional Council



Schedule B to Report LS-2010-022

**LITERAL INTERPRETATION OF SECTION 71 (2.1)
INCLUDING CONTRIBUTION TO CANDIDATES FOR OFFICE OF MAYOR**

Donation	Remaining Funds
<p>\$3,000.00 (4 x \$750.00) contributor specifies contribution is for local Caledon council</p> <p>AND</p> <p>\$750.00 to candidates for Office of Mayor</p> <p>AND</p> <p>\$3,000.00 (4 x \$750.00) contributor specifies contribution is to candidates running for both local Caledon and Peel Regional office, but only for the candidate's campaign for Regional office (Total Contributions are \$6,750.00)</p>	<p>\$2,000.00 for candidates running for local council only</p> <p>PLUS</p> <p>\$5,000.00 for candidates in Mississauga and Brampton who are running for Regional Council</p>