



**Information Session
Compliance Audit Committee**

Disclaimer

These slides are provided by the Ministry of Municipal Affairs and Housing for convenience only. They are a simplified summary of some of the provisions of the *Municipal Elections Act, 1996* and prescribed Form 4.

The slides should not be relied on for legal or official purposes. For the authoritative text, recourse should be had to e-laws (*Municipal Elections Act, 1996*, *Municipal Act, 2001* and the applicable regulations and forms). Since specific facts and circumstances vary, users should obtain legal advice when issues arise.

Objectives

The session will provide information on:

- Overview Compliance Audit Committee
- Candidates Duties
- Campaign Expenses
- Campaign Contributions
- General Information
- Form 4

Overview

COMPLIANCE AUDIT COMMITTEE

Compliance Audit Committee

From the *Municipal Elections Act, 1996*:

- An elector who is entitled to vote in an election and 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

Compliance Audit Committee Process

Application made to the clerk of the municipality or secretary of the local board

Application in writing setting out reasons for the elector's belief

Application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) supplementary filing date, if any
- (c) filing date for the final financial statement (s. 79.1)
- (d) date on which the candidate's extension, if any, under subsection 80 (4) expires

Compliance Audit Committee Process

- Within 10 days after receiving the application, the clerk of the municipality shall forward the application to the compliance audit committee and provide a copy to council
- Within 30 days after receiving the application, the committee shall consider the application and decide whether an audit should be granted or rejected
- The decision of the committee may be appealed to the Ontario Court of Justice within 15 days after the decision is made

Compliance Audit Committee Process

- If the committee decides to grant the application, it shall appoint an auditor to conduct a compliance audit
- Only auditors licensed under the *Public Accounting Act, 2004* are eligible to be appointed

Compliance Audit Committee Process

The auditor shall promptly conduct an audit to determine whether the candidate has complied with the provisions of the Act relating to election campaign finances and shall prepare a report outlining any apparent contravention. 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

Compliance Audit Committee Process

Within 10 days after receiving the auditor's report, the clerk of the municipality shall forward the report to the compliance audit committee

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

Compliance Audit Committee Process

The committee shall consider the report within 30 days

After receiving the report it and may:

- (a) if the report concludes that the candidate appears to have contravened a provision of the 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 the Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application

CANDIDATES' DUTIES

Candidates' Duties

- Accurate record keeping is a legislated requirement
- Campaign bank account opened for the purposes of the election campaign
- All contributions of money deposited into the campaign bank account
- All payments for expenses except nomination filing fee made from campaign account
- Contribution of goods or services are valued
- Receipts are issued for every contribution and obtained for every expense

Candidate Duties

Candidates must keep records of:

- the receipts issued for every contribution
- the value of every contribution
- whether contribution is in the form of money, goods or services
- the contributor's name and address
- every expense including the receipts obtained for each expense

See *Municipal Elections Act, 1996* for complete list

EXPENSES

Campaign Expenses

- Any expense incurred for goods and services in relation to an election
- Includes the replacement value of any goods held in inventory from a previous election
- Includes equivalent value of any contribution of goods and services for use in whole or in part
- Nomination filing fee is an expense
- Unless the item is exempt from the spending limit, all expenses count toward the candidate's spending limit

Campaign Expenses Exempt from Spending Limit

- Expenses incurred in holding a fundraising function
- Expenses holding parties and other expressions of appreciation after close of voting
- Expenses relating to a court action for a controverted election
- Expenses relating to a recount
- Expenses relating to a compliance audit
- Expenses incurred by a candidate with a disability that are directly related to the disability
- Audit and accounting fees

Campaign Inventory

- Campaign expenses include the value of any goods from a previous campaign
- All goods from previous campaigns must be included in the opening inventory even if not included in the closing inventory of the previous campaign.
- Replacement value should be used
- Remaining reusable campaign materials must be valued and reported as closing inventory
- Any materials that cannot be reused should not be included in the closing inventory
- The value of any remaining inventory is not to be deducted from the campaign expenses.

