

Request for Decision

Municipal Election - Creation of a Compliance Audit Committee

Presented To:	City Council
Presented:	Wednesday, May 26, 2010
Report Date	Friday, May 14, 2010
Type:	Managers' Reports

Recommendation

THAT the report from the Executive Director, Administrative Services dated May 14, 2010 be accepted, and

THAT an Election Compliance Audit Committee be established with all the powers and functions as described in the Municipal Elections Act 1996 as amended, and

THAT the Terms of Reference for the City of Greater Sudbury's Election Compliance Audit Committee be adopted, and

THAT the City of Greater Sudbury enters into agreements with the four area School Boards to share the Election Compliance Audit Committee for those School Board zones/areas for which the City of Greater Sudbury is conducting the School Board election, with the understanding that each partner will pay all costs associated with their use of the Committee, and

THAT Staff be directed to return to City Council, prior to October 1, 2010 with a recommendation on the membership of the Election Compliance Audit Committee for the term December 1, 2010 to November 30, 2014, and

THAT the necessary By-Laws are prepared.

Signed By

Report Prepared By

Caroline Hallsworth
Executive Director, Administrative Services
Digitally Signed May 17, 10

Recommended by the Department

Caroline Hallsworth
Executive Director, Administrative Services
Digitally Signed May 17, 10

Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
Digitally Signed May 18, 10

Financial Implications

If an audit is granted, all costs for the audit and any legal proceedings which follow would be paid from the Election Reserve Fund. All costs associated with the functioning of the Election Compliance Audit Committee would also be paid from the Election Reserve Fund.

Policy Implications

An Election Compliance Audit Committee is required under the Municipal Elections Act 1996, as amended.

Executive Summary

Bill 212, which received Royal Assent in December 2009, has made it mandatory that all municipalities and local boards appoint an Election Compliance Audit Committee, prior to October 1st of each election year. The Election Compliance Audit Committee is independent of Council and its role is to consider applications for a compliance audit. If the Committee grants the application, then the Committee appoints an Auditor, receives the audit findings and decides, based on those findings, if legal proceedings should be commenced.

Background

While a few municipalities, including the City of Toronto and the City of Kawartha Lakes had delegated their election audit functions to a committee for previous elections, Bill 212, “An Act to Promote Good Government” has made it mandatory that all municipalities and local boards appoint an Election Compliance Audit Committee prior to October 1st of each election year.

While it is not often that a compliance audit application is received, those audit applications which are granted can become time consuming and costly to the municipality as has been the experience in both Toronto and Vaughan where compliance audit applications were received following the 2006 elections. In Vaughan, four requests were received related to three sitting councillors and to the former mayor. As of April 15, 2010 three of those cases were “still winding their way through the court process”. Following the 2006 election, the City of Toronto spent \$82,000 in legal fees alone related to one specific compliance audit for a council position.

Municipalities across Ontario are now in the process of forming these committees. In preparing this report, staff reviewed materials from many of these municipalities including Burlington, Chatham-Kent, Hamilton, Kawartha Lakes, Kingston, London, Milton, Oakville, Richmond Hill, Toronto and Vaughan. This report is based on the best practices of other municipalities and common approaches to the formulation of Election Compliance Audit Committees so as to ensure that the Election Compliance Audit Committee is both independent and has the knowledge and expertise required given the decisions that the Committee will have to make.

Under the provisions of the Municipal Elections Act, 1996, any eligible elector who believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances may apply for a compliance audit of the candidate’s election campaign finances. This then triggers a process which is defined under the Municipal Elections Act and which necessitates that each municipality and local board have an Election Compliance Audit Committee.

Some municipalities have introduced a fee for filing of an Application for a Compliance Audit. This practice is recommended as having a fee promotes responsible use of the application process. The City of Burlington has introduced an application fee in the amount of \$25.00 which amount is also proposed for the City of Greater Sudbury.

