

Establishment of a Compliance Audit Committee for the 2010 Municipal Election – Updated Report (Bill 212)

Date:	November 16, 2009
To:	Executive Committee
From:	City Clerk
Wards:	All
Reference Number:	

SUMMARY

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

Under the existing 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 copy of section 81 of the *Act* is attached as Appendix 'A')

The proposed 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 municipalities and local boards if the Bill is passed in its current form. (A copy of the proposed sections is attached as Appendix 'B'.)

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

The City Clerk recommends that:

1. City 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. City Council adopt the terms of reference for the compliance audit committee set out in Appendix "C" and direct the Clerk to make any amendments necessary to reflect enactment of the provisions of Bill 212 set out in Appendix "C".
3. City Council adopt the membership selection process set out in Appendix 'D';
4. City Council establish a per diem of \$350 for attendance at meetings by Members of the Compliance Audit Committee.
5. 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 compliance audit 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

This is a revised version of a report originally submitted to the Executive Committee as item EX34.7 on September 8, 2009 and deferred by the Committee. This report has been updated to reflect the impact of the proposed amendments to the *Municipal Elections Act, 1996*, contained in Bill 212 (*Good Government Act, 2009*), currently before the Ontario Legislature.

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.

The proposed 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. Should the proposed amendments be enacted, the delegation from Council recommended in this report would be without effect as the amended legislation would give compliance audit authority directly to the 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, updated to show the impacts of Bill 212, 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.

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 'C') and a selection process (Appendix 'D'). 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

Ulli S. Watkiss
City Clerk

ATTACHMENTS

Appendix 'A' – Section 81 of the *Municipal Elections Act, 1996*

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

Appendix 'C' – Terms of Reference for the Toronto 2010 Compliance Election Audit Committee

Appendix 'D' – 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’

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

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.

Appendix ‘C’

Terms of Reference for the Toronto 2010 Election Compliance Audit Committee

	Terms of Reference	Impact of Bill 212 on the Terms of Reference
1	<p><u>Name</u></p> <p>The name of the Committee is the “Toronto 2010 Election Compliance Audit Committee”.</p>	
2	<p><u>Duration</u></p> <p>The Committee must be established before voting day and will complete its work after dealing with all compliance audit applications received from the 2010 election. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received.</p>	<p>Council must establish a Compliance Audit Committee before October 1, 2010. The term is office is from December 1, 2010 to November 30, 2014 to deal with applications from the 2010 election and any by-elections during Council’s term.</p>
3	<p><u>Mandate</u></p> <p>The powers and functions of the Committee are set out in subsections 81(3), (4), (7), (10) and (11) of the <i>Municipal Elections Act, 1996</i>. The Committee will be required to:</p> <ul style="list-style-type: none"> (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) may 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. 	<p>The Committee will perform all functions relating to compliance audit applications.</p>
4	<p><u>Membership</u></p> <p>The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:</p> <ul style="list-style-type: none"> (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 <i>Municipal Elections Act, 1996</i>. <p>Members of Council and City staff are not eligible to be appointed to the Committee pursuant to clause 81(3.2)(b) of the <i>Municipal Elections Act, 1996</i>.</p>	<p>Membership is from 3 to 7 members.</p> <p>In addition to Members of Council and City staff, candidates in the 2010 election or in any by-election during the term of Council are not eligible to be appointed to the Committee.</p>

	Terms of Reference	Impact of Bill 212 on the Terms of Reference
5	<p><u>Membership Selection</u></p> <p>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 <i>Get Involved</i> section of the City's web site.</p> <p>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. Recommended candidates will be submitted to Council through the Executive Committee for Council's consideration.</p> <p>The selection process will be based upon clearly understood and equitable criteria. Members will be selected on the basis of the following:</p> <ul style="list-style-type: none"> (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 <p>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.</p> <p>Members will be appointed by Toronto City Council.</p>	<p>Any members appointed must also agree in writing they will not be a candidate in the 2010 election or in any by-election during the term of Council. Failure to adhere to this requirement will result in the individual being removed from the committee.</p>
6	<p><u>Chair</u></p> <p>The Committee members will select a Chair from amongst its members at its first meeting.</p>	
7	<p><u>Staffing and Funding</u></p> <p>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.</p>	<p>The Clerk shall establish administrative practices and procedures for the Committee and shall carry out any other duties to implement the Committee's decisions.</p>
8	<p><u>Meetings</u></p> <p>Meetings of the Committee will be conducted in accordance with the open meeting provisions of the <i>City of Toronto Act, 2006</i> and the City's web site will be used to communicate the meeting notices and agendas.</p>	

Appendix 'D'

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, staff from the City Clerk's Office and the City Manager's Office will short list and interview applicants who meet the criteria. The City Clerk will prepare a list of recommended appointees for Council's consideration, through the Executive Committee.
7. Members of the Toronto 2010 Compliance Audit Committee will be appointed by City Council.