Fundraising

- Raising money for the candidate's campaign must be the primary purpose of the event
- Campaign events at which incidental fundraising takes place do not qualify
- Fundraising functions can only be held for a candidate during the campaign period
- Gross income and expenses from each function must be recorded and reported
- Price of admission is a contribution and a receipt must be issued for the full amount

CONTRIBUTIONS

What is a Campaign Contribution

- Money
- Value of goods and services
- Admission price for a fund-raising function
- Difference between the amount paid and the market value of a good or service sold at a fund-raising function
- Difference between the amount paid and the market value of a good or service purchased for the campaign
- Any unpaid but guaranteed balance of a campaign loan

What is Not a Campaign Contribution

- Value of services provided by voluntary unpaid labour
- Value of services provided voluntarily by employees of an entity as long as they do not receive extra compensation from their employer
- An amount of \$10 or less that is donated at a fund-raising function
- Value of free political advertising provided it is in accordance with the *Broadcasting Act* (Canada) and is made available to all candidates
- Amount of a campaign loan obtained by the candidate or the spouse of the candidate

Who Can Contribute?

Eligible contributors are:

- individuals normally resident in Ontario
- corporations that carry on business in Ontario
- unions that hold bargaining rights for employees in Ontario
- a candidate and his or her spouse

Who Cannot Contribute?

The following organizations may NOT contribute to a municipal campaign:

- federal political party
- provincial political party
- federal or provincial government
- municipality or school board

Limits on Contributions

- Limit on contributions donated in money, goods or services from any individual, corporation or trade union is \$750 to any one candidate
- Limit applies regardless of the number of offices the candidate was nominated for during the election period
- Maximum total amount that can be contributed to candidates in the same jurisdiction is \$5000.00

Borrowing

Loan guarantee only by candidate or spouse

Loan - only from bank or other recognized lending institution in Ontario

Reporting of Contributions

Must be reported in the financial statement to be filed with the clerk, and includes:

- total amount of any funds raised at a fundraising function such as a dinner, dance, or other event
- name and address of any contributor who made a total aggregate contribution, including the value of goods or services, exceeding \$100

Contribution Receipts

Value of a contribution (money, goods or services) must be established and a receipt given for the full value

Before issuing a receipt for a contribution the candidate should ensure that:

- contributor is normally resident in Ontario and the receipt is made out in the contributor's name
- a corporate donor meets the requirement of carrying on business in Ontario
- a trade union has bargaining rights in Ontario for its members

Contribution Refunds

Contributions can only be returned or paid to the clerk when they are made in contravention of the *Municipal Elections Act, 1996*:

- made outside the candidate's campaign period
- from anonymous sources (except "pass the hat")
- from ineligible sources (e.g. non residents or from a business that is not a corporation)
- in excess of the \$750 limit or the \$5,000 total limit
- a cash contribution in excess of \$25
- from funds not belonging to the contributor

GENERAL

Financial Reporting Requirements

- Form 4 prescribed by MMAH for filing financial contributions and expenses
- Financial statements are required to be audited if expenses or contributions exceed \$10,000
- All contributions of more than \$100 must be reported on financial statement
- Expenses subject to the spending limit and excluded from the limit are both included in the total expenses
- All records must be retained for the term of office including financial documents

Surplus/Deficit

- Entire amount of a campaign surplus must be paid to the clerk
- Candidate is entitled to refund any contributions they or their spouse made to the campaign before paying the surplus to the clerk.
- Clerk places surplus monies in a trust fund for use by the candidate for a recount, application for a controverted election or compliance audit.
- If none of the above occurs, surplus becomes the property of the municipality or school board.

Audits

What must be retained:

- all deposit slips, showing contributor names
- record of contributions of goods/services and their fair market value
- list of name, address and amount donated by all contributors, whether individuals, corporations or trade unions
- a record of all contributions returned as well as anonymous contributions paid over to the clerk

Penalties and Enforcement

- Candidates, elected or not, who do not file a financial statement, initial or supplementary, forfeit their office and are ineligible to hold municipal office in Ontario for the period up to and including the next regular election
- A candidate who files a financial statement that shows a surplus and fails to pay the amount to the clerk is liable to penalty
- A candidate who files a statement that shows that the candidate spent in excess of his or her campaign expense limit is liable to penalty

Resources

MMAH – 2010 Municipal Elections Guide

www.mah.gov.on.ca

MMAH Forms Repository

www.forms.ssb.gov.on.ca

E-Laws Website

www.e-laws.gov.on.ca

Municipal World Magazine

www.municipalworld.com

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