
HALDIMAND COUNTY

Report CS-CL-10-2018 English Language Public School Board By-election For Consideration by Council in Committee on August 28, 2018



OBJECTIVE:

To provide information on the need for a by-election for the two Haldimand County trustee positions for the Grand Erie District School Board, and seek approval for a revised election budget for 2018.

RECOMMENDATIONS:

1. THAT Report CS-CL-10-2018 English Language Public School Board By-election be received;
2. AND THAT the correspondence from the County Solicitor, dated August 21, 2018, re: School Board Trustee Election Issue, be received as information;
3. AND THAT the Mayor and County staff continue to aggressively pursue a resolve to this issue through the Premier of Ontario's Office, the Minister of Municipal Affairs and the local MPP, including a request for funding if a school board related by-election is required;
4. AND THAT, in the absence of the Provincial government's agreement to the acclamation of the two currently eligible candidates for the two English Language Public School Board trustee positions, staff continue to proceed with the planning for a County-wide By-election within the legislated timeframes;
5. AND THAT, in order to conduct this By-election, the 2018 Municipal Election budget be increased by \$48,000, as outlined in Report CS-CL-10-2018, with funding from the Contingency Reserve given that this is not a normal or expected component of the municipal election process;
6. AND THAT a copy of this report be sent to the Premier of Ontario, Minister of Municipal Affairs and MPP Toby Barrett requesting their immediate assistance, including consideration of special funding in the event that this School Board related By-election must proceed.

Prepared by: Evelyn Eichenbaum, Clerk

Respectfully submitted: Karen General, CPA, CGA, General Manager of Corporate Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

One of the certified candidates for a trustee for the English Language Public School Board in the upcoming fall Municipal Election has been determined as ineligible after the deadline for withdrawal. Unfortunately, the County solicitor has advised that Haldimand County is now required to hold a County-wide by-election for this seat, in accordance with the *Municipal Elections Act, 1996* (Act). Such a by-election would follow the October 22nd Municipal Election. Although the by-election will result in increased workload, increased cost, and significant confusion amongst the electorate, the solicitor's interpretation of this legislation is that there is no other legal recourse to address the situation. A request has been made to the Minister of Municipal Affairs and Housing to intervene in this matter in order to

have a more practical solution based on the circumstances. Until a response is received from the Province, the planning process for holding a by-election will proceed as outlined in this report. An amendment to the 2018 Municipal Election budget is also required in order to authorize the increased expenditures required for this school board by-election.

BACKGROUND:

The regular municipal election for 2018 is scheduled to take place on Monday, October 22, 2018. At the close of Nomination Day – July 27, 2018 – there were three candidates who submitted nomination forms for the two Haldimand County trustee positions on the Grand Erie District School Board (GEDSB). Based on the information provided to the Clerk through the filing of the nomination forms, all three candidates were certified as candidates for those two positions. Subsequently, one of the certified candidates attended the County office and indicated that he wished to withdraw his nomination. He was advised that the deadline for withdrawal had passed, so his name could not be removed from the ballot. Further, it became apparent that this candidate was not eligible to hold office as a public school board trustee given his employment with a school board.

Staff have conferred with representatives from the local Ministry of Municipal Affairs and Housing office, as well as the County Solicitor, in an effort to resolve this situation. The Provincial and legal opinion is that the two remaining public school board candidates cannot remain on the election ballot for October 22nd. Instead, the legal interpretation of Section 39 (b) of the Act is that the regular election (on October 22nd) for the English-speaking Public School Board Trustee position is cancelled and a by-election shall be held to fill the office.

This particular issue affects all English public school supporters in Haldimand County. As of August 22, 2018, there are 36,650 eligible voters in Haldimand County, of which 32,435 have English Public School support. Staff anticipate receiving an updated voter's list from the Municipal Property Assessment Corporation (MPAC) in September, and as new voters add themselves to the voters' list prior to the October 22nd election, the number of eligible voters will likely increase.

ANALYSIS:

On August 13, 2018, written confirmation was received by the Clerk that a certified candidate for the GEDSB trustee position in the fall Municipal Election was not eligible to hold office as a school board trustee. Accordingly, legal interpretation of the applicable legislation requires that the election process must start over for this particular office, including establishment of a new nomination date and conducting a County-wide by-election.

There are legislated timelines to carry out these processes, based on the date at which ineligibility was confirmed. In accordance with Section 65 of the Act, the date of Nomination Day shall be fixed not less than 30 days and not more than 60 days after a candidate for the office becomes ineligible to hold the office under the circumstances described in clause 39 (b). In this circumstance, Nomination Day will be September 12th at the earliest and October 12th at the latest. The related By-Election Day shall be 45 days after Nomination Day. In order to accommodate necessary arrangements, the following two timelines are being proposed:

Nomination Day:	October 5, 2018	Election Day:	November 19, 2018
	October 12, 2018		November 26, 2018

If, at the end of the above noted Nomination Day, only two candidates have submitted nomination forms, and if those candidates are both certified, they would be considered elected by acclamation, and no by-election would be held. (Candidates who submit nomination forms for the by-election, must be

eligible as on Nomination Day for the by-election, and they also must have been eligible on Nomination Day for the regular election.)

