

## Polling exposes Elections Act hole: expert; Gauged popularity; 'You want to go in so you can win': Mississauga MP

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Questions about whether former Mississauga-area Liberal MP Bonnie Crombie violated elections law in her bid to join city council have exposed a glaring hole in the Municipal Elections Act, experts say.

Ms. Crombie, who was defeated in the May federal election only to announce her candidacy for Mississauga's vacant Ward 5 seat months later, paid for a team to conduct advance polls to gauge her popularity in the region shortly before jumping into the hotly contested race.

"You want to go in so you can win," she said in a July interview with the National Post, a couple of weeks before filing her nomination papers.

Ms. Crombie and her lawyer contend she broke no rules, even as other municipal law experts suggest she may have run afoul of section 76 of the Municipal Elections Act, which bars candidates from incurring election expenses outside the campaign period.

At issue is the definition of election expenses, referenced in the Act as "costs incurred for goods or services by or on behalf of a person wholly or partly for use in his or her election campaign."

Toronto-based lawyer Chris Barnett said an electoral poll to gauge popularity would fit that definition.

"As a general rule, since a poll is likely to be 'wholly or partly for use' in a campaign, they would be considered expenses... strictly speaking, candidates should not be incurring expenses before they are nominated," he said.

**George Rust-D'Eye**, a municipal law expert and Mississauga's interim integrity commissioner, said the ambiguity of the Act makes it difficult to provide a definitive answer. If a political neophyte conducted a personal poll for the express purpose of deciding whether to enter politics, Mr. Rust-D'Eye said, that may well fall outside the purview of the Act.

But in a case such Ms. Crombie's - where an individual has recently held public office and already has a team in place to survey the electorate - it would more likely constitute a violation, he said. Such a poll could also be used to zone in on specific addresses or areas where support is lacking.

"All of those factors would tend toward it being a campaign expenditure.... In some cases, I would think a poll would be part of the campaign because it

would be familiarizing the people that were polled of the fact that the person is running," Mr. **Rust-D'Eye** added.

Ms. Crombie was adamant to the contrary, maintaining she was on "absolutely solid ground" legally.

"It's research that I did. It's absolutely not a violation. We researched that," Ms. Crombie said, noting her poll was not designed to promote her candidacy, but rather to facilitate her decision on whether to engage in the campaign at all.

"It's a battle of lawyers now, who says what," Ms. Crombie fumed.

Her own lawyer, Jack Siegel, said while a survey to gauge what issues matter to the electorate may be an election expense since it could assist in tailoring a campaign, a "horse race" poll would provide no such insight. The debate, Mr. Siegel said, highlights severe inadequacies in the Municipal Elections Act.

"There are not spaces here where you could drive a truck through; you can take an entire convoy," he said.

Even the Ministry of Municipal Affairs and Housing could not confirm whether advance polling would constitute an election expense, with a spokesman noting it "does not provide legal interpretation."

Mississauga's Ward 5 byelection, which has drawn 27 candidates, is slated for Sept. 19.

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