

7-1-2013

# Municipal Election Compliance Audit Committees: A Review and Critical Analysis

Ashley Grigg  
Western University

Follow this and additional works at: <https://ir.lib.uwo.ca/lgp-mrps>



Part of the [Public Administration Commons](#)

---

## Recommended Citation

Grigg, Ashley, "Municipal Election Compliance Audit Committees: A Review and Critical Analysis" (2013). *MPA Major Research Papers*. 116.

<https://ir.lib.uwo.ca/lgp-mrps/116>

This Major Research Paper is brought to you for free and open access by the Local Government Program at Scholarship@Western. It has been accepted for inclusion in MPA Major Research Papers by an authorized administrator of Scholarship@Western. For more information, please contact [tadam@uwo.ca](mailto:tadam@uwo.ca), [wlsadmin@uwo.ca](mailto:wlsadmin@uwo.ca).

**Municipal Election Compliance Audit Committees:  
A Review and Critical Analysis**

MPA Research Report

Submitted to

The Local Government Program  
Department of Political Science  
The University of Western Ontario

Ashley Grigg  
July 2013

## **Municipal Election Compliance Audit Committees: A Review and Critical Analysis**

### **Executive Summary:**

Prior to the 2010 municipal election, the provincial government mandated the establishment of municipal election compliance audit committees for all municipalities in Ontario. Under the *Municipal Elections Act, 1996*, an eligible elector who believes on reasonable grounds that a candidate has contravened election campaign finance rules has the right to request a compliance audit of the candidate's campaign finances. The compliance audit committee's central function is to receive and consider these applications.

The regulation and enforcement of federal and provincial election campaign finance is the subject of considerable study and research. In contrast, literature investigating the performance of municipal election campaign finance is relatively limited, particularly as it relates to the incipient compliance audit committee process.

Referencing parliamentary transcripts, case law and municipal records, this paper explores the topic of municipal election compliance audit committees and puts forward an argument for legislative review. The paper begins with a review of legislative intent, and continues with an examination of four cases, each having resulted in an appeal to the Ontario Court of Justice. The practical application of the law through a review and observation of cases is used for undertaking a descriptive analysis of the compliance audit committee process and in the end, reveals the need for legislative review. This paper concludes with a number of recommendations for legislative amendment and process improvements which would increase accountability and in effect, better uphold the purpose of municipal election campaign finance rules in Ontario.

**Table of Contents:**

Chapter 1: Introduction.....	4
Chapter 2: Background .....	7
Chapter 3: Literature Review .....	10
3.1 Municipal Election Campaign Finance Reform in Ontario.....	11
3.2 Responses on the Function and Operation of Compliance Audit Committees ...	15
Chapter 4: Deliberative Democracy and Campaign Finance .....	17
Chapter 5: A Review of Legislative Intent .....	18
Chapter 6: Case Study Analysis .....	20
6.1 <i>Dickerson v. Compliance Audit Committee of the City of Pickering</i> .....	21
6.2 <i>Fuhr v. Perth South (Township)</i> .....	25
6.3 <i>Lancaster v. St. Catharines (City) Compliance Audit Committee</i> .....	28
6.4 <i>Ford v. Toronto (City) Compliance Audit Committee</i> .....	32
Chapter 7: A Summary of the Evidence in Support of Legislative Review.....	34
7.1 Selection Criteria, Operational Policies and Procedures.....	35
7.2 Reasons for Decision .....	38
7.3 Form 4 Revisions .....	39
7.4 Decision Making Criteria .....	42
7.5 Exercise of Discretion.....	43
7.6 Campaign Spending Limits .....	47
7.7 An Exploration of Alternatives .....	48
Chapter 8: Future Evaluation and Analysis.....	51
Chapter 9: Conclusions.....	52
References:.....	54

## **Chapter 1: Introduction**

Alleged corruption, undue influence, inequality and a perceived lack of openness, accountability and overall integrity are criticisms that have dogged municipal elections in Ontario. Recent amendments to the *Municipal Elections Act, 1996* resulted in the mandatory establishment of compliance audit committees in municipalities across Ontario, which was intended to increase compliance and enforcement related to municipal election campaign finance. The *Municipal Elections Act, 1996* provides that any eligible elector who believes on reasonable grounds that a candidate has contravened election campaign finance rules has the right to request a compliance audit of the candidate's election campaign finances. This paper explores the topic of compliance audit committees, the legislative provisions surrounding their operation and lessons learned since the time of their establishment.