Staff are preparing a budget and making arrangements to follow through with a by-election as required under the Act. Some of the by-election details are legislated i.e. the hours of Election Day are 10:00 a.m. to 8:00 p.m., and one Advanced Poll must also be held (date, hours and location to be established). For Election Day, the number and location of voting places shall be established as most convenient for the electors. In this case, fewer voting locations could be utilized in order to control the expense and logistical issues of the by-election, but the County must be cognizant that this issue affects all 32,000 public school voters so broad access to be able to exercise their democratic right is important. Staff will endeavour to utilize County facilities wherever possible and anticipate scheduling 4 or 5 voting locations, rather than the 8 locations scheduled for the regular election. Staff anticipate polling locations in Hagersville, Caledonia, Dunnville and Cayuga on Election Day, with an Advanced Poll in Cayuga.

As the work and cost related to this particular by-election is considerable, and in light of the significant confusion for the electorate resulting from an inadvertent timing issue, a letter was drafted to the Minsiter of Municipal Affairs and Housing (Attachment 1), and copied to Premier Doug Ford, seeking consideration of a ministerial order to acclaim the two remaining certified candidates for the office of GEDSB trustees. Mayor Hewitt attended the Association of Municipalities of Ontario conference in Ottawa, and presented the letter personally to the Minister on August 21st. Mayor Hewitt was advised that the Minsiter's staff would review the matter and follow up with the County regarding the requested intervention. As Haldimand County has an elected Member of Provincial Parliament (MPP) who is part of the sitting government, it is hoped that MPP Tobey Barrett will offer his assistance in resolving this unfortunate matter in a timely and pragmatic manner to the benefit of the local constituents.

FINANCIAL/LEGAL IMPLICATIONS:

Finance

Some additional costs will have to be incurred for staffing, facility rental, configuration of tabulation equipment, ballot printing and mailing, and advertising. The tabulators used for the regular election can be retained for use during the by-election, and the contract for voter database software is in place until the end of 2018. With fewer voting locations, fewer staff would be required, and there would be an increased reliance on external workers who worked the regular election in addition to Clerks Division staff and some County staff. The following presents an estimated budget related to the by-election:

Temporary staffing	\$1,000
Honoraria – External Election Workers	\$4,500
Overtime (Clerks and I.S. staff)	\$2,000
Facility Rental	\$1,000
Tabulation configuration and related costs	\$13,500
Ballots	\$3,000
VoterNotification Cards printing and mailing	\$21,000
Advertising	\$2,000
Total	\$48,000

Voter notification cards are utilized as significant communication tools in each election. Because English Language Public School support represents the majority of voters in Haldimand County, voter notification cards would have to be sent to approximately 16,000 households, which represents 88% of the Haldimand County municipal electorate. There is a cost of approximately \$21,000 to have a third party print and mail notification cards related to this by-election. Staff have considered an alternative, such as a general, non-personalized voter notification card that could be prepared and handed out to

English Public School board voters at the October 22nd election, however, this will only capture those individuals who actually vote in the municipal election, leading to many eligible voters perhaps being unaware of this issue. Accordingly, the normal mailing process is recommended.

The approved expenditure budget for the 2018 Municipal Election is \$200,000. (Annual contributions to the reserve of \$50,000 over the last four years provide funding.) Given this by-election is an unusual and unanticipated event, the additional costs should be funded from the Contingency Reserve.

The current candidates will be required to submit a Financial Statement for the initial campaign period, and will be refunded their \$100 nomination fee. For those candidates who submit a nomination form for the by-election, a \$100 nomination fee will be required.

Legal

Staff have had numerous discussions with staff from the Ministry of Municipal Affairs, and with the County Solicitor regarding the current situation of an ineligible certified candidate requiring the holding of a by-election. The County Solicitor has prepared an opinion letter on the matter which is included in the closed agenda for the August 28, 2018 Council in Committee meeting providing further context.

STAKEHOLDER IMPACTS:

The two eligible certified candidates for GEDSB trustee, and the Director of Education for the GEDSB have been informed of the legislated requirement to move forward with a by-election due to the ineligibility of a certified candidate.

Communication to the electorate regarding this issue will be a key factor. Not all electors pay attention to school board elections, so a lower turnout at a by-election can be anticipated, especially in light of this process taking place almost parallel to, and immediately following the regular election. Staff will draft a comprehensive communication plan to promote the by-election.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: Yes

Policy: No

ATTACHMENTS:

1. Letter to the Minister of Municipal Affairs and Housing requesting Ministerial Order dated August 21, 2018