

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 04/2010

Being a By-law to Establish an Election Compliance Audit Committee for the Corporation of the Municipality of Port Hope.

WHEREAS Bill 212 (Good Government Act, 2009) under the Municipal Elections Act, 1996 made changes to Section 81 of the Municipal Elections Act, 1996 by introducing a new section 81.1 requiring an Election Compliance Audit Committee;

AND WHEREAS the Council of the Corporation of the Municipality of Port Hope deems it expedient to establish an Election Compliance Audit Committee regarding campaign finances;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE ENACTS AS A BY-LAW AS FOLLOWS:

1. That a Committee to be known as the Compliance Audit Committee is hereby established.
2. That the rules and regulations of the Corporation of the Municipality of Port Hope Procedural By-law shall govern all proceedings of the Compliance Audit Committee.
3. That the records of the Compliance Audit Committee shall be retained and preserved in accordance with the provisions of the Corporation of the Municipality of Port Hope Records Retention By-law.
4. That the Election Compliance Audit Committee shall consist of no less than three (3) members, with membership drawn from the following stakeholder groups:
 - Accounting and audit – accountants or auditors with experience in preparing and auditing the financial statements of municipal candidates;
 - Academic – college or university professors with expertise in political science or local government administration;
 - Legal; and
 - Other individuals with knowledge of the campaign financing rules of the Municipal Elections Act, 1996

all being voting members, appointed for the term of the appointing Council or until their successors are appointed. Council may reappoint any member whose term has expired and otherwise has discretion in filling any vacancy by appointment for the remainder of any applicable term. There shall be no limit on the number of terms a member may be appointed at the discretion of Council to serve on the Election Compliance Audit Committee.

The Municipal Clerk or his/her designate shall be an ex-officio member of the Committee and shall not be a voting member.

5. That the Terms of Reference of the Election Compliance Audit Committee are set out in Schedule A attached hereto forming part of this By-law.

6. In carrying out the provisions of this By-law, the Committee shall at all times be the agent of the Municipal Corporation and while acting bona fide within the limits of the authority of this By-law neither the Committee nor any member thereof shall incur any liability by reason of anything done or left undone by the Committee; provided however, that nothing in this section contained shall authorize or empower the Committee to incur any debt, liability or obligation for which the Municipal Corporation shall become liable without having previously obtained the consent of the Council of the Municipality of Port Hope.
7. That this By-law shall come into force and take effect on the date of its passing.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this 26th day of January, 2010.

Linda Thompson, Mayor

S. C. Dawe, Municipal Clerk

SCHEDULE "A" TO BY-LAW NO. 04/2010

Terms of Reference for the Election Compliance Audit Committee

Terms of Reference	
1	<p><u>Name</u></p> <p>The name of the Committee is the "Election Compliance Audit Committee".</p>
2	<p><u>Duration</u></p> <p>The Committee must be established before October 1, 2010 and the term of office shall be consistent with the term of Council. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received and requires disposition.</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 shall be required to act as a quasi-judicial body 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.
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>Composition shall <u>not</u> include:</p> <ul style="list-style-type: none"> (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 pursuant to clause 81(3.2)(b) of the <i>Municipal Elections Act, 1996</i>.
5	<p><u>Membership Selection</u></p> <p>Staff will solicit interest from the general public within the Municipality of Port Hope by general advertisement. Information will also be placed on the <i>Human Resources</i> section of the municipal web site.</p> <p>All applicants will be required to complete a local board/ committee application form outlining their qualifications and experience and submit a resume outlining their work history and experience. If necessary, due to the volume of applications received the Chief Administrative Officer and Municipal Clerk will interview applicants who meet the selection criteria and prepare a short list. Recommended candidates will be submitted to Council through the In Camera meeting forum for Council's consideration, and subsequently appointed by resolution of Council.</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;

