



To: Municipal and School Board Election Candidates

Notice: Campaign Finance Penalties under the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*, as amended

This notice is provided in accordance with Section 33.1(a) of the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*, as amended

Section 33.1:

- (1) The clerk shall, before voting day, give to each person nominated for an office notice of,
 - (a) the penalties under subsections 88.23 (2) and 92 (1) related to election campaign finances

The following sections of the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*, as amended are of particular interest for Municipal and School Board Election Candidates:

Effect of default by candidate

88.23 (1) A candidate is subject to the penalties listed in subsection (2), in addition to any other penalty that may be imposed under this Act,

- (a) if the candidate fails to file a document as required under section 88.25 or 88.32 by the relevant date;
- (b) if a document filed under section 88.25 shows on its face a surplus, as described in section 88.31, and the candidate fails to pay the amount required by subsection 88.31 (4) to the clerk by the relevant date;
- (c) if a document filed under section 88.25 shows on its face that the candidate has incurred expenses exceeding what is permitted under section 88.20; or
- (d) if a document filed under section 88.32 shows on its face a surplus and the candidate fails to pay the amount required by that section by the relevant date. 2016, c. 15, s. 60.

Penalties

(2) Subject to subsection (7), in the case of a default described in subsection (1),

- (a) the candidate forfeits any office to which he or she was elected and the office is deemed to be vacant; and
- (b) until the next regular election has taken place, the candidate is ineligible to be elected or appointed to any office to which this Act applies. 2016, c. 15, s. 60.

Notice of default

(3) In the case of a default described in subsection (1), the clerk shall,

- (a) notify the candidate in writing that the default has occurred;
- (b) if the candidate was elected, notify the council or board to which he or she was elected in writing that the default has occurred; and
- (c) make available to the public the name of the candidate and a description of the nature of the default. 2016, c. 15, s. 60.

Clerk's report re filing requirements

(4) The clerk shall make available to the public a report setting out all candidates in an election and indicating whether each candidate complied with section 88.25. 2016, c. 15, s. 60.

Same

(5) The report mentioned in subsection (4) shall be made available on a website or in another electronic format as soon as possible after,

- (a) April 30 in the year following a regular election; and
- (b) 90 days after voting day in a by-election. 2016, c. 15, s. 60.

Application to court

(6) The candidate may, before the last day for filing a document under section 88.25 or 88.32, apply to the Superior Court of Justice to extend the time for filing the document under that section and, if the court is satisfied there are mitigating circumstances justifying a later date for filing the document, the court may grant an extension for the minimum period of time necessary to enable the candidate to file the document but the court shall not grant an extension of more than 90 days. 2016, c. 15, s. 60.

Notice to clerk

(7) If a candidate makes an application under subsection (6), the candidate shall notify the clerk in writing before 2 p.m. on the last day for filing a document under section 88.25 or 88.32 that the application has been made. 2016, c. 15, s. 60.

Effect of extension

(8) If the court grants an extension under subsection (6), the penalties set out in subsection (2) apply only if the candidate has not filed the document before the end of the extension. 2016, c. 15, s. 60.

Cessation of penalty

(9) The penalties set out in subsection (2) for a default described in clause (1) (a) do not take effect if, no later than 2 p.m. on the day that is 30 days after the applicable day for filing the document, the candidate files the relevant document as required under section 88.25 or 88.32 and pays the clerk a late filing fee of \$500. 2016, c. 15, s. 60.

Late filing fee

(10) The late filing fee is the property of the municipality. 2016, c. 15, s. 60.

Candidates' financial statements, etc.

88.25 (1) On or before 2 p.m. on the filing date, a candidate shall file with the clerk with whom the nomination was filed a financial statement and auditor's report, each in the prescribed form, reflecting the candidate's election campaign finances,

- (a) in the case of a regular election, as of December 31 in the year of the election; and
- (b) in the case of a by-election, as of the 45th day after voting day. 2016, c. 15, s. 60.

Same

(2) If a candidate's election campaign period ends as described in paragraph 3 of subsection 88.24 (1), the financial statement and auditor's report must reflect the candidate's election campaign finances as of the day the election campaign period ended. 2016, c. 15, s. 60.

Error in financial statement

(3) If an error is identified in a filed financial statement, the candidate may withdraw the statement and, at the same time, file a corrected financial statement and auditor's report on or before the applicable filing date under section 88.30. 2016, c. 15, s. 60.

Supplementary financial statement and auditor's report

(4) If the candidate's election campaign period continues during all or part of the supplementary reporting period, the candidate shall, before 2 p.m. on the supplementary filing date, file a supplementary financial statement and auditor's report for the supplementary reporting period. 2016, c. 15, s. 60.

Same

(5) If a candidate's election campaign period ends as described in paragraph 3 of subsection 88.24 (1) and the election campaign period continued during all or part of the supplementary reporting period, the candidate shall, before 2 p.m. on the supplementary filing date, file a supplementary financial statement and auditor's report for the period commencing on the day the candidate's election campaign period ends and including the six-month period following the year of the election. 2016, c. 15, s. 60.

