

**DATE:** May 25, 2010

**REPORT NO. CM2010-039**

**TO:** Mayor Hancock and Members of City Council

**FROM:** John Brown  
City Manager

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**1.0 TYPE OF REPORT**

**CONSENT ITEM [ ]**  
**ITEM FOR CONSIDERATION [ X ]**

**2.0 TOPIC**

Establishment of a Municipal Elections Compliance Audit Committee for the City of Brantford

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**3.0 RECOMMENDATION**

- A. THAT Report CM2010-039 of the City Clerk dated May 25, 2010 BE RECEIVED; and
- B. THAT the City Clerk BE DIRECTED to solicit applications for a three member Municipal Elections Compliance Audit Committee; and
- C. THAT Chapter 26 of the City of Brantford Municipal Code BE AMENDED to include the City of Brantford Municipal Elections Compliance Audit Committee as a Schedule to the City's Board and Advisory Committee By-law.

**4.0 PURPOSE**

Report CM2010-039 outlines the revised requirements of the Municipal Elections Act as they relate to the establishment of a Municipal Elections Compliance Audit Committee by the Municipality.

**5.0 BACKGROUND**

Amendments to the Municipal Elections Act contained within Provincial Bill 212 now require every municipality and local board to establish before October 1<sup>st</sup> in an Election year a Compliance Audit Committee for the purposes of Section 81 of the Municipal Elections Act.

Appendix "A" to this Report contains an outline of Sections 81 and 81.1 of the Municipal Elections Act as they relate to the composition and responsibilities of a Municipal Elections Compliance Audit Committee.

Prior to the legislative changes contained within Bill 212, the appointment of a Compliance Audit Committee was optional for municipalities and local boards. Amendments contained within Bill 212 now require that each Council or Local Board establish a Compliance Audit Committee by October 1<sup>st</sup> in an Election Year.

The Compliance Audit Committee is established to review and report on any requests for a compliance audit filed with the municipality. All candidates are required to file prescribed financial statements with the Clerk outlining campaign financial activities. Any eligible elector who believes on reasonable grounds that a candidate has contravened the campaign financing sections of the Act, may apply for a compliance audit of a candidate's election campaign finances.

The City of Brantford has never had a request for a Compliance Audit in any previous Municipal Election.

## **6.0 CORPORATE POLICY CONTEXT**

Not applicable.

## **7.0 INPUT FROM OTHER SOURCES**

Input obtained from the Ministry of Municipal Affairs and Housing as well as a number of other Ontario Municipalities has been included in this Report.

## **8.0 ANALYSIS**

### **8.1) Compliance Audit Committee Membership**

**a) TERM** – The Municipal Elections Act requires that the term of Office of the Committee be the same as the Council or Local Board that takes office following the next Regular Election (December 1, 2010 to December 1, 2014)

**b) COMMITTEE SIZE** - Section 81.1 (2) of the Municipal Elections Act requires that 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.

In consideration of the specific expertise sought for members of this Committee, Staff are recommending that the Committee be limited to a three members to ensure that all appointed members are well qualified to serve on the Committee.

**c) QUALIFICATIONS OF COMMITTEE MEMBERS**

Ideally, the composition of the Committee will include individuals with an auditing, accounting or legal background and those also with a knowledge of campaign finance activities.

It is important to note that Auditors appointed to serve on the Committee would not be able to audit or prepare the Financial Report of any candidate running for municipal office.

As the Committee will operate in a quasi-judicial fashion, past experience on a committee, task force or tribunal would also be an asset.

Advertisements seeking applicants for this Committee will emphasize the ideal background requirements noted above.

**8.2) General Responsibilities of the Committee**

Pursuant to the requirements of Section 81 and 81.1 of the Municipal Elections Act, the powers and functions of the Committee include:

- to consider the compliance audit application received from an elector and decide whether it should be granted or rejected.
- if the application is granted, to appoint an auditor.
- to consider the auditor's report and decide whether legal proceedings should be commenced.
- to 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.

**8.3) Jurisdiction of the Committee**

The requirements of the Municipal Elections Act provide that each municipality or local board shall appoint a Compliance Audit Committee. There is nothing in the legislation that prohibits the same individuals being appointed by different municipalities or local boards to serve in this capacity.

Staff Members of the Clerk's Department have met previously with Representatives of Brant Haldimand Norfolk Separate School Board and the Grand Erie District School Board to discuss opportunities to utilize the same membership for their required Committees.

Both School Boards have expressed an interest in appointing the same representatives appointed by the City to serve as their Compliance Audit Committee.

As a result the City will seek individuals interested in serving in the capacity of Compliance Audit Committee member for both the City of Brantford and the Public and Separate School Boards. It will still be the responsibility of the School Boards to formally appoint the same individuals that the City appoints to their own Compliance Audit Committees. Advertisements seeking interested individuals to serve on the Committee will note the scope of responsibility of the Committee.

#### **8.4) Committee Selection**

It is the responsibility of Council to appoint a Compliance Audit Committee. Staff of the City Clerk's Department will coordinate required advertising for individuals interested in serving on the Committee and provide required background information.

A list of Committee applicants will be brought to the City's Appointment's Committee for a recommendation to City Council.

#### **8.5) Committee Process and Procedures**

In keeping with current practice, Members of the Compliance Audit Review Committee will not receive remuneration from the Municipality. Members will serve on the Committee in a volunteer capacity.

The City Clerk's Department will provide the Committee with all administrative support requirements. The City Clerk or his designate will serve as Secretary to the Review Committee.

The Committee will operate in accordance with the provisions of the City of Brantford's Council Procedural By-law.

### **9.0 FINANCIAL IMPLICATIONS**

Costs for required advertising to solicit applications has been provided for within the Clerk's Department's 2010 Municipal Election Budget. Should future audits be required as the result of Compliance Audit Committee requests, these costs

will be drawn from the Clerk's Departments Election Reserve Account. As noted earlier in the Report there will be no remuneration provided to Members of the Committee.

**10.0 CONCLUSION**

The establishment of the City's Municipal Election Compliance Audit Committee is now a legislative requirement under the Municipal Elections Act. With approval of the recommendation within this Report, Staff will commence the recruitment process for qualified individuals in hopes of having Council appoint Members to the Committee by the end of August.

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John Brown  
City Manager

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Darryl Lee  
City Clerk

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

- |  |                              |  |
|--|------------------------------|--|
| By-law required  | <input type="checkbox"/> yes | <input type="checkbox"/> no            |
| Agreement(s) or other documents to be signed by Mayor and/or City Clerk  | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |
| Is the necessary by-law or agreement being sent concurrently to Council? | <input type="checkbox"/> yes | <input checked="" type="checkbox"/> no |

**APPENDIX “A” to Report CM2010-036**

**Sections 81 and 81.1 of the Municipal Elections Act as amended.**

**Compliance audit**

**Application**

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**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 (4) expires. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**Decision**

(5) Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

(8) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (7). 2009, c. 33, Sched. 21, s. 8 (44).

**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 this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

**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 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. 2009, c. 33, Sched. 21, s. 8 (44).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

(b) has the powers set out in section 34 of the *Public Inquiries Act, 2009* and section 34 applies to the audit.

See: 2009, c. 33, Sched. 21, ss. 8 (45), 13 (2).

**Costs**

(13) The municipality or local board shall pay the auditor's costs of performing the audit. 2009, c. 33, Sched. 21, s. 8 (44).

**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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).

### **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. 2009, c. 33, Sched. 21, s. 8 (44).