



INCORPORATED 1855

TOWN OF WHITBY REPORT

RECOMMENDATION REPORT

REPORT TO: Operations Committee	REPORT NO: CS 37-10
DATE OF MEETING: May 25, 2010	FILE NO(S):
PREPARED BY: Corporate Services	LOCATION: Town Wide
REPORT TITLE/SUBJECT:	Municipal Election Compliance Audit Committee

1.0 **RECOMMENDATION:**

1. That Report CS 37-10 of the Director, Corporate Services/Treasurer be received;
2. That the Terms of Reference for the Compliance Audit Committee, included as Attachment 1 to this report be adopted;
3. That the posting and selection process for the Compliance Audit Committee, included as Attachment 2 to this report be endorsed; and
4. That the Town Clerk be given the authority to give effect thereto.

2.0 **EXECUTIVE SUMMARY:**

In accordance with the provisions of the *Municipal Elections Act*, the Council of the Town of Whitby is required to establish a Compliance Audit Committee prior to October 1st in an election year. The purpose of this report is to provide the Town Clerk with the necessary authority to establish a Compliance Audit Committee in accordance with the *Municipal Elections Act*.

3.0 **ORIGIN:**

Prior to Bill 212, Municipal Election Compliance Audits were discretionary and Council had the option of retaining the responsibility for compliance audit reviews. Of the Durham municipalities reviewed, only the Town of Ajax established and appointed a Compliance Audit Committee. Subsequently Bill 212 was enacted which amended the *Municipal Elections Act* resulting in the mandatory requirement for a municipal council or local board to establish a compliance audit committee prior to October 1, 2010.

4.0 BACKGROUND:

The *Municipal Elections Act (MEA)* states that an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the MEA relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

The *Municipal Elections Act (MEA)* requires that every municipality appoint a compliance audit committee prior to October 1, 2010. The mandate of the compliance audit committee is to:

- a) consider a request for a compliance audit and determine whether the request should be granted or rejected;
- b) if the request is granted, appoint an auditor;
- c) review the auditor's report and determine whether legal action should be taken; and
- d) if the auditor's report indicates that there are no apparent contraventions and no reasonable grounds for the application, advise Council. Council would then decide whether or not to recover the auditor's costs from the applicant.

5.0 DISCUSSION/OPTIONS:

The *MEA*, as amended effective January 1, 2010, introduced a new section 81.1 to require the establishment of a compliance audit committee for all municipalities and local boards. The legislative requirements addressing compliance audits and the establishment of this committee are included as Attachment 3 to this report.

To facilitate the creation of the Municipal Election Compliance Audit Committee, the Town Clerk is proposing that Council endorse the selection process as outlined in Attachment 2 to this report and that the Terms of Reference included as Attachment 1 to this report be adopted.

As the committee will have quasi-judicial responsibilities under the *MEA*, staff is proposing that a retainer fee and a per diem apply to attendance at meetings. The Terms of Reference address the financial reimbursement to members appointed to the committee.

Compliance Audit Committee Composition

Compliance audit committee members should possess an in-depth knowledge of the campaign finance rules of the *MEA* so that they can make independent decisions on the merits of the applications. As the committee will operate as a quasi-judicial committee, prior experience on a committee, task force or tribunal would also be an asset.

Ideally, the committee composition should consist of 3 or 5 members, including auditors, accountants, lawyers or other individuals specializing in election campaign finance activities. A maximum of 7 members is permitted under the *MEA*. To avoid possible conflicts of interest, care must be taken to ensure that any auditors or accountants appointed to the compliance audit committee do not audit or prepare the financial statement of any candidate running for office on Whitby Town Council. Accordingly, any auditor or accountant appointed to the committee will have to agree in writing not to undertake the audits or preparation of the financial statements of any candidates seeking election to Whitby Town Council. Failure to adhere to this requirement will result in the individual being removed from the committee.

Organizations such as the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada and universities may be approached to solicit interest from their members or faculty for Council's consideration. As each municipality and local board is required to appoint a Compliance Audit Committee, the potential for a shared committee service was reviewed with area municipal clerks. At first, area municipal clerks supported the concept of a shared compliance audit committee as it was felt there would be consistency in the approach. After much review and consideration, the shared approach was deemed not feasible and did not outweigh the benefits of an independent local municipal committee. It was felt that a shared committee would cause logistical challenges in appointments, possible increased costs and it was felt would intensify the challenge of finding impartial applicants.