Terms of Reference	
	<p>(b) proven analytical and decision-making skills;</p> <p>(c) experience working on a committee, task force or similar setting;</p> <p>(d) demonstrated knowledge of quasi-judicial proceedings</p> <p>(d) availability and willingness to attend meetings; and</p> <p>(e) excellent oral and written communication skills</p> <p>To avoid possible conflicts of interest, any accountants appointed to the compliance audit committee are not permitted to audit or prepare the financial statement of any candidate running for office on Municipal Council; and 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 Council. <i>Failure to adhere to this requirement will result in the individual being removed from the committee.</i></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 Clerk's Office will provide administrative support to the Committee. The necessary funding will be paid from the Elections budget.</p>
8	<p><u>Meetings / Procedures</u></p> <p>A) <i>General:</i> Meetings of the Committee will be conducted in accordance with the open meeting provisions of the <i>Municipal Act, 2006</i> and the Port Hope municipal web site will be used to communicate the meeting notices and agendas in accordance with the Corporation's Procedural By-law. The first meeting will be called by the Municipal Clerk upon receipt of an application to conduct a compliance audit. Subsequent meetings will be at the call of the Chair. All time frames established in the Municipal Elections Act (MEA), 1996 and regulations shall be adhered to.</p> <p>Committee activity shall be determined primarily by the number and complexity of applications for compliance audits that may be received. The frequency and duration of the Committee meetings will be determined by the Committee in consultation with the Municipal Clerk. Meetings of the Committee shall be governed by Roberts Rules of Order, Procedural By-law and applicable legislation.</p> <p>Any member who misses three consecutive meetings, in accordance with Corporation's Procedural By-law, may be removed from the Committee. The Committee must make recommendations in writing to Council for the removal of any member.</p> <p>Closed meeting rules as outlined in Section 239 of the Municipal Act shall apply.</p> <p>B) <i>Procedures and Applicable Time Frames</i></p> <p>i) <u>Requirements</u></p> <p>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.</p> <p>ii) <u>Deadline</u> The application must be made within 90 days after the latest of:</p> <p>(a) the filing date under section 78;</p> <p>(b) the candidate's supplementary filing date, if any, under section 78;</p> <p>(c) the filing date for the final financial statement under section 79.1; or</p>

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(d) the date on which the candidate's extension, if any, under subsection 80(3) expires.

iii) Application to be forwarded to committee

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 of the Municipal Elections Act (MEA) and provide a copy of the application to the council or local board.

iv) Decision

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

v) Appeal

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.

vi) Appointment of auditor

If the committee decides under subsection (iv) to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

Same

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

viii) Duty of auditor

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.

ix) Who receives report

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
- (f) the Election Compliance Audit Committee (ECAC).

x) Report to be forwarded to committee

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 Election Compliance Audit Committee.

xi) Powers of auditor

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.

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	<p>xii) <u>Costs</u> The Council or local board, as the case may be, shall pay all costs in relation to the committee's operation and activities. The MEA does not make provision for recovery of costs related to an application where the auditor's report indicates no apparent contravention, or the Committee finds no reasonable grounds for the application.</p> <p>xiii) <u>Power of committee</u> The committee shall consider the report within 30 days after receiving it and may:</p> <p>(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;</p> <p>(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.</p> <p>xv) <u>Immunity</u> No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (vi) 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.</p> <p>xvi) <u>Saving provision</u> 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.</p> <p>xvii) <u>Role of Clerk or secretary</u> 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.</p>
9.	<p><u>Expulsion of a Member</u></p> <p>The Committee and / or the Clerk may recommend to Council the expulsion of a member for reasons as listed, but not limited to:</p> <p>a) the member being in contravention of the Municipal Act, the Municipal Freedom of Information and Protection of Privacy Act, the Municipal Conflict of Interest Act and the Municipal Elections Act;</p> <p>b) disruption of the work of the Committee or other legal issues that may arise.</p>
10.	<p><u>Administration</u></p> <p>Any responsibilities not clearly identified within the Terms of Reference shall be in accordance with Section 81 of the MEA.</p>

11.	<p><u>Reports</u></p> <p>The Committee will conduct the compliance audit in accordance with the provisions of the Municipal Elections Act (MEA) and the Clerk will act as the main contact between the Committee and Council and will report on Committee activity as required to the appropriate individuals and Council as prescribed by the MEA.</p>
12.	<p><u>Conflict of Interest</u></p> <p>Members shall be governed by the Municipal Conflict of Interest Act and shall disclose the pecuniary interest to the Clerk and remove themselves from the meetings for the duration of the discussion and voting with respect to that matter.</p>
13.	<p><u>Errors or Omissions</u></p> <p>The accidental omission to give notice of any meeting of the Committee to its members, or the non-receipt of any notice by any member, or any error in any notice that does not affect its substance, does not invalidate any resolution passed or any proceedings taken at the meeting.</p>