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File No.: 304070

Mayor Dan Carter and Members of Council
The Corporation of the City of Oshawa
Oshawa City Hall
50 Centre Street South
Oshawa, ON
L1H 3Z7

Your Worship and Members of Council:

**Re: Request for Council-directed Recount – Mrs. Theresa Corless
Office of City Councillor – Ward 1 Election
*Municipal Elections Act, 1996***

We have been retained by Mrs. Theresa Corless, a candidate in the election for the Office of City Councillor – Ward 1, in support of a request for a recount in that election. We submit this letter to Council as our formal request, on behalf of our client, that Council pass a resolution pursuant to its authority under section 57 of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32 Sched., requiring a recount of the votes cast for the Office of City Councillor – Ward 1 Election.

Mrs. Corless was one vote short of triggering an automatic recount. This is an extremely close result. It is incumbent on Council to ensure the final vote count accurately and reliably reflects the will of the voters of Oshawa. In our view, Council can best uphold this democratic principle by directing that a focused recount be conducted.

Background

Mrs. Corless is long-time resident of Oshawa, with a demonstrated commitment to public service. She has served two terms as a Trustee of the Durham Catholic District School Board, also having served as its Chair. Mrs. Corless was inspired to serve on City Council, and decided to run in the 2022 Municipal Election to represent the residents of Ward 1, where she resides with her family.

As Council may be aware, Mrs. Corless finished in second place by a margin of only 8 votes. This reflects an exceedingly small vote differential. Despite this, Mrs. Corless was advised by the Clerk that an automatic recount would not be held as the threshold for doing so was narrowly missed.

Following the declaration of the election results, questions remain about how certain ballots were accounted for. We note, for example, the mail-in ballots cast by Mrs. Corless's daughters, both of whom are studying abroad, did not reach them soon enough to have them returned to the Clerk on time. Unfortunately, the Declaration of Certified Results does not clearly itemize which ballots in which races were rejected, and on what basis. We only know that 93 ballots were cast but not counted in the results.

Council's Authority to Direct a Recount

It is within Council's purview to direct that a recount be conducted, for any reason, even if an automatic recount was not required. Section 57 of the *Municipal Elections Act, 1996* provides as follows:

Recount for municipality, local board or Minister

57 (1) Within 30 days after the clerk's declaration of the results,

(a) the council of a municipality may pass a resolution requiring a recount of the votes cast,

(i) for all or specified candidates for an office on the council,
[emphasis added]

On behalf of our client, we submit that this is a circumstance in which Council should exercise this statutory authority.

Municipal Election Recount Policy

Even though the City's Municipal Election Recount Policy (the "**Policy**") did not require an automatic recount, Council should take guidance from its expectation of when a recount must be conducted. On behalf of our client, we submit that because this particular result was so close to an automatic recount, Council should similarly deem it desirable to hold a recount.

The Policy recognizes that when some elections are very close, the public interest is best served by holding a recount. To this end, the Policy sets the following threshold:

5. Threshold

An automatic recount shall be conducted where the vote differential between the last available candidate(s) elected and the first candidate(s) not elected is equal to or less than one quarter of one percent (0.25%) of the total number of votes cast for the office, rounded up to the closest whole number.

According to the Clerk's Declaration of Certified Results, the three candidates in the Ward 1 election received 2402 total votes. However, this is the number of ballots counted, not the "total number of votes cast" for that election, which the Policy directs we must consider. The total number of votes may be even higher, however, the Certified Results do not itemize how many ballots were cast but eventually rejected, or on what basis. We only know there may be up to 93 ballots.

In any event, and based on the number of votes counted, a 0.25% vote differential for the Ward 1 election – which the Policy directs is to be rounded up – is only 7 votes.

Mrs. Corless fell one single vote shy of an automatic recount. If even one of Mrs. Corless's daughters received their mail-in ballot in good time, there would have been an automatic recount.

Certainty and Reliability of Election Results

One of the most important principles underlying the *Municipal Elections Act, 1996*, as defined by our courts, is that there be certainty that the results of the election reflects the votes casts. All valid votes must be counted to ensure the intention of every voter is reflected.

Council, through the Policy, deemed it appropriate that a 7 vote differential would have resulted in an automatic recount. In this case, with an 8 vote differential, Council should similarly view it as an important and desirable instance to ensure certainty in the election result.

Other municipalities in Ontario have already directed that a recount be conducted, and for similarly close races. For example, in the Town of Mattawa, where there was a 7 vote differential in an election where 717 votes were cast (a 0.98% differential), the council passed a resolution on November 1, 2022 directing that a recount be held. Based on recently reported unofficial results, the results of the vote did change following that recount.

Lastly, in past experience in Oshawa, the reconciling of “spoiled” ballots following voting day has affected the final results of the vote. In the 2018 Ward 4 election, former Councillor Sanders picked up several additional votes during the reconciling of “spoiled” ballots. While this was not enough to have him elected to Council, this example demonstrates that a thorough review of “spoiled” ballots can affect the final tally.

Conclusion

It is incumbent on Council to ensure the election results accurately and reliably reflect the will of Oshawa voters. Every vote matters, and every ballot must count and be accounted for. Council should uphold this important democratic principle by exercising its authority to require a focused recount be held for the Office of City Councillor – Ward 1 election.

Enclosed with this letter is a draft of the resolution Council should pass to require the recount.

We will be in attendance at Council’s meeting on November 15, 2022 and have filed a request with the Clerk to make a deputation to Council.

Yours truly,

AIRD & BERLIS LLP



John Mascarini

JM/JGP/km

Encl.

Draft Council Resolution

Resolution No. # - Council-Directed Recount – 2022 Municipal Election, Office of City Councillor – Ward 1

Moved by:

Seconded by:

Whereas the City Clerk declared the results of the 2022 Municipal Election on October 25, 2022;

And whereas the election for the Office of City Councillor – Ward 1 resulted in a vote differential of eight (8) votes between the first-placed candidate and the second-place candidate;

And whereas the City Clerk determined that City's Municipal Election Recount Policy did not require an automatic recount;

And whereas Council has authority under section 57 of the *Municipal Elections Act, 1996* to require that a recount be held;

And whereas Council has determined that it is appropriate and desirable that a recount be conducted to ensure that there is certainty that the results of the election reflect the votes cast;

Now therefore be it resolved:

1. That, pursuant to subparagraph 57(1)(a)(i) of the *Municipal Elections Act, 1996*, Council direct the City Clerk to conduct a manual recount for the Office of City Councillor – Ward 1 election, which shall include the following:
 - a. That all ballots cast by Ward 1 electors be manually recounted;
 - b. That all ballots which were rejected by the Clerk or a deputy returning officer relating directly to the Office of City Councillor – Ward 1 election be included in the manual recount;
 - c. Where ballots were rejected by the Clerk or a deputy returning officer, for any reason, in relation to an office other than the Office of City Councillor – Ward 1 that also appeared on the ballot, such ballots be included in the manual recount;
 - d. That all ballots which were “declined” by a Ward 1 elector in accordance with s. 52(5) of the *Municipal Elections Act, 1996* be including in the manual recount;
 - e. Where ballots were “declined” but in relation to an office other than the Office of City Councillor – Ward 1 that also appeared on the ballot, such ballots be included in the manual recount; and
 - f. That the Clerk's declaration of results of the recount separately itemize the number of rejected ballots, and the reasons for rejection, and “declined” ballots which relate specifically to the Office of City Councillor – Ward 1 election.