In order for Council to proceed with the appointment of a committee to address compliance audit requests related solely to candidates for town council, the recommendations as contained in this report should be approved at this time enabling commencement of the process.

The Town Clerk is recommending that the Municipal Election Audit Compliance Committee consist of three members and that a retainer fee of \$200 for each of the three committee members and a per diem rate of \$250 plus mileage for attending meetings be endorsed. These rates appear to be in line with other municipalities who have established a committee.

6.0 PUBLIC COMMUNICATIONS/PLAN:

The municipal clerk is responsible for establishing procedures for the committee which will be posted publicly on the Town's website.

7.0 CONSIDERATIONS:

A. PUBLIC

Following the 2010 municipal election, any elector wishing to apply for a compliance audit will be required to submit such a request to the Town Clerk for consideration by a Compliance Audit Committee.

B. FINANCIAL

Advertising costs will be incurred to solicit applications for appointment to a Compliance Audit committee. All costs relating to the committee operation and activities are the responsibility of the municipality and the municipality or local board is also required to pay any auditor costs where the committee has approved an application for audit. Such costs will be addressed during the 2011 Operating Budget review.

Staff resources will be required to support the Compliance Audit Committee and the process. The amount of staff time required is unknown at this time and is dependent on the complaints received.

A per diem rate for committees has not been established by policy by council and therefore the Town Clerk is recommending that a retainer fee of \$200 be established and a per diem rate of \$250 plus mileage for attending meetings.

C. IMPACT ON & INPUT FROM OTHER DEPARTMENTS/SOURCES

Responsibility for supporting the operations and activities of the Compliance Audit Committee rests solely with the municipal clerk or secretary to the local board.

D. CORPORATE AND/OR DEPARTMENT STRATEGIC PRIORITIES

This report addresses the corporate strategic goal to be accountable and excellence in local government.

8.0 SUMMARY AND CONCLUSION

The Compliance Audit committee is a legislatively required resource to all electors appointed for the term of council. The following are key points that should be considered with respect to this report;

- A municipal election compliance audit committee must be established by a council or local board prior to October 1st of an election year;
- Where a compliance audit application is granted by the committee, it shall appoint an auditor to conduct the audit of a candidate's election campaign finances;
- The clerk of the municipality is responsible for the establishment of administrative practices and procedures for the committee and for the implementation of the committee's decisions; and
- Any costs associated with a compliance audit committee or an auditor shall be the responsibility of the Town.

Upon approval of this report, the Town Clerk will proceed with the posting and selection process for the Compliance Audit Committee.

9.0 ATTACHMENTS

Attachment #1 Municipal Election Compliance Audit Committee Terms of Reference

Attachment #2 Posting and Selection Process
Attachment #3 Section 81, *Municipal Elections Act*

For further information contact:
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Debi A. Wilcox, Town Clerk, Ext. 4302

Ken Nix, Director of Corporate Services/Treasurer

Robert Petrie, Chief Administrative Officer, Ext. 2211

ATTACHMENT #1

**Terms of Reference
for the
Municipal Election Compliance Audit Committee**

1. Enabling Legislation

Municipal Elections Act, as amended (MEA)

Section 81.1 of the *Municipal Elections Act* states:

Compliance audit committee:

- 1) a council or local board shall, before October 1 of an election year, establish a committee for the purposes of section 81.

Composition:

- 2) The committee shall be composed of not fewer than three and not more than seven members and shall not include:
 - a) employees or officers of the municipality or local board;
 - b) members of the council or local board; or,
 - c) any persons who are candidates in the election for which the committee is established.

Term of Office:

- 3) The term of office of the committee is the same as the term of office of the council or local board that takes office following the next regular election, and the term of office of the members of the committee is the same as the term of the committee to which they have been appointed.

Role of clerk or secretary:

- 4) The clerk of the municipality or the secretary of the local board, as the case may be, shall establish administrative practices and procedures for the committee and shall carry out any other duties required under the *MEA* to implement the committee's decisions.

Costs

- 5) The council or local board, as the case may be, shall pay all costs in relation to the committee operation and activities.

2. Mandate

An elector who is entitled to vote in an election and believes on a reasonable grounds that a candidate has contravened a provision of the *MEA* relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

The mandate of the Municipal Election Compliance Audit Committee is to hear and determine all applications filed in accordance with section 81 of the *MEA* in accordance with the procedures established by the municipal clerk under the provisions of the *MEA*. Any application which does not meet the legislative deadline for submission will not be presented to the committee for review.

