

## **Establishment of a Compliance Audit Committee for the 2010 Municipal Election**

<b>Date:</b>	August 24, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	City Clerk
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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This report recommends the establishment of a compliance audit committee composed of three members for the 2010 municipal election.

Under section 81 of the *Municipal Elections Act, 1996*, Council may choose to either consider compliance audit applications itself or establish a committee for this purpose. For both the 2003 and 2006 elections Council established a compliance audit committee to consider applications for a compliance audit of candidate financial statements. All of Council's powers and functions under section 81 of the *Municipal Elections Act, 1996* were delegated to the committee.

A targeted search strategy will be undertaken to attract qualified individuals. A listing of recommended individuals will be submitted for Council's consideration through the Executive Committee in early 2010. Each appointee to the compliance audit committee will receive the per diem established by Council for attendance at meetings (currently \$350).

### **RECOMMENDATIONS**

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The City Clerk recommends that:

1. Council establish a compliance audit committee composed of three members and delegate all of Council's powers and functions under subsections 81(3), (4), (7), (10) and (11) of the *Municipal Elections Act, 1996* in respect of compliance audit applications;

2. Council adopt the terms of reference and membership selection process set out in Appendices 'B' and 'C';
3. each appointee to the compliance audit committee receive the per diem established by Council for attendance at meetings (currently \$350);
4. the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

## **Financial Impact**

Factors involved in determining compliance audit committee costs include the number of compliance audit applications that might be received, the number of meetings that are required to be held and the complexity of the audits that may need to be conducted. Based on past experience and in anticipation of a further increase in the number of applications, given the increase in applications following the 2006 election (see Table 1), it is estimated that it may cost approximately \$75,000 for the targeted search advertising costs, remuneration costs for committee members, auditor costs to conduct five to seven non-complex audits and administration costs to support the committee.

Funding for this purpose is available in the Election Reserve and, if required, would be paid during 2011, 2012 and 2013.

Should more applications be received than are anticipated or if the audits are complex, it will be necessary to seek Council's authorization for additional funds.

The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial implications.

## **DECISION HISTORY**

Council has established a three member compliance audit committee for both the 2003 and 2006 elections.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/adm7rpt/cl002.pdf>  
<http://www.toronto.ca/legdocs/2006/agendas/council/cc060627/adm4rpt/cl019.pdf>

At its January 31, February 1 and 2, 2006 meeting, Council adopted, with amendments, Clause 2 of Report 1 from the Policy and Finance Committee to provide that citizen appointees to a compliance audit committee would receive a \$350 per diem.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/pof1rpt/cl002.pdf>

## **ISSUE BACKGROUND**

After dealing with compliance audit applications from the 2000 municipal election, Council requested the Minister of Municipal Affairs and Housing to amend the *Municipal*

*Elections Act, 1996* (the ‘*Act*’) to permit a municipal council to establish an arms-length committee to make decisions on compliance audit applications.

The *Act* was 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 City staff and must be established prior to voting day.

For both the 2003 and 2006 municipal elections Council removed itself from making decisions regarding compliance audit applications and established a three member compliance audit committee.

This report has been prepared in consultation with Legal Services.

Separate reports on the election administration by-laws and the election campaign finance by-laws are also before the Committee at this time.

## **COMMENTS**

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 City 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 (a copy of section 81 of the *Act* is attached as Appendix ‘A’).

Since 1997, there have been a total of 11 compliance audit applications as detailed in Table 1.

Table 1 – Compliance Audit Applications

Election	Number	Decision
1997	1	Council approved the application, appointed an auditor and commenced legal action against the candidate for violations of the election finance provisions of the <i>Act</i> . The court found the candidate guilty and imposed a fine (\$1,100).
2000	4	Council denied all four applications.
2003	1	The compliance audit committee denied the application.
2006	5	The compliance audit committee denied three applications and granted a compliance audit for the other two applications. After receiving the two audit reports, the committee voted to commence legal action against the candidates for violations of the election campaign finance provisions of the <i>Act</i> . The court imposed a monetary fine (\$500) against one candidate; the other case is still pending as the candidate cannot be located.

