



Council in Committee Report  
March 2, 2010

## **COMPLIANCE AUDIT COMMITTEE**

Report prepared by: Clerk

### **RECOMMENDATION:**

The Clerk recommends:

- 1) **THAT Council direct staff to work with the other interested municipalities within York Region to recruit applicants for a Joint Compliance Audit Committee;**
- 2) **AND THAT the Terms of Reference for the Joint Compliance Audit Committee be adopted;**
- 3) **AND FURTHER THAT Council provide direction as to an individual to represent the Town on the selection committee.**

#### **1. PURPOSE:**

The purpose of this report is to seek Council's direction with respect to the formation of a Compliance Audit Committee.

#### **2. BACKGROUND:**

##### **2.1 Mandatory Compliance Audit Committee**

The *Municipal Elections Act, 1996*, as amended by Bill 212, now requires that every municipality appoint a Compliance Audit Committee prior to October 1<sup>st</sup>, 2010. The mandate of the Compliance Audit Committee is to:

- a) Consider 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 were no apparent contraventions and if there appears that there were no reasonable grounds for the application, advise Council.

Council would then decide whether or not to recover the auditor's costs from the applicant.

Only a handful of municipalities appointed Compliance Audit Committees for the 2003 and/or 2006 municipal elections. Due to the complexity of the financial accounting rules and to ensure that the Committee Members possess an in-depth knowledge of the campaign finance rules, all of these municipalities stated a preference for applicants with a background in accounting or auditing. To avoid any potential conflict of interest, applicants with accounting or auditing backgrounds were asked to agree in writing that they would not offer their services to any municipal election candidates. In addition, staff would recommend that all candidates be required to agree in writing to not work for or provide advice to any candidate running for municipal office in the election.

With the amendment to the Act, 444 municipalities as well as all of the various school boards will now be looking for applicants to appoint to their Compliance Audit Committees. This will result in competition for qualified candidates. The competition will be even greater when one factors in the conflicting interests between appointments to these Committees and the need for accountants and auditors to work on the financial statements for all candidates running for offices across the province.

In the past, those candidates whose total contributions received and total expenses incurred were equal to or less than \$10,000 were permitted to complete a simplified one page financial statement. With the amendments to the *Municipal Elections Act, 1996* all candidates are now required to complete a detailed financial statement. Those candidates whose total contributions received and total expenses incurred are greater than \$10,000 will have to provide an auditor's report in addition to their financial statement. It remains to be seen whether the greater level of detail in the financial statements that is now required will result more or less requests for compliance audits.

Nothing in the legislation precludes municipalities from sharing a Compliance Audit Committee. Requests for Compliance Audits are usually rare occurrences. As a result, a shared Committee should be able to handle the potential workload.

York Regional Clerks have met and discussed various options regarding a Joint Compliance Audit Committee, which are contained within this report. The City of Vaughan has already made a decision to appoint their own Compliance Audit Committee and the Town of Newmarket has appointed a Compliance Audit Committee in the past. The various municipalities in York Region will be taking similar reports to their respective Councils during the month of March. If the decision is made to create a Joint Compliance Audit Committee, staff within the participating municipalities will immediately commence the recruitment of applicants.

## 2.2 Compliance Audit Process

The *Municipal Elections Act, 1996* requires that both municipalities and school boards establish Compliance Audit Committees. The steps in the process described below which pertain to the Clerk would apply equally to the Secretaries for the various school boards.

Any elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the *Municipal Elections Act, 1996* pertaining to election campaign finances, may apply in writing to the Clerk for a compliance audit of the candidate's election campaign finances. The application must be made within 90 days of the financial statement filing date (by June 23<sup>rd</sup>, 2011).

The Clerk then has 10 days to forward the written request to the Compliance Audit Committee and copy Members of Council. Within 30 days of receiving the request, the Committee must consider the compliance audit request and decide whether it should be granted or rejected. The decision of the Committee may be appealed to the Ontario Court of Justice within 15 days of the decision.

If the Committee decides to grant the request for a compliance audit, it appoints an outside auditor to conduct the audit. The auditor then prepares a report which is submitted to the candidate, Council, the Clerk with whom the candidate filed his or her nomination, and the applicant. Within 10 days of receiving the report, the Clerk of the municipality must forward the report to the Compliance Audit Committee. Within 30 days of receiving the auditor's report, the Committee must consider it.

The municipality (or the school board) is responsible for paying the auditor's costs of performing the audit and all costs in relation to the Committee's operation and activities.

