

2003 Municipal Election

Recount Application

Ron Swiddle, City Solicitor
Thursday, January 26, 2005

Recount Request

- 1.Request for Council Recount
- 2.Request for court-ordered recounts
- 3.Mr. Robert's concerns
- 4.Recommendations - future requests for Recounts



Recount Request

- Mr. Robert requests a manual recount for Ward 3 Councillor race
- Council only able to authorize machine recount
- Council refuses request



Recounts Request

December 11, 2003

- Mr. Robert files for Court-ordered Recounts and other relief
- Not the same request made to Council earlier



Recounts Request

1. Ward 3, Councillor Race (6 Candidates):

Candidate	Total Votes Received	Difference
1 Councillor DUPUIS	4,355	
2 Councillor RIVEST	3,098	1,257
3 Jean ROBERT	3,065	1,290

Mr. Robert was third, with a vote of 3,065, 33 votes lower than that of the second successful candidate.



Recounts Request

2. Mayoral Race (13 Candidates):

Candidate	Total Votes Received	Difference
1 Mayor COURTEMANCHE	19,152	
2 Paul MARLEAU	11, 360	7,792



Recounts Request

3. English Language Public (ELP) - School Board Trustee Area 3 Ward 3 (2 Candidates)

Candidate	Total Votes Received	Difference
1. Gary BASS	1,109	
2.Lori DeVILGT	946	163



Recounts Request

4. English Language Separate (ELS) - School Board Trustee Zone 3 Ward 3 (2 Candidates)

Candidate	Total Votes Received	Difference
1 Barry MacDONALD	1,274	
2 Craig CUNNINGHAM	998	276



Recounts Request

5. French Language Public (FLP) - School Board Trustee Area 7 Wards 1 to 6 (10 Candidates, 6 to be elected)

Candidates #6 & 7 only	Total Votes Received	Difference
6 Françoise C. MONETTE	886	
7 Francois BOUDREAU	867	19



Recounts Request

6. French Language Separate (FLS) - School Board Trustee Zone 6 Ward 3, (3 Candidates, 2 to be elected)

Candidates	Total Votes Received	Difference
1 Georges BOUDREAU	2,556	
2 Marcel LEGAULT	1,677	879
3 Derek DUPUIS	1,471	1,085

On the FLP race challenged by Mr. Robert, the second place candidate, Marcel Legault, won by 206 votes.



Recounts Request

Additional Requests made to Court

7. Forensic audit of the election results for the City of Greater Sudbury (not just Ward 3)
8. Order to produce **all** records relating to the election including municipalities such as French River, St. Charles, etc.)
9. City to reimburse Mr. Robert for all his costs
10. Other sundry relief



Recounts Request

Cost Implications for six manual recounts, forensic audit, etc.

- The City was defending itself against all of the requests made by Mr. Robert
- estimated costs \$150,000 to \$200,000



3. Mr. Robert's Concerns

Mr. Robert raised nine concerns to justify a recount.

- Answered at length in court filings

- Brief summary follows



Mr. Robert's concerns

- 1) The 33 vote difference between Mr. André Rivest and himself;**
 - No longer automatic recount
 - Automatic recount only in the event of a tie
 - Under the old legislation, would not have qualified



Mr. Robert's concerns (cont'd)

2) The difficulties he had in obtaining the election results election night;

Candidate's Guide says:

- 1) results posted on website when available
 - were posted at 1:20 p.m. next day
- 2) written results available by noon November 12th
 - were available by 10:00 a.m.



Mr. Robert's concerns (cont'd)

3) Voting machine “malfunctions”

- **No** machine in ward 3 malfunctioned on voting day
- At close of polls, one machine had difficulty transmitting results because of a phoneline problem.
- It was brought to Election Control, and transmitted results without problem.



Mr. Robert's concerns (cont'd)

4) "Discrepancy" for non-resident vote in Ward 3;

- On two pages of statistical information of 50 pages, one column in 10 was misprinted.
- This was not the election results; had no bearing on the count.
- This statistic was corrected within two days; new pages issued.
- Mr. Robert was advised before launching court action



Mr. Robert's concerns (cont'd)

5) The KPMG LLP report;

- KPMG performed a number of audit services through the election
- Did random testing of machines election night, one per ward
- In Ward 3, actually did recount of 1,036 ballots
- Confirmed exact results as initial reports



Mr. Robert's concerns (cont'd)

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Mr. Robert's concerns (cont'd)

6) The treatment of "spoiled ballots";

"Spoiled ballots" - formerly were interpretation issues

Now - are rejected by machine
- voter gets new ballot

Spoiled ballots kept separate, not involved in count or recount



Mr. Robert's concerns (cont'd)

7) Voting in “Wards” 7, 8 and 9;

- 7, 8 and 9 are nominal Wards, to be kept separate from City Wards 1 -6
- Used for residents outside City to vote on School Boards
- Not for Mayor or Councillor



Mr. Robert's concerns (cont'd)

8) Proxy votes;

- On Election Day, one man was to vote by proxy, but voted himself
- Had not completed any proxy forms
- Voted once, and only once
- No problem, no effect on counting of votes



Mr. Robert's concerns (cont'd)

9) Scrutineers' rights

- Upon review, confirmed that no scrutineer's rights were infringed
- No effect on counting of ballots



Mr. Robert's concerns

Judicial Recount

- Applicants must prove there are sufficient grounds for a recount, based on concrete evidence, and not just mere concerns.
- The nine concerns raised by Mr. Robert do not raise any grounds for a recount.



4. Recommendation for handling future recount requests

Recounts and Technology

- Legislative Change
 - was “voter intent”
 - now “mark in space provided”



4. Recommendation for handling future recount requests

Recounts resulting from the 2003 Municipal Elections In Ontario

- Approximately 440 municipalities, tens of thousands of offices
- 15 recounts
- No changed results



Recommended Policy

1. If Council feels special circumstances call for a recount, Council should order it and pay.
 2. If Council feels a recount is unwarranted, it should allow the recount if the applicant is willing to pay.
 - payment to be refunded if declared winner changes.
- Options - case by case
 - 50 - 50