## Compliance Audit Committee Composition

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 City 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 City Council. Failure to adhere to this requirement will result in the individual being removed from the committee.

In 2006 a targeted search strategy was implemented to attract individuals who possess the requisite skills and knowledge. The City Clerk’s Office, in consultation with the Auditor General’s office developed selection criteria (contained in the Terms of Reference, Appendix ‘B’) and a selection process (Appendix ‘C’). Under this strategy, organizations such as the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada and universities in Toronto were approached to solicit interest from their members or faculty for Council’s consideration.

This approach worked well for the composition of the 2006 compliance audit committee. It is recommended the same strategy be implemented for the 2010 committee.

If necessary, due to the volume of applications received, City staff will interview applicants who meet the selection criteria and prepare a short list of qualified applicants for Council's consideration. Staff from the City Manager's office and the City Clerk's office will be involved in the short listing process.

It is recommended a three member committee be established as was the case in 2003 and 2006. This will ensure that the process can be completed within the legislated timeframe.

A listing of recommended individuals will be submitted for Council's consideration through the Executive Committee in early 2010.

## **CONTACT**

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## **SIGNATURE**

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Ulli S. Watkiss  
City Clerk

## **ATTACHMENTS**

Appendix 'A' – Section 81 of the *Municipal Elections Act, 1996*  
Appendix 'B' – Terms of Reference for the 2010 Compliance Audit Committee  
Appendix 'C' – Selection Process for the Toronto 2010 Election Compliance Audit Committee

## Appendix 'A'

### Section 81 of the *Municipal Elections Act, 1996*

#### 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) The application shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office, within 90 days after the later of the filing date, the candidate's last supplementary filing date, if any, or the end of the candidate's extension for filing granted under subsection 80 (6), if any; it shall be in writing and shall set out the reasons for the elector's belief.

#### Decision

(3) Within 30 days after receiving the application, the council or local board, as the case may be, shall consider the application and decide whether it should be granted or rejected.

#### Delegation to committee

(3.1) A council or local board may, before voting day in an election, establish a committee and delegate its powers and functions under subsection (3) alone or under subsections (3), (4), (7), (10) and (11) with respect to applications received under subsection (2) and the council or local board, as the case may be, shall pay all costs in relation to the operation and activities of the committee.

#### Powers and limitations

(3.2) A committee established under subsection (3.1),  
(a) shall exercise the powers and duties delegated to it under that subsection with respect to all applications received under subsection (2) in relation to the election for which it is established; and  
(b) shall not include employees or officers of the municipality or local board, as the case may be, or members of the council or local board, as the case may be.

#### Appeal

(3.3) The decision of the council or local board under subsection (3) and of a committee under subsection (3) pursuant to a delegation under subsection (3.1) 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 council, local board or committee could have made.

#### Appointment of auditor

(4) If it is decided to grant the application under subsection (3), the appropriate council or local board shall, by resolution, appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

#### Licensed auditor

- (5) Only an auditor who is licensed under the *Public Accounting Act* may be appointed under subsection (4).

#### Duty of auditor

- (6) An auditor appointed under subsection (4) 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 prepare a report outlining any apparent contravention by the candidate.

#### Who receives report

- (7) The auditor shall submit the report to,
- (a) the candidate;
  - (b) the council or local board;
  - (c) the clerk with whom the candidate filed his or her nomination; and
  - (d) the applicant.

#### Powers of auditor

- (8) 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.

#### Costs

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

#### Consideration of report, legal proceeding

- (10) The council or local board shall consider the report within 30 days after receiving it and may commence a legal proceeding against the candidate for any apparent contravention of a provision of this Act relating to election campaign finances.

#### Recovery

- (11) If the report indicates that there was no apparent contravention and the council or local board 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

- (12) No action or other proceeding for damages shall be instituted against an auditor appointed under this section 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.