If the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, the Committee must determine whether to commence legal proceedings against the candidate. If the report concludes that the candidate did not contravene the Act, the Committee must make a finding as to whether there were reasonable grounds for the request for the audit. If the Committee determines that there were no reasonable grounds, then the Council (or the school board) is entitled to recover the auditor's costs from the applicant.

The Committee shall consist of between 3 and 7 Members and cannot include any employees or officers of the municipality (or the school board), or any Members of Council, or any candidate in the election for which the Committee is established. The term of office is the same as that of Council.

### **3. ANALYSIS & OPTIONS:**

#### **3.1 Recruitment Options of Compliance Audit Committee Members**

Staff contacted the Association of Municipalities of Ontario (AMO) to determine whether the Local Authority Services Limited (LAS) was considering offering a service for Compliance Audit Committees similar to the service offered for Closed Meeting Investigators. Staff were advised that while the idea was considered, LAS is not intending to introduce any new programming related to Compliance Audit Committees. As a result, Council will need to recruit Compliance Audit Committee Members.

There are a number of options regarding the appointment of a Compliance Audit Committee.

##### Option 1:

The Town could do its own recruitment and appoint its own Compliance Audit Committee.

Staff would recommend that the Committee be comprised of five Members, three of which would be called upon to sit should the Town be in receipt of a compliance audit request. The Committee must hear compliance audit requests within 30 days of receipt of the request. This will ensure that there are sufficient Committee Members available at short notice to comprise a three member Committee. Staff would not recommend that quorum (being two of the three Members) ever be utilized for such a Committee.

##### Option 2:

The Town could discuss the possibility of contracting the Compliance Audit Committee function with the Town's auditors. The auditors would be requested to supply names of individuals whom Council would then appoint. Staff would recommend appointing more than three individuals. Should the Town be in receipt of a compliance audit request, a minimum of three of the appointed individuals would be called upon to sit as the Town's Compliance Audit Committee.

This would be a contracted service and as such would be subject to the cost for service negotiated with the Town's auditors. This would likely involve a retainer fee and would be the most costly solution.

The Town's appointment of the current auditors expires in 2012. If Council chooses this option, the appointment of the individuals for the Compliance Audit Committee would have to continue through to 2014.

### Option 3:

The Town could collaborate with other interested municipalities within York Region to recruit and appoint a Joint Compliance Audit Committee.

Each participating municipality would appoint a member to sit on a selection committee that would be responsible for reviewing the applications and making recommendations as to a list of preferred candidates for consideration by the various Councils.

Each participating municipality would then select one individual from the list. The number of participating municipalities would dictate the number of Committee Members within the "pool". When a participating municipality receives a request for a compliance audit, the Clerk would contact the Committee Members and establish a minimum of three who would sit as the Compliance Audit Committee.

Taking into consideration the steep competition for qualified applicants as well as the potential for conflicts for those applicants with accounting/auditing backgrounds, Staff recommend that Council proceed with Option 3.

A Joint Compliance Audit Committee offers the greatest potential to reach the broadest spectrum of interested applicants and is it is also the most cost effective option.

There is a history of partnering for the provision of services within the Northern Six municipalities comprised of the Towns of Aurora, East Gwillimbury, Georgina, Newmarket, Whitchurch-Stouffville and the Township of King. While participation in a Joint Compliance Audit Committee is also being considered by Richmond Hill and Markham, in addition to those noted above, the principal remains

### **3.2 Terms of Reference**

The mandate for the Compliance Audit Committee is outlined in section 81 of the *Municipal Elections Act, 1996*.

The term of the Committee would be co-terminus with the Term of Council (2010 – 2014). While compliance audit requests for the 2010 election must be submitted by June 23<sup>rd</sup>, 2011, a by-election could result in the need for the Compliance Audit Committee to sit during the term of Council.

Staff administrative support would be supplied by the Clerk's department or in the case of a Joint Compliance Audit Committee, the Clerk's department of the applicable municipality.

A detailed Terms of Reference for a Joint Compliance Audit Committee is included as Attachment 1. Should Council decide to proceed with an alternate option, the Terms of Reference would be modified accordingly.

### **3.3 Recruitment**

Staff consulted those municipalities that appointed Compliance Audit Committees for the 2003 and/or 2006 municipal elections. The following selection criteria was established by the City of Toronto and modified slightly by the Town of Port Hope.