The committee is required by legislation to:

- a) Review any applications for a compliance audit of any candidate who ran for election to Whitby Town Council, if the application was received in accordance with the legislation requirements.
- b) Determine whether the application should be granted or rejected within 30 days of receipt of such application.
- c) Where an application is granted, appoint an auditor licensed under the *Public Accounting Act, 2004* or other prescribed person to conduct a compliance audit of the candidate's election campaign finances.
- d) Consider the report of the auditor within 30 days of receipt and may,
 - i) if the report concludes that the candidate appears to have contravened a provision of the *MEA* relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention;
 - ii) if the report concludes that the candidate does not appear to have contravened a provision of the *MEA* relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application.

3. Type of Committee

Statutory Committee.

4. Membership and Qualifications

The Municipal Election Compliance Audit Committee is composed of the following members:

Report	Member Name
Committee Chair	To be determined
Committee Member(s)	3 members as appointed by Council possessing the required skills and qualifications. The committee shall not include, <ol style="list-style-type: none">a) employees or officers of the municipality or local board;b) members of the council or local board; orc) any persons who are candidates in the election for which the committee is established.
Departmental Representative	Town Clerk

Qualifications include the skills, knowledge and experience committee members need to contribute effectively to the accomplishment of the committee objectives such as accounting and audit experience, academic qualifications, legal professions and those with knowledge of campaign financing rules under the *MEA, 1996*.

5. Meeting Schedule

The committee shall meet as required to consider any applications for audit that have been filed in accordance with the legislation.

6. Reporting Requirements and Method

Meetings of the committee will be conducted in accordance with the open meeting provisions of the *Municipal Act, 2001*. Meeting notices, agendas and minutes shall be posted to the Town of Whitby website.

7. Budget and Resources

Members of the committee shall receive a retainer fee of \$200 plus a per diem rate of \$250 and mileage expenses for attendance at each meeting. The town is responsible to pay for any audit costs relating to the decisions of the committee.

Resource Budget

The following Town of Whitby staff resources will be required per meeting for the successful operation of the committee:

Staff Resource	Time Commitment (FTE equivalent) per meeting
Staff #1 Agenda Clerk	Dependent on # of complaints received
Staff #2 Deputy Clerk	Dependent on # of complaints received
Staff #3 Town Solicitor	As Required
Staff #4 Town Clerk	As Required

8. Code of Conduct

All employees and volunteers will be guided by any Town of Whitby policies applicable to quasi-judicial committees of council. The intent of the terms of reference is to enforce a positive and respectful workplace that is free from personal harassment and workplace conflict.

Workplace conflict occurs when two or more parties have interests to some degree that are or can be perceived as being at odds which disrupts the cohesive relationships necessary for a productive and harmonious workplace.

Personal harassment is any unwelcome behaviour, conduct or communications directed at an individual that is offensive to that individual. It is persistent and creates an intimidating, offensive or embarrassing work environment.

All staff and volunteers will refrain from personal harassment and workplace conflict behaviour, including offensive remarks or other actions that create intimidating, hostile or humiliating working conditions under this policy.

Members should be cognizant of perceived conflict in terms of issues which may serve to benefit them personally. Members shall not use their status on committees or personal or political gain. Committee members shall have regard for the Municipal Guidelines addressing the use of corporate resources during an election year.

9. Completion Criteria

The mandate of the Municipal Election Compliance Audit Committee will be considered complete at the end of each four year term of council at which time, a successor committee shall be appointed.

ATTACHMENT #2

**Posting and Selection Process
for the
Municipal Election Compliance Audit Committee**

1. Information pertaining to the Municipal Election Compliance Audit Committee, including the committee terms of reference and an application for appointment to the committee, shall be posted to the Town website for public reference.
2. Applications for appointment to the Municipal Election Compliance Audit Committee will be solicited by posting notice:
 - a) on the Town of Whitby website – [www. Whitby.ca](http://www.Whitby.ca)
 - b) in the local newspapers
 - c) with the institute of Chartered Accountants of Ontario
 - d) with the Law Society of Upper Canada.
3. Completed applications, including details relating to qualifications and experience, will be accepted during a four week period after the initial posting.
4. Applications will not be accepted from:
 - a) Employees or officers of the municipality or local board
 - b) Members of Council or local board
 - c) Any persons who are candidates in the election for which the committee is established or family members of same; and
 - d) Any person who is or intends to volunteer or seek employment to assist any candidate with his/her election finances in the election for which the committee is established.
5. Accepted applications will be presented to the Operations Committee for review and recommendation to Council.
6. Council shall determine appointments to the Compliance Audit Committee based upon skills and qualifications.