## Appendix 'B'

### Terms of Reference for the Toronto 2010 Election Compliance Audit Committee

1. Name

The name of the Committee is the "Toronto 2010 Election Compliance Audit Committee".

2. Duration

The Committee must be established before voting day (November 8, 2010) and will complete its work after dealing with all compliance audit applications received from the 2010 election. (The last date for filing a compliance audit application with the City Clerk is June 4, 2012.) The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received.

3. Mandate

The powers and functions of the Committee are set out in subsections 81(3), (4), (7), (10) and (11) of the *Municipal Elections Act, 1996*. The Committee will be required to:

- (a) consider a compliance audit application received by an elector and decide whether it should be granted or rejected;
- (b) if the application is granted, appoint an auditor;
- (c) receive the auditor's report;
- (d) consider the auditor's report and decide whether legal proceedings should be commenced; and
- (e) recover the costs of conducting the compliance 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.

4. Membership

The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- (b) academic – college or university professors with expertise in political science or local government administration;
- (c) legal; and
- (d) other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Members of Council and City staff are not eligible to be appointed to the Committee pursuant to clause 81(3.2)(b) of the *Municipal Elections Act, 1996*.



## 5. Membership Selection

City staff will contact the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada, York University, Ryerson University and the University of Toronto to solicit interest from their members or faculty to sit on the Committee. Information will also be placed on the *Get Involved* section of the City's web site.

All applicants will be required to complete an application form outlining their qualifications and experience. If necessary, due to the volume of applications received, City staff will interview applicants who meet the selection criteria and prepare a short list for Council's consideration through the Executive Committee.

The selection process will be based upon clearly understood and equitable criteria. Members will be selected on the basis of the following:

- (a) demonstrated knowledge and understanding of municipal election campaign financing rules;
- (b) proven analytical and decision-making skills;
- (c) experience working on a committee, task force or similar setting;
- (d) availability and willingness to attend meetings; and
- (e) excellent oral and written communication skills

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

Members will be appointed by Toronto City Council.

## 6. Chair

The Committee members will select a Chair from amongst its members at its first meeting.

## 7. Staffing and Funding

Staff from the City Clerk's Office will provide administrative support to the Committee. The necessary funding will be paid from the Elections Reserve Fund.

## 8. Meetings

Meetings of the Committee will be conducted in accordance with the open meeting provisions of the *City of Toronto Act, 2006* and the City's web site will be used to communicate the meeting notices and agendas.

## Appendix 'C'

### Selection Process for the Toronto 2010 Election Compliance Audit Committee

1. City staff will place information, including the terms of reference and an application form, on the *Find a CA Volunteer* section of the Institute of Chartered Accountants of Ontario web site. This is a free service and the posting remains on the site for six weeks. Should this posting provide an insufficient response, the information will be placed on the *Career Connection* section of the Institute's web site which costs \$220.00 plus taxes for a four week posting.
2. City staff will write to the Law Society of Upper Canada requesting that it circulate the information on the opportunity to be appointed to the Toronto 2010 Election Compliance Audit Committee to its members. In addition, staff will write directly to those lawyers in the Toronto area identified on the Law Society's web site as "certified specialists" in municipal law, excluding any lawyers working directly for a municipality.
3. City staff will write to York University, Ryerson University and the University of Toronto requesting they circulate the information on the opportunity to be appointed to the Toronto 2010 Election Compliance Audit Committee to their faculty.
4. The terms of reference for the Toronto 2010 Election Compliance Audit Committee and the application form will be posted on the *Get Involved* section of the City's web site.
5. All applicants will be required to complete an application form outlining their qualifications and experience.
6. If necessary, due to the volume of applications received, City staff will interview applicants who meet the selection criteria and prepare a short list for Council's consideration through the Executive Committee. Staff from the City Manager's office and the City Clerk's office will be involved in the short listing process.