- a) Demonstrated knowledge and understanding of municipal election campaign financing rules;
- b) Proven analytical and decision-making skills;
- c) Experience working on committees, task forces or similar settings;
- d) Demonstrated knowledge of quasi-judicial proceedings;
- e) Availability and willingness to attend meetings; and
- f) Excellent oral and written communication skills

The City of Vaughan made the decision in 2009 to proceed with its own Compliance Audit Committee and is currently in the process of recruiting applicants. Vaughan solicited interest from the professional bodies governing or representing auditors, accountants, lawyers, engineers and such other professions that impose professional standards on their Members, breach of which can lead to discipline. In addition, Vaughan disqualified anyone from participating on the committee who has participated as candidates in City of Vaughan elections, or who have conducted audits or provided financial advice in respect of such campaigns. Staff would recommend a similar approach.

Staff recommend that information regarding the Committee be posted on the Town's website as well as advertised on the Town page. Staff also recommend that recruitment be conducted in a manner similar to that undertaken by the Cities of Toronto and Vaughan. Staff will contact the Institution of Chartered Accountants of Ontario; the Law Society of Upper Canada; Professional Engineers Ontario; York University; Ryerson University; and University of Toronto.

Staff will place information regarding the Compliance Audit Committee on the "*Find a CA Volunteer*" section of the Institution of Chartered Accountants of Ontario website. This is a free service and the posting will remain on their website for six weeks. If this posting is not successful, the Town will place an advertisement on the Institution's website in their "*Career Connection*" section at a cost of \$220 plus tax for a four week posting.

There are no costs associated with requests made to the Law Society of Upper Canada and the various Universities.

Should Council decide to go with a Joint Compliance Audit Committee, advertisements placed in the various Town/City pages would result in wider exposure. In addition, should it be necessary to place an advertisement on the Chartered Accountants of Ontario website, the costs incurred with this advertisement would be divided amongst the participating municipalities.

### **3.4 Remuneration**

Some municipalities have provided remuneration to the Members of the Committees and others have not. It is felt that the provision of remuneration will be a more effective means to attract candidates as it will compensate the Members for the time away from their professions.

There is precedence for providing remuneration within the Town. The Committee of Adjustment, the Property Standards Committee and the Vicious Dog Appeal Committee are paid a per diem for attendance at meetings of \$74.50. This rate has been the same since 2004 and should be reviewed prior to the re-appointment of the Committees for the next term of Council.

The City of Toronto pays its Compliance Audit Committee Members a per diem of \$350 for attendance at meetings. The City of Ajax pays Members \$200 following appointment as a retainer and for ongoing review of background material. The Members of Ajax's Committee are paid \$100 for attendance at each meeting lasting four hours or less or \$200 for meetings lasting greater than four hours. The City of Vaughan set their per diem rate at \$400; an amount that co-insides with the rate paid to other quasi-judicial committees.

If the Town decided to proceed with a Joint Compliance Audit Committee, staff would recommend the payment of a retainer fee that would also compensate the Members for ongoing review of background material (similar to the approach taken by Ajax). The payment of this retainer fee would be divided between the participating municipalities.

The City of Vaughan advised that in their experience the typical length of meetings was not excessive. As a result, staff would not recommend a graduated pay scales based upon the length of the meeting as that could potentially encourage longer meetings.

The payment of a per diem rate would be the responsibility of the municipality requesting the services of the Joint Compliance Audit Committee. As the Town is located in close proximity to the City of Toronto and the City of Vaughan, the attraction of applicants for a Joint Compliance Audit Committee would be in competition with these municipalities. As a result, similar remuneration levels should be considered. In addition, a Joint Compliance Audit Committee may

involve a greater travel distance for the Members and as a result, Council may wish to consider the possibility of compensation for mileage.

In the case of a Joint Compliance Audit Committee, Staff would recommend a \$400 retainer fee and a per diem rate of \$350 plus mileage. As noted above the retainer fee would be divided between the member municipalities of the Joint Compliance Audit Committee and the per diem rate would only be payable by the participating municipalities should the Committee be required to sit.

#### **4. FINANCIAL IMPLICATIONS:**

There will be initial recruitment costs of approximately \$1,000 which would be incurred during 2010. Staff will endeavour to keep these costs to a minimum. Any costs will be charged to the 2010 Municipal Election budget.

Any requests for Compliance Audit for the 2010 municipal election will occur in 2011. Council annually sets aside funding in the Town's Election Reserve in order to spread out the impact of the cost of the municipal election. Staff would recommend that additional funding be placed in Election Reserve for 2011 that would cover any potential compliance audit expenses. If the Town is not in receipt of any requests, the level of contributions to the Election Reserve in future years could be adjusted accordingly.