ATTACHMENT #3

Municipal Elections Act, 1996
Section 81

81. (1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Requirements

(2) An application for a compliance audit shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office; and it shall be in writing and shall set out the reasons for the elector's belief. 2009, c. 33, Sched. 21, s. 8 (44).

Deadline

(3) The application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) the candidate's supplementary filing date, if any, under section 78;
- (c) the filing date for the final financial statement under section 79.1; or
- (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires. 2009, c. 33, Sched. 21, s. 8 (44).

Application to be forwarded to committee

(4) Within 10 days after receiving the application, the clerk of the municipality or the secretary of the local board, as the case may be, shall forward the application to the compliance audit committee established under section 81.1 and provide a copy of the application to the council or local board. 2009, c. 33, Sched. 21, s. 8 (44).

Decision

(5) Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected. 2009, c. 33, Sched. 21, s. 8 (44).

Appeal

(6) The decision of the committee may be appealed to the Ontario Court of Justice within 15 days after the decision is made and the court may make any decision the committee could have made. 2009, c. 33, Sched. 21, s. 8 (44).

Appointment of auditor

(7) If the committee decides under subsection (5) to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Same

(8) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (7). 2009, c. 33, Sched. 21, s. 8 (44).

Duty of auditor

(9) The auditor shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate. 2009, c. 33, Sched. 21, s. 8 (44).

Who receives report

(10) The auditor shall submit the report to,

- (a) the candidate;
- (b) the council or local board, as the case may be;
- (c) the clerk with whom the candidate filed his or her nomination;
- (d) the secretary of the local board, if applicable; and
- (e) the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Report to be forwarded to committee

(11) Within 10 days after receiving the report, the clerk of the municipality or the secretary of the local board shall forward the report to the compliance audit committee. 2009, c. 33, Sched. 21, s. 8 (44).

Powers of auditor

(12) For the purpose of the audit, the auditor,

- (a) is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and
- (b) has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the audit as if it were an inquiry under that Act. 2009, c. 33, Sched. 21, s. 8 (44).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

(b) has the powers set out in section 34 of the *Public Inquiries Act, 2009* and section 34 applies to the audit.

See: 2009, c. 33, Sched. 21, ss. 8 (45), 13 (2).

Costs

(13) The municipality or local board shall pay the auditor's costs of performing the audit. 2009, c. 33, Sched. 21, s. 8 (44).

Power of committee

- (14) The committee shall consider the report within 30 days after receiving it and may,
- (a) if the report concludes that the candidate appears to have contravened a provision of this Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention;
 - (b) if the report concludes that the candidate does not appear to have contravened a provision of this Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application. 2009, c. 33, Sched. 21, s. 8 (44).

Recovery of costs

(15) If the report indicates that there was no apparent contravention and the committee finds that there were no reasonable grounds for the application, the council or local board is entitled to recover the auditor's costs from the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Immunity

(16) No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (7) for any act done in good faith in the execution or intended execution of the audit or for any alleged neglect or default in its execution in good faith. 2009, c. 33, Sched. 21, s. 8 (44).

Saving provision

(17) This section does not prevent a person from laying a charge or taking any other legal action, at any time, with respect to an alleged contravention of a provision of this Act relating to election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Compliance audit committee

81.1 (1) A council or local board shall, before October 1 of an election year, establish a committee for the purposes of section 81. 2009, c. 33, Sched. 21, s. 8 (44).

Composition

(2) The committee shall be composed of not fewer than three and not more than seven members and shall not include,

- (a) employees or officers of the municipality or local board;
- (b) members of the council or local board; or
- (c) any persons who are candidates in the election for which the committee is established. 2009, c. 33, Sched. 21, s. 8 (44).

Term of office

(3) The term of office of the committee is the same as the term of office of the council or local board that takes office following the next regular election, and the term of office of the members of the committee is the same as the term of the committee to which they have been appointed. 2009, c. 33, Sched. 21, s. 8 (44).

Role of clerk or secretary

(4) The clerk of the municipality or the secretary of the local board, as the case may be, shall establish administrative practices and procedures for the committee and shall carry out any other duties required under this Act to implement the committee's decisions. 2009, c. 33, Sched. 21, s. 8 (44).

Costs

(5) The council or local board, as the case may be, shall pay all costs in relation to the committee's operation and activities. 2009, c. 33, Sched. 21, s. 8 (44).