Supplementary report

(6) A supplementary financial statement or auditor's report shall include all the information contained in the initial statement or report filed under subsection (1), updated to reflect the changes to the candidate's campaign finances during the supplementary reporting period. 2016, c. 15, s. 60.

Auditor

(7) An auditor's report shall be prepared by an auditor licensed under the *Public Accounting Act, 2004*. 2016, c. 15, s. 60.

Exception re auditor's report

(8) No auditor's report is required if the total contributions received and total expenses incurred in the election campaign up to the end of the relevant period are each equal to or less than \$10,000. 2016, c. 15, s. 60.

Notice to candidates, before filing date

(9) At least 30 days before the filing date, the clerk shall give notice of the following matters to every candidate whose nomination was filed with him or her:

1. All the filing requirements of this section.
2. The candidate's entitlement to receive a refund of the nomination filing fee if he or she meets the requirements of section 34.
3. The penalties set out in subsections 88.23 (2) and 92 (1). 2016, c. 15, s. 60.

Same, before supplementary filing date

(10) At least 30 days before the supplementary filing date, the clerk shall give notice of the filing requirements of this section and the penalties set out in subsections 88.23 (2) and 92 (1) to the following candidates:

1. A candidate who notified the clerk under paragraph 4 of subsection 88.24 (1).
2. A candidate who notified the clerk under paragraph 5 of subsection 88.24 (1). 2016, c. 15, s. 60.

Electronic filing

(11) The clerk may provide for electronic filing under this section and may establish conditions and limits with respect to electronic filing. 2016, c. 15, s. 60.

Documents filed after filing date

(12) If the documents required to be filed under this section are not filed by 2 p.m. on the day that is 30 days after the applicable day for filing the documents, the clerk shall accept the documents only for the purpose of making the documents available under subsection 88 (9.1). 2016, c. 15, s. 60.

Return of surplus for subsequent expenses

88.32 (1) This section applies if all of the following circumstances exist:

1. A candidate or registered third party has paid a surplus to the clerk under subsection 88.31 (4).

2. The candidate's election campaign period has ended under paragraph 2, 3 or 4 of subsection 88.24 (1) or the registered third party's campaign period has ended under paragraph 2 or 3 of section 88.28.
3. It is no longer possible to recommence the campaign period under paragraph 5 of subsection 88.24 (1) or paragraph 4 of section 88.28.
4. The candidate or registered third party subsequently incurs expenses relating to a compliance audit. 2016, c. 15, s. 62.

Return of surplus

(2) If the candidate or registered third party notifies the clerk in writing that he, she or it is incurring subsequent expenses relating to a compliance audit, the clerk shall return the amount of the surplus, with interest, to the candidate or registered third party. 2016, c. 15, s. 62.

Effect of return of surplus

(3) If the surplus is returned to the candidate or registered third party, he, she or it is permitted to incur expenses relating to a compliance audit but no other expenses may be incurred. 2016, c. 15, s. 62.

Reporting periods

(4) The first reporting period of the candidate or registered third party under this section begins on the day after the surplus is returned and ends 90 days later, and each successive period of 90 days is a further reporting period. 2016, c. 15, s. 62.

Financial statements

(5) For each reporting period, the candidate or registered third party shall file with the clerk a financial statement in the prescribed form reflecting the expenses of the candidate or registered third party for the reporting period, and the financial statement must be filed no later than 2 p.m. on the 10th day after the end of the reporting period. 2016, c. 15, s. 62.

Final financial statement

(6) If, during a reporting period, the amount of surplus is reduced to zero or any remaining surplus is no longer required by the candidate or registered third party for expenses relating to a compliance audit, the candidate or registered third party shall file a final financial statement. 2016, c. 15, s. 62.

Repayment of remaining surplus

(7) If the final financial statement indicates that there is any remaining surplus, the candidate or registered third party shall pay the remaining surplus to the clerk when the financial statement is filed. 2016, c. 15, s. 62.

Remaining surplus held in trust by clerk

(8) The clerk shall hold the amount of the remaining surplus in trust for the candidate or registered third party. 2016, c. 15, s. 62.

Release of amount if another compliance audit

(9) If, after the candidate or registered third party pays the remaining surplus to the clerk, another compliance audit commences, subsections (2) to (8) apply, with necessary modifications, with respect to the subsequent compliance audit. 2016, c. 15, s. 62.

Amount to become property of municipality or local board

(10) The amount of the remaining surplus becomes the property of the municipality or the local board, as the case may be, when the compliance audit is finally determined and the period for commencing any other compliance audit has expired. 2016, c. 15, s. 62.

If you require any further information, please contact Adam Foran, by email at aforan@oshawa.ca, or by telephone at (905) 436-3311, ext. 2310.

Mary Medeiros

City Clerk & Returning Officer