It is anticipated that joint costs would include things such as advertising, recruitment, and the initial retainer fee. These costs would be divided equally between the participating municipalities. If each member municipality appointed their own Committee, it would be responsible for payment of these costs. As a result, an equal proportion of savings would be achieved by each of the participating municipalities. However, in the unlikely event that there should be any sizable unforeseen joint costs, the participating municipalities would agree to apportion those costs in a manner similar to that utilized by the Northern Six municipalities for Internal Audit Projects, meaning that the assigned costs would be apportioned based upon population and assessment.

#### **5. ALIGNMENT WITH STRATEGIC PLAN:**

This report is aligned with the Town's Strategic Plan in the following manner:

##### *2. Fiscal Stewardship & Asset Management*

2.3 Explore partnerships to deliver new infrastructure/services

##### *3. Municipal Services and Innovation*

3.4 Promote excellence in public administration and communications

**6. CONCLUSION:**

Staff recommend that the recruitment of a Joint Compliance Audit Committee with interested area municipalities be entertained as expeditiously as possible.

**For further information on this report, please contact  
Michele Kennedy, Clerk at 905-640-1910 or 905-895-5299 ext. 224  
[michele.kennedy@townofws.com](mailto:michele.kennedy@townofws.com)**

**7. ATTACHMENT:**

Attachment 1: Terms of Reference for Joint Compliance Audit Committee



TOWN OF  
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## **TERMS OF REFERENCE FOR JOINT COMPLIANCE AUDIT COMMITTEE**

### **MANDATE**

The powers and functions of the Committee are set out in Section 81 of the *Municipal Elections Act, 1996*.

1. Within 30 days of receipt of an application requesting a compliance audit, the Committee shall consider the compliance audit application and decide whether it should be granted or rejected;
2. If the application is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances;
3. The Committee will review the auditor's report within 30 days of receipt and decide whether legal proceedings should be commenced; and
4. If the auditor's report indicates that there were no apparent contraventions and if there appears there were no reasonable grounds for the application, the Committee shall advise Council accordingly.

Members of Council, staff or candidates running for office in the 2010 municipal election are not eligible to be appointed to the Committee. Should an appointed Member accept employment with any of the member municipalities or register as a candidate with any of the member municipalities, their appointment will be terminated.

All Committee Members must agree in writing that they will not work for or provide advice to any candidate running for municipal office within the member municipalities.

To avoid any potential conflict of interest, applicants with accounting or auditing backgrounds must agree in writing that they will not offer their services to any municipal election candidates.

Anyone who has participated as candidates in the member municipality elections, or who have conducted audits or provided financial advice in respect of such campaigns, would be disqualified from participation on the Committee.

### **COMPOSITION**

One member appointed from each participating municipality for a total of “X” members.

When a municipality is in receipt of an appeal, the Clerk of the applicable municipality shall contact the Committee Members and arrange for a minimum of three Members to hear the audit request.

## **TERM**

The term of the Committee is co-terminus with Council.

## **CHAIR**

The three-Member Committee called to hear a request for compliance audit shall select one of its Members to act as a Chair at the first meeting.

## **PROPOSED MEETING SCHEDULE**

The Committee shall meet as needed with meetings to be scheduled by the Clerk, in consultation with the Chair, when a compliance audit application is received.

## **STAFFING AND FUNDING**

Staff from the applicable member municipality shall provide administrative support to the Committee. The member municipality requiring the services of the Committee shall be responsible for all associated expenses.

## **MEETINGS**

Meetings of the Committee shall be conducted in accordance with the open meeting requirements of the provisions in the *Municipal Act, 2001*. The websites of the member municipalities will be utilized to communicate the meeting notices and agendas.

## **REMUNERATION**

\$400 - Retainer fee (includes compensation for review of any background materials).

\$350 - Per Diem rate, plus mileage.

## **MEMBERSHIP SELECTION**

All applicants will be required to complete an application form outlining their qualifications and experience.

Each member municipality will select an individual who will serve on the Selection Committee. The Selection Committee shall meet to review all applications based upon the approved selection criteria. The Selection Committee shall prepare a short

list for consideration by the Councils of the member municipalities. Each municipality shall select one member to be appointed to the Joint Compliance Audit Committee.

### **SELECTION CRITERIA**

- a) Demonstrated knowledge and understanding of municipal election campaign financing rules;
- b) Proven analytical and decision-making skills;
- c) Experience working on committees, task forces or similar settings;
- d) Demonstrated knowledge of quasi-judicial proceedings;
- e) Availability and willingness to attend meetings; and
- f) Excellent oral and written communication skills.