Municipal elections are a key function of democratic rights and government processes at the local level. In Ontario, municipal elections take place every four years and are governed by the provisions of the *Municipal Elections Act, 1996* (the Act). The Act sets out various rules which regulate the conduct of municipal elections. These include provisions which impact electors, candidates, municipal professionals and the public. The Act regulates the administration of municipal elections including provisions respecting candidate nominations, the voters' list, advance voting, accessibility, records retention, recounts, restricted acts after nomination day, and the like. Among these rules are provisions governing campaign finance, which regulate the various aspects of a candidate's election campaign finances including expenses, donations, fundraising, financial reporting, financial disclosure, public reporting, enforcement, and the establishment of compliance audit committees.

In the decision of *R. v. Losani Homes*, Justice of the Peace Ken Dechert of the Ontario Court of Justice offered the following comments, which describe the importance of the legislative provisions governing municipal election campaign:

*“In my view, the Municipal Elections Act, 1996, especially as it relates to matters of election campaign finances, is an important public welfare statute. Its purpose is to set fair rules for municipal elections so that all citizens in our democracy can feel that the process of electing our municipal governmental officials is conducted in a fair and open manner. Rules such as those set out in the Municipal Elections Act, 1996, serve to strengthen our democracy and therefore enhance the freedoms that our forefathers carefully and thoughtfully created in Ontario for our benefit.”<sup>1</sup>*

The above illustrates the level of significance with which the Courts place on the provisions governing municipal election campaign finance in Ontario - going so far as to equate their purpose with the preservation of Canadian democracy.

The subjects of federal and provincial election campaign finance rules have been much studied and explored. In contrast, literature investigating the performance of municipal election campaign finance rules is relatively limited, particularly as it relates to the fledgling compliance audit committee process.

Recent amendments to the *Municipal Elections Act, 1996* were purported to support the principles of accountability and transparency and to increase public confidence in the municipal election process. Allegations of frequent and ongoing violations and the absence of an effective enforcement mechanism contributed to an overall lack of public confidence. The institution of mandatory compliance audit committees has been described as being a response to the need for increased accountability and transparency in municipal election campaign finance; however, broad legislative parameters has served to undermine their purpose and function.

---

<sup>1</sup> *R. v. Losani Homes (1998) Ltd.*, 2007 ONCJ 634, at paras, 14-17, as quoted in Johnson, Jody E. “Municipal Election Enforcement: Does it Really Exist?” Presented at proceedings of the *International Municipal Lawyers Association, 75<sup>th</sup> Annual Conference, Canadian Department Meeting, 2010*, page 26.

The purpose of this paper is to provide a critical analysis of the compliance audit committee process as it currently exists under the provisions of the *Municipal Elections Act, 1996*, and in doing so will examine the need for increased legislative clarity. Due to the relatively short amount of time since their establishment, observations and findings concerning the performance of compliance audit committees (CAC) is limited. This paper undertakes a comprehensive review of the legislation and an evaluation of operational challenges.

The paper begins with a review of literature on the subject of municipal election campaign finance in Ontario and continues by setting out the relevant theoretical framework. Analysis commences with an examination of legislative intent, as evidenced by transcripts of parliamentary debate. The paper continues with a focused examination of the facts surrounding four compliance audit committee applications originating in the municipalities of Pickering, Perth South, St. Catharines, and Toronto. The case study analysis proceeds with a review of case law and investigates decisions issued on appeal by the Ontario Court of Justice. The analysis includes an examination of alternative compliance and enforcement methods and opportunities for further research. Using the observations made from the case study analysis, this paper sets forth a case for legislative review and concludes by making a number of recommendations to this end.

The object of this paper is not to draw conclusions regarding a preferred method of compliance and enforcement, but rather to use information gathered in an effort to gain a full comprehension of contributing factors and to put forward reasons for review. Analysis has been undertaken for the purpose of making a case for policy improvement in order to provide greater clarity concerning the practical application of the legislation.

The intent of this paper is to provide input into the consideration of practical challenges impacting the CAC process and contribute to the literature on this subject. This information is intended to be of relevance to municipal professionals and policy-

makers. The information gathered and the analysis presented in this paper may also be interest to the various stakeholders of municipal elections, including candidates and their campaign teams, electors, the general public, compliance audit committee members, municipal councils, and the like. The findings are intended to be used as a tool for informing future policy decisions surrounding the continued use and possible improvement of compliance audit committees in Ontario.

