
Report to City Council from Election Disclosure Complaints Officer Regarding Complaints Lodged Following the 2016 City of Saskatoon Municipal Election

Background

In accordance with Bylaw 8491, being “*The Campaign Disclosure and Spending Limits Bylaw, 2006*” (Bylaw), I am currently serving as the Election Disclosure Complaints Officer, having been appointed to that position on July 21, 2010.

My education includes a Bachelor of Arts from the University of Manitoba, a Master of Business Administration from the University of Western Ontario, and a Master of Arts and PhD from Duke University. I was awarded an Earned Doctor of Letters by the University of Saskatchewan in 2005. I am the author and editor of ten books and numerous articles and chapters in books on electoral systems, representation, elections, redistricting, and leadership selection. I joined the University of Saskatchewan faculty in 1965, and retired as Professor Emeritus in 2004. Currently, I am the Senior Policy Fellow at the Johnson-Shoyama Graduate School of Public Policy at the University of Saskatchewan.

For the purpose of this investigation, I have benefited from the services of Mr. Neil Robertson, QC, of Regina. Mr. Robertson is a specialist in municipal law, and, under authority of Bylaw 8491, Subsection 15 (2), he provided advice for this investigation.

Clauses 20 (1) (b) and (c) of Bylaw 8491 provide the Election Disclosure Complaints Officer with discretion over whether “the complaint is frivolous, vexatious, trivial or is made in bad faith” or whether “the circumstances of the complaint do not warrant investigation”. This discretion is reasonably exercised to avoid inconveniencing people and expending public resources in futile investigations where it is clear the complaint cannot be sustained. In exercising this discretion, the Officer should accept the complaint at face value (unless clearly unbelievable), even though any allegations on which it is based may later turn out to be unfounded or incorrect.

I have chosen to accept the complaints at face value and to investigate them for final disposition.

According to Subsection 19 (3) of Bylaw 8491 “the decision of the Election Disclosure Complaints Officer shall be final”.

Introduction

This report is the first for the City of Saskatoon under Bylaw 8491, so it is reasonable to expect that it will establish a precedent for the future. This precedent will not bind future

Election Disclosure Complaints Officers, but nonetheless how the issues are addressed and reported to City Council, the candidates, and the complainants, will likely have application beyond this particular instance.

I should make it clear that it is my opinion that Bylaw 8491 (Section 21) provides *minimum*, rather than maximum, direction and content requirements. City Council, the general public, and future candidates would be better served by my going beyond a mere statement of the number of complaints, their general nature, and the disposition of those complaints (which is the *minimum* contemplated by Section 21 of Bylaw 8491), to provide an explanation in the context of these complaints of the Bylaw and my reasoned interpretation and application of the relevant provisions of the alleged contraventions.

Report

The purpose of this report is to comply with the requirements of Bylaw 8491, being *The Campaign Disclosure and Spending Limits Bylaw, 2006*.

This Bylaw sets limits on spending for elections to City Council, requires disclosure of campaign contributions and expenses, and establishes campaign spending limits. The Bylaw provides for appointment of an Election Disclosure Complaints Officer to investigate complaints of false, misleading or incomplete disclosure of election contributions or expenses.

Section 21 of the Bylaw requires the Election Disclosure Complaints Officer “upon completion of the investigation of all complaints arising out of a general election or by-election” to “submit a report to Council setting out:

- a) the number of complaints received;
- b) the general nature of the complaints received; and
- c) the disposition or resolution of the complaints.”

a) Number of Complaints:

The City Clerk provided me with three separate complaints. Each complaint named a different Mayoral candidate in the 26 October 2016 civic election.

b) General Nature of Complaints:

- The complaint against Don Atchison related to an expression of support or endorsement by Mike Babcock.
- The complaint against Charlie Clark related to an expression of support, in the form of a video endorsement, by Zach Galifianakis.
- The complaint against Kelley Moore related to an expression of support, in the form of a video endorsement by Sara Wheelwright, as well as alleged support provided by Prairie Wild Consulting in the form of “undeclared equipment use and services”.

c) Disposition of Complaints:

Following investigation of the complaints, which included contacting each of the subjects of the complaints and receiving answers to my questions, I concluded that the

complaints should be dismissed. Written decisions on each of the complaints have been provided to the complainant(s) and the candidate/subject of complaint, with copies to the City Clerk.

General Observations

One common aspect to the three complaints was the premise that a public expression of support, or endorsement, by a person with potential influence is required to be reported as a campaign contribution. Since this issue may arise again at some future point, I will provide a brief explanation as to why I found that such endorsements do not constitute a campaign contribution as defined by Bylaw 8491.

A basic premise of a successful democracy is that citizens become engaged in elections. That presupposes discussions of issues and candidates by an active citizenry and, understandably, attempts by some individuals and groups to persuade family, friends, colleagues, and others, to support a particular candidate.

Citizens who take an interest in the future of their community at some point decide which candidate to support in an election. In so doing they often communicate their support for that candidate in an effort to persuade other citizens to vote for the recommended candidate. Voluntary communications of support (*regardless of the medium of communication*) from *any* individual may take many forms and are within the scope of the fundamental freedom of expression protected by Section 2 (b) of the *Canadian Charter of Rights and Freedoms*. While not central to my analysis, it would be surprising if City Council intended that endorsements by one individual of another would be subject to the Bylaw.

Clause 2 (a) of the Bylaw provides the following definition of “campaign contribution”:

“campaign contribution” means any money paid, or any donation in kind provided, to or for the benefit of a candidate during the election contribution period for the purpose of financing an election campaign, including revenue raised from a fundraising event by the sale of tickets or otherwise, but does not include volunteer labour or services.

This definition is tied to something of monetary value – money or something with ascertainable and equivalent value. It includes “donation in kind provided ... for the benefit of a candidate during the election contribution period for the purpose of financing an election campaign”, but specifically excludes “volunteer labour or services”. The donation in kind then must satisfy the following four elements:

1. donation of monetary value;
2. provided to or for the benefit of a candidate;
3. during the election campaign contribution period; and
4. for the purpose of financing an election campaign.

A public expression of support for a candidate or endorsement does not meet the first part of the definition of a “campaign contribution” because it is not a “donation” of

monetary value. Further, expressions of support or endorsements are provided to encourage other people to vote for the recommended candidate, not “for the purpose of financing an election campaign”. Even if a monetary value could be attributed, the exclusion for “volunteer ... services” would likely then apply, assuming an endorsement could be considered as “labour or services”.

A distinction may be drawn between the personal endorsement and the cost of producing commercials featuring the endorsement, which may have monetary value. In the case of the complaint against Kelley Moore, I was satisfied that any contribution of this kind by Sara Wheelwright, or her company, was properly disclosed, as was any contribution in the form of use of equipment or services by Prairie Wild Consulting or its principals.

Decision

Based on responses I received from the three candidates, my own review of the details and information contained in each of the complaints, and having viewed various videos and internet postings, I am satisfied that the endorsements referenced in the complaints had neither real nor potentially attributable monetary value. I am also satisfied that all in kind contributions for equipment or services were properly disclosed and that no violation of the election disclosure rules of Bylaw 8491 had taken place. The complaints are dismissed.

Respectfully submitted by:

**Professor John Courtney
Election Disclosure Complaints Officer
For the City of Saskatoon**