These applications must be made in writing and submitted to the Clerk within ninety days after the filing date for the financial statements. Within ten days of receipt of the application, the Clerk must forward the application to the Election Compliance Audit Committee and also provide a copy to Council or the local School Board in jurisdiction.

The Municipal Elections Act (section 81.1 (1)) requires that Council establish an Election Compliance Audit Committee. This Election Compliance Audit Committee is not a Committee of Council in the ordinary sense of other Committees established by Council under the authority of the Municipal Act. The primary difference

is that the Election Audit Compliance Committee is completely independent and is empowered to make decisions. Decisions of the Election Compliance Audit Committee are not recommendations and are not subject to ratification by Council. Any review or ratification by Council would jeopardize the independence of the Election Compliance Audit Committee and is not allowed under the Act.

The powers and functions of the Election Compliance Audit Committee are codified in detail in Section 81 of the Municipal Election Act 1996 as amended and can be summarized as follows:

- Consider a compliance audit application received from an elector and decide if it should be granted or rejected;
- If the application is granted, appoint an auditor licensed under the Public Accounting Act, 2004;
- Receive and consider the auditor's report;
- Commence legal proceedings if the report concludes that the candidate appears to have contravened the Act related to election campaign finances;
- Recover the costs of conducting the compliance audit from the applicant if there were no apparent contraventions and if the Committee has found that there appears to have been no reasonable grounds for making the application.

The Election Compliance Audit Committee will have the authority to appoint a professional auditor to conduct the review. The City of Greater Sudbury already has three accounting firms as auditors of record and these firms would be approached first, should an audit be required. The auditor selected will have the powers of a commissioner under the Public Inquiries Act and will be required to provide a Letter of Independence, confirming that there would be no conflict with the work assigned.

Section 81.1 of the Municipal Election Act describes the composition of the Election Compliance Audit Committee as being between three and seven members and specifically excludes employees or officers of the municipality or local board, members of the council or local board and any persons who are candidates in the election for which the committee is established, from sitting on the Committee.

Election Compliance Audit Committees are independent and granted specific powers under the Municipal Elections Act. Decisions of the committee are not subject to ratification by Council and may be appealed to the Ontario Court of Justice. Further, the committee requires individuals with the ability to work independently with minimal guidance from CGS staff, as staff would be in a conflict situation if the application concerned a sitting member of Council. Because of these powers and because the Committee has the ability to retain auditors and commence legal proceedings without consultation with staff, most municipalities are seeking very specific, professional skill sets from their Committee members. Finally, because the Committee has only thirty days in which to complete a substantial body of work, it is recommended that the Committee be kept to three members, to facilitate scheduling and efficiency.

Municipalities are seeking individuals with a detailed knowledge of, or ability to understand, the campaign financing rules under the act. Since the committee acts as a quasi-judicial body, prior experience on a similar committee, task force, tribunal or professional body is being sought by most municipalities. All municipalities reviewed are requiring a formal application, outlining the applicant's experience and knowledge in this regard.

In addition to traditional advertising, the Clerk will circulate this opportunity to professional bodies representing auditors, accountants, lawyers, engineers and other regulated professions, requesting that they forward the opportunity to their members in the Greater Sudbury Area. This would include but not be limited to the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada and the Professional

Engineers of Ontario. The opportunity will also be circulated through the local business community.

As the Election Compliance Audit Committee may be asked to review applications pertaining to members of Council, it is important that the nomination and appointment process be managed so as to minimize potential conflicts. Accordingly, many municipalities are using staff to review the applications received, and interview applicants if so required. City staff then makes a recommendation of the committee membership directly to Council, who appoints the committee.

If this method is acceptable to Council, a three member staff group, comprising of the Chief Financial Officer, the City Clerk and the Executive Director, Administrative Services will complete a review of applicants and make recommendations to Council.