This paper has been prepared by a current municipal administrator. My interest in municipal elections, and by extension the subject of compliance audit committees, is generated from professional experience as a municipal clerk. Among the various statutory obligations delegated to the clerk is the responsibility to undertake and administer all aspects of municipal elections. Experience with and observations of compliance audit committees during the course of the 2010 municipal election generated my interest and the desire for investigative analysis in this regard, particularly as it relates to the practical application of the legislation. Professional knowledge and experience lends itself well to undertaking an analysis of this type, however, professional bias has the potential, albeit unintentionally, to jeopardize the integrity of an evaluative process. As a result, every effort has been made to ensure resource collection and analysis is carried out in a fair and objective manner so as to guard against unfair influence and the distortion of resulting findings.

## **Chapter 2: Background**

As briefly noted above, allegations of legislative violations, undue influence, malfeasance, and a perceived lack of integrity have dogged municipal elections in Ontario for some time. Following the Municipal Election held in 2000, the City of Toronto petitioned the Ministry of Municipal Affairs and Housing to amend the legislation governing municipal campaign finance in order to provide City Council with the authority



to establish a committee for the purpose of considering and deciding on applications seeking a compliance audit of financial statements of a candidate who ran for office in a municipal election (City of Toronto). The *Municipal Elections Act, 1996* was subsequently amended and municipal councils across Ontario were provided with the authority to either decide on whether to grant or reject an application for a compliance audit or to delegate all or part of its authority to a committee established for this purpose (City of Toronto). This set the stage for the adoption of the compliance audit committee model across Ontario.

At the conclusion of each municipal election in Ontario, the Ministry of Municipal Affairs and Housing (the Ministry) undertakes a post-election review which includes a consideration of the legislative parameters outlined under the Act, and the manner in which these provisions were applied during the election. In late 2009, as a result of the legislative review which took place after the 2006 municipal election, the Province of Ontario enacted the *Good Government Act, 2009*, which introduced a number of amendments that impacted municipal governments across Ontario. Among the amendments were changes to municipal election campaign finance regulations. As a result of these amendments, every council and local board, is now required, before October 1 of an election year, to establish a committee for the purposes of conducting compliance audits of election campaign finances (*Municipal Elections Act, 1996 s. 81.1(1)*).

The Act provides that an eligible elector who believes on reasonable grounds that a candidate has contravened election campaign finance rules can request a compliance audit of the candidate's election campaign finances (*Municipal Elections Act, 1996 s. 81(1)*). The Act also sets out the mandate of the compliance audit committee, describing it as being to review and consider applications for a compliance audit and to make a decision whether the application should be granted or rejected (*Municipal*

*Elections Act, 1996 s. 81(5)*). An application for a compliance audit must be filed within ninety days following a candidate's financial filing date (*Municipal Elections Act, 1996 s. 81(3)*). The legislation provides a right of appeal – with candidates and applicants being afforded the opportunity to appeal a committee's decision (either granting or rejecting an application) to the Ontario Court of Justice (*Municipal Elections Act, 1996 s. 81(6)*). Costs associated with the committee and the services of an auditor are the responsibility of the municipality (*Municipal Elections Act, 1996 s. 81(13) and 81.1(5)*).

Compliance audit committees have been established to uphold the campaign finance provisions under the Act and to increase accountability and transparency of the electoral process. The CAC process was designed to act as an accountability mechanism to monitor and ensure compliance, including identifying contraventions and making recommendations on enforcement and associated penalties. Thus, the central purpose of the committee is twofold: first, upon application, consider matters of compliance and second, to act as a mechanism for enforcement.

Prior to the time amendments under the *Good Government Act, 2009* were adopted; section 81 of the Act enabled an elector to request that a municipal council order a compliance audit of a candidate's campaign finances. If a compliance audit was ordered and its results revealed contraventions, a municipal council then had the authority to commence legal proceedings against the candidate. In addition, a council could establish a compliance audit committee to consider the application for a compliance audit; however, the establishment of the committee was at the discretion of Council and a majority of Ontario municipalities did not proceed with such an appointment (AMCTO). The final report of the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) 2006 Municipal Elections Post-Election Survey found that of 329 respondents only 5.8% of municipalities established a body separate from council to review applications for compliance audits (AMCTO).

Significant political pressures would have been at play under the former Act should a municipal council receive a request for a compliance audit, particularly if the subject of the application was an elected member of Council. Such political pressure was witnessed in a number of widely publicized compliance audit committee applications.<sup>2</sup>

### **Chapter 3: Literature Review**

The performance of federal and provincial election campaign finance in Canada is a topic much studied and explored. In contrast, literature investigating the performance of municipal election campaign finance rules is relatively limited, particularly as it relates to the recently introduced CAC process. Due to the relatively short amount of time that compliance audit committees have operated, there is no empirical research available on the subject. The lack of writings published poses a challenge when attempting to undertake an examination of available literature. This demonstrates a lacuna as to the subject of compliance audit committees and presents a unique research opportunity.

