

STAFF REPORT: Administration



REPORT TO: Finance and Administration Committee
MEETING DATE: December 15, 2010
REPORT NO.: A.10.14
SUBJECT: 2010 Election Compliance Audit Committee
PREPARED BY: Stephen Keast, Clerk

A. Recommendations

THAT Council receive Staff Report A.10.14, "2010 Election Compliance Audit Committee" for information purposes.

B. Background

This report has been prepared in response the amendments to the *Municipal Elections Act, 1996*, contained in Bill 212 (*Good Government Act, 2009*).

The *Act* was previously amended in November 2002 to provide Council with the ability to either deal with compliance audit applications itself or establish a committee and delegate some or all of its powers and functions with respect to compliance audit applications. These powers and functions include:

- consider the compliance audit application received from an elector and decide whether it should be granted or rejected
- if the application is granted, appoint an auditor
- receive the auditor's report
- consider the auditor's report and decide whether legal proceedings should be commenced; and
- recover the costs of conducting the audit from the applicant if the auditor's report indicates there were no apparent contraventions and if there appears there were no reasonable grounds for the application.

The committee cannot include Council Members or Town Staff and must be established prior to voting day.

The amendments to the *Municipal Elections Act, 1996* contained in Bill 212 (*Good Government Act, 2009*) make changes to section 81 and introduce a new section 81.1 to make a compliance audit committee *mandatory* for all councils and local boards if the Bill is passed in its current form. The amended legislation would give compliance audit authority directly to the compliance audit committee. Committee membership may be from three to seven members.

All candidates are required to file provincially prescribed financial statements with the Clerk detailing their campaign financing activities. An eligible elector who believes on reasonable grounds that a candidate has contravened the *Act* relating to campaign

finances may apply for a compliance audit of the candidate's election campaign finances. The application must be made in writing to the Clerk, include the reasons for the elector's belief that the candidate has contravened the *Act* and be made within 90 days after the filing date for the financial statements.

Compliance audit committee members must possess an in-depth knowledge of the campaign finance rules of the *Act* so 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's composition would include auditors, accountants, lawyers, academics and other individuals specializing in campaign finance activities.

To avoid possible conflicts of interest, care must be taken 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 Town Council. Accordingly, any auditor or accountant appointed to the committee will have to agree in writing to not undertake the audits or preparation of the financial statements of any candidates seeking election on Town Council. Failure to adhere to this requirement will result in the individual being removed from the committee.

It was proposed following a meeting of Grey County Clerks that a Joint Grey County Compliance Audit Committee be appointed to serve all member municipalities as required. Following a request for application by interested persons, a Committee of Grey County Clerks would jointly prepare a proposed Joint Committee membership for consideration by each member municipal Council. Committee per diems and normal expenses would be paid by the host municipality where an application for audit has been filed and host municipal Staff would provide support to the Committee.

This review of a Joint Committee is ongoing and Council will be kept apprised of the situation. A Compliance Audit Committee must be appointed by October 1, 2010 and will remain in existence until November 30, 2014 so as to be able to address any audit requests arising from the October 25, 2010 municipal election and any by-elections occurring during the term of Council.

C. The Blue Mountains' Strategic Plan

Providing a strong, well-managed municipal government.

D. Environmental Impacts

None

E. Budget Impact

Unknown at this time

F. Attached

Appendix "A". Proposed new sections 81 and 81.1 of the *Municipal Elections Act, 1996* if Bill 212 (*Good Government Act, 2009*) is enacted.

Respectfully submitted,

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Appendix 'A'

New sections 81 and 81.1 of the *Municipal Elections Act, 1996* as amended by Bill 212 (Good Government Act, 2009)

Compliance audit

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.

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.

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(3) expires.

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.

Decision

(5) Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected.

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.

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.

Same

(8) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (7).

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 the Act

relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate.

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.

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.

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 set out in section 33 of the *Public Inquiries Act, 2009* and section 33 applies to the audit.

Costs

- (13) The municipality or local board shall pay the auditor's costs of performing the audit.

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.

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.

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.

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.

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.

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 this Act 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's operation and activities.