



FUNDING OF MUNICIPAL POLITICAL PARTIES

By: *Daniel Goupil*, lawyer

A recent decision of the Appeal Court of Quebec¹ recently confirmed a democratic principle of the municipal electoral process which is stipulated in *An Act respecting elections and referendums in municipalities*.

In municipal elections held in the Municipality of Saint-Constant in November 2005, two teams competed for positions as councillors and mayor. The maximum amount allowed by law for election expenses was set at \$37 506. However the actual amount spent by the defendants to win the election was more than \$53 000. This amount exceeded the allowable amount by 42%. The losing team demanded that the election be annulled.

The Appeal Court of Quebec confirmed the decision of the Honorable Gilles Mercure of the Superior Court who had come to the following conclusions:

The candidate for mayor had appointed an official agent. The evidence showed that the agent did not have any control over the expenditures. The agent declared that he had not realized that the expenditures had exceeded the allowed amount, and the mayor could not claim that he had completely entrusted this responsibility to his agent and consequently could not have been unaware of the excess expenditures unless his unawareness was deliberate.

Although the evidence showed that all the candidates for positions as councillors were unaware of the financial matters regarding the election campaign and therefore the excess spending had been done without their knowledge, the defendants did not succeed in proving that a 42% cost overrun on allowable expenditures *did not have a decisive impact on the election*, which was the burden of proof required by law. Therefore the election of the mayor and

councillors was declared null and void by both the Superior Court and the Court of Appeal.

As Judge Bastarach said in a recent decision of the Supreme Court²: 'The electoral financing system is the primary means by which the state promotes equality in political debate'.

¹ *Boivin vs. Pépin*, [2007] Q.C.C.A. 1478 (C.A.)

² *PGC vs. Harper*, [2004] 1 R.C.S. 884

GOLF TICKETS FOR MUNICIPAL ELECTED REPRESENTATIVES.

By: *Daniel Goupil*, lawyer

As you no doubt remember, there was a lot of reaction by municipal councils in the summer of 2006 to the decision of the Superior Court, in the matter of *Parenteau vs. Bourbonnais*¹, when the court declared that the mayor and councillors of the City

of Chambly were disqualified for misconduct. The allegations were that they had purchased tickets to take part in golf tournaments held by neighbouring municipalities and tickets so that their spouses could participate in certain other activities (benefit brunches, tribute concert, Club Optimiste supper, etc.), using money from the municipal budget rather than from their expense allocations.

A recent decision of the Appeal Court² reversed this decision and clarified the issue for municipal politicians.

First the Appeal Court decided that purchasing tickets for golf tournaments organized by neighbouring municipalities is a legitimate council expense because by purchasing these tickets, the municipality helps works or initiatives for the well-being of the population (funds for charitable organizations), which was evidence not recognized by the tribunal of the first instance.

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With regard to the tickets purchased for spouses, the Court of Appeal noted that there were very few events where spouses participated and that the entry fees were low (\$15 to \$75). The Court also noted that the purchase of these tickets was a financial contribution to community organizations (expenses authorized by law) and, as the defendants had explained, it was expected that the elected representatives would be accompanied by their spouses. For these reasons, the tribunal decided that it would be abusive to conclude that purchasing this type of tickets constituted misconduct by the elected representatives, particularly because these purchases are allowed by law.

In conclusion we quote the following extract from the decision of Judge Chamberland:

"It is possible that the voters of Chambly have other views, and may think that no matter what the law says, these expenses should be assumed by the individual elected representatives from their own expense allocations. Should this be the case, the voters will be able to express their views in the next elections or in other ways. But this debate is not part of legal matters which the Court must decide"

¹ 505-05-006695-016 (C.S.)

² *Bourbonnais vs. Parenteau*, [2007] Q.C.C.A. 1841 (C.A.)



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