The body of literature specifically related to compliance audit committees primarily consists of news media, decisions from the Ontario Court of Justice, and a small number of articles published by municipal professionals. Primary sources of information include agendas, minutes and decisions of compliance audit committees, as well as reports from municipal staff concerning the appointment of the committee and the adoption of related procedures. There is some empirical research and literature related to municipal election campaign finance in Ontario and the study of financial contributions as a determinant of electoral success, however much of this area of study is not directly related to the subject of this paper.

---

<sup>2</sup> See *Jackson v. Vaughan (City)*, (2010) O.N.C.J. 118.

Nevertheless, a review of research published on the topic of municipal election campaign finance reform in Ontario (preceding the legislative amendments to the Act and serving as the foundation for legislative amendment under the *Good Government Act, 2009*) combined with a review of information and opinions obtained from credible, albeit non-scholarly, resources is helpful in considering the body of literature on this subject.

As a result, the literature review outlined herein will commence with an examination of the resources on the subject of municipal election campaign finance reform in Ontario, particularly that which is relevant to the subjects of compliance and enforcement (the twofold purpose of compliance audit committees). The review will then proceed with a study of the limited writings published on the topic of compliance audit committees since the time of their establishment in 2010.

### **3.1 Municipal Election Campaign Finance Reform in Ontario**

Prior to the recent legislative amendments, critics argued that a number of deficiencies existed under the legislation governing municipal election campaign finance. These criticisms laid the ground work for the subsequent establishment of compliance audit committees.

In 2002, the City of Toronto established the Toronto Election Finance Review Task Force (the Task Force). The mandate of the Task Force was to review all components of municipal election campaign finance legislation and make recommendations concerning legislative amendments and process improvements with a view to improve accountability concerning candidate financial disclosure (City of Toronto, *Election Finance Review Task Force*). The Task Force undertook a review and, in 2004, issued a Municipal Election Discussion Paper (the Discussion Paper) which made a number of recommendations. Among the numerous proposals was the recommendation

that Elections Ontario should be responsible for the monitoring and enforcement of municipal election campaign finance rules (Election Finance Review Task Force 8). The recommendations of the Task Force were subsequently approved by Toronto City Council and forwarded to the Ministry of Municipal Affairs and Housing. In 2006, the *City of Toronto Act - Stronger City of Toronto for a Stronger Ontario Act, 2006*, amended the *Municipal Elections Act, 1996* to provide the authority for Toronto City Council to prohibit corporations and trade unions from making election campaign contributions (*Stronger City of Toronto for a Stronger Ontario Act, 2006* s. 70.1(1)). In addition, several of the Task Force's recommendations are considered to have informed the Ministry of Municipal Affairs and Housing's review and amendment of the *Municipal Elections Act, 1996*, which came into effect prior to the 2010 municipal election.

Of particular relevance to this paper are the Task Force's findings and recommendations concerning compliance and enforcement of election campaign finance rules. The Discussion Paper outlines concern regarding the appropriateness City Council being responsible for monitoring compliance and enforcement. As outlined above, the then current legislation designated Council as being responsible for considering whether to grant or reject an application for a compliance audit. The Task Force questioned the suitability of having a council monitor its own performance as it relates to election campaign finance and challenged whether this system fostered public confidence (Election Finance Review Task Force 7-8). The Discussion Paper called for the establishment of an Election Finance Review Board specifically for this purpose (Election Finance Review Task Force 7). The Discussion Paper contemplated the establishment of a Board, composed of civilian members, with a mandate to monitor election campaign finance activities and authorized to receive and manage complaints (Election Finance Review Task Force 8). The Task Force also explored alternatives, including the establishment of a quasi-judicial body under the Province of Ontario for this

purpose (Election Finance Review Task Force 8). It also explored the option of compliance and enforcement falling under the responsibility of Elections Ontario (Election Finance Review Task Force 8). Although each of these options is mentioned, the Discussion Paper did not explore these alternatives in any great detail.

The City of Ottawa also contributed to the discourse on the subject of municipal election campaign finance reform. Following the 2003 and 2006 elections a City Councillor undertook an elections review.<sup>3</sup> In 2009, the City, in the interest of preserving fairness in the democratic process, requested the Minister of Municipal Affairs and Housing to consider the enactment of various amendments. These recommendations sought to level the playing field by decreasing the influence of corporate contributions, the advantages of incumbency, and increase financial reporting mechanisms (City of Ottawa).