The staff group would review the applications based on an evaluation of each applicants using the criteria below:

- Demonstrated experience in receiving and understanding financial information, preferably with knowledge and understanding of municipal election campaign financing rules;
- Experience working in a profession that imposes professional standards on its members, where breach of those standards may lead to discipline;
- Proven analytical and decision making skills;
- Experience working on a committee, task force, tribunal, disciplinary panel or similar body;
- Excellent written and oral communication skills.

To avoid any future potential conflicts of interest, any person appointed to the Committee must agree in writing not to prepare or audit the election financial statements of any candidate for office in the Municipal or School Board elections in the Greater Sudbury area and shall neither be a candidate, nor a member of an election campaign team.

In many cases, municipalities are paying per diems to the Committee members, so as to be able to attract working professionals with accounting, audit, legal and similar backgrounds who, through their work, are required to adhere to professional codes or standards. Per diems paid by other municipalities range from \$80 in Oakville and \$100 in London to \$300 in Milton and \$400 in Vaughn. Richmond Hill pays a \$400 retainer and then a per diem of \$350 plus mileage.

Because the members of the committee will be a decision making body, with independent authority and because the members of the committee will be working in their professional capacity, a per diem rate of \$200 is proposed for members of the City of Greater Sudbury's Election Compliance Audit Committee.

As described in the Act, the term of office of the committee is the same as the term of office of the Council or School Board to which they have been appointed. The first Election Compliance Audit Committee will be appointed for the period December 1, 2010 to November 30, 2014 and will respond to any applications that arise from the 2010 elections and any by-elections held in this time period. The Committee will conduct its meetings in accordance with the Rules of Procedure By-Law.

The proposed Terms of Reference for the Election Compliance Audit Committee are appended.

Terms of Reference Election Compliance Audit Committee

Mandate:

Required under the Municipal Elections Act 1996 as amended, the Election Compliance Audit Committee considers applications for a compliance audit related to elections for the Council of the City of Greater Sudbury, and for those School Board zones/areas from the following School Boards for which the City of Greater Sudbury is conducting the School Board election:

- Conseil scolaire catholique du Nouvel-Ontario
- Conseil scolaire public du Grand Nord de l'Ontario
- Rainbow District School Board
- Sudbury Catholic District School Board

Primary Objectives:

The powers and functions of the Election Compliance Audit Committee are set out in detail in Section 81 of the Municipal Election Act 1996 as amended and can be summarized as follows:

- Consider a compliance audit application received from an elector and decide if it should be granted or rejected
- If the application is granted, appoint an auditor licensed under the Public Accounting Act, 2004
- Receive and consider the auditor's report
- Commence legal proceedings if the report concludes that the candidate appears to have contravened the Act related to election campaign finances
- Recover the costs of conducting the compliance audit from the applicant if there were no apparent contraventions and if the Committee has found that there appears to have been no reasonable grounds for making the application

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Membership:

Three members with:

- Demonstrated experience in receiving and understanding financial information, preferably with knowledge and understanding of municipal election campaign financing rules;
- Experience working in a profession that imposes professional standards on its members, where breach of those standards may lead to discipline;
- Proven analytical and decision making skills;
- Experience working on a committee, task force, tribunal, disciplinary panel or similar body;
- Excellent written and oral communication skills.

The Committee shall not include:

- Employees or officers of the municipality and local School Boards
- Members of Council and local School Boards
- Any persons who are candidates in the elections for Council and School Boards

Time Commitment:

The Committee meets only if an application for a Compliance Audit has been received from an eligible elector, within the specified time periods following an election or by-election. The time required from members will depend on the decisions made by the Committee with regard to the validity of the application and subsequently, the findings of the audit, if an audit is approved. The Committee will be required to adhere to the timelines established in the Municipal Elections Act 1996, as amended.

Remuneration:

Because the committee is a decision making body and members will be working in their professional capacity, a per diem of \$200 will be paid for attendance at each meeting.

Term:

December 1, 2010 to November 31, 2014.

Members:

To be appointed by the Council of the City of Greater Sudbury, before October 1st of the election year.