In a presentation made to the City of Toronto Administration Committee, Robert MacDermid, Associate Professor of Political Science with York University, outlined his response to the final report of the Toronto Election Finance Review Task Force. In the response MacDermid recommended the creation of a body independent from council to oversee compliance and rule on complaints (MacDermid 10). MacDermid made a number of other recommendations for reform including placing increased emphasis on compliance during a candidate's campaign period, the introduction of a method of processing complaints of violations during the campaign period, and the creation of a simple and readily accessible public inventory of complaints (MacDermid 1-3).

MacDermid further explored the subject of municipal election campaign finance in a paper that compared and empirically analyzed municipal election campaign financing activities, particularly contribution patterns, in ten municipalities across the

---

<sup>3</sup> These reviews took the form of two separate reports titled "*Reforming Ottawa's Municipal Election Finances* (28 April, 2005)" and "*The Need for Reform: A Report on the 2006 Municipal Election*" (20 June, 2007).

Toronto region. The report gathered data from the financial filings of candidates submitted following the 2003 municipal election. The findings indicated that campaign contribution patterns differ between communities and that in some municipalities the bulk of candidate financial contributions are generated from corporations and the development industry (MacDermid, Funding Municipal Elections 13). MacDermid concluded that a lack of citizen involvement has resulted in an increase in campaign contributions from corporations and the development industry (MacDermid, Funding Municipal Elections 20). The paper went on to find that the development industry is the most prevalent contributor in municipal election campaigns (MacDermid, Funding Municipal Elections 13) and points to the need for further research about whether this trend has resulted in greater incumbency rates for pro-development candidates (MacDermid, Funding Municipal Elections 21). MacDermid went on to explore the subject of self-financed election campaigns and concluded that new candidates and candidates from immigrant communities face significant barriers to election (MacDermid, Funding Municipal Elections 21). Of particular interest is MacDermid's conclusion that, although the rules of municipal election campaign finance are set out by the province and are uniformly applicable to municipalities across Ontario, differences in application exist between municipalities (MacDermid, Funding Municipal Elections 3). The report spoke to the complexity of municipal election campaign finance, and noted that analysis of the subject is challenging, particularly given the variance in practice noted above (MacDermid, Funding Municipal Elections 19). MacDermid noted that current rules governing municipal election campaign finance are inadequate and that the need for an independent body for the purpose of oversight and enforcement is clear (MacDermid, Funding Municipal Elections 30).

Following the 2003 municipal election, Mayor Larry Dilanni found himself the subject of an application for a compliance audit, which following the granting of

application on appeal resulted in an audit and subsequent charges (Gardner 3). Dilanni plead guilty to six charges and the Court subsequently ruled that the violations had been committed without intent (Gardner 3). Dilanni was sentenced to six months probation and as a condition of sentencing, the Court ordered Dilanni to write an essay for Municipal World magazine (Dilanni 37). The case, and Dilanni's subsequent article illustrate that when a council is responsible for deciding on applications for a compliance audit, members of council may be reluctant to exercise judgment on their fellow councillors (Dilanni 37).

### **3.2 Responses on the Function and Operation of Compliance Audit Committees**

As noted above, at the present time no scholarly literature is available specific to the subject of municipal compliance audit committees. The following is a review of writings prepared by municipal professionals on the subject. These resources describe the current policy environment and experiences to-date.

Through its mandate, the Association of Municipal Managers, Clerks and Treasurers of Ontario regularly provides input to provincial ministries regarding legislative and policy implementation matters currently impacting local governments. In October 2011, the AMCTO provided comments to the Ministry of Municipal Affairs and Housing concerning the legislation governing municipal election campaign financing and the need for legislative review. The submission notes that due to a lack of legislative clarity, compliance audit committees and the Ontario Court of Justice are not supporting the intent of the legislation governing municipal election campaign finance (Gatien 1). The submission recommends a review of the scope of the financial filing requirements impacting candidates, including the need to consider the degree of associated public risk in order to recognize cases where candidates are acclaimed to office or spend a nominal amount on their campaign (Gatien 2). AMCTO continued by recommending that the role



of the compliance audit committee should be reviewed, specifically in relation to the committee's ability to consider the severity of the violation in determining their decision (Gatien 2). Finally, AMCTO questioned whether another level government should be given the responsibility to appoint compliance audit committees, rather than being appointed by elected representatives who may potentially be involved in any decision resulting from the findings of a compliance audit (Gatien 2).

AMCTO's submission is important because it brings to light a number of challenges experienced by local governments in relation to the compliance audit committee process and supports the argument for legislative review. The issues identified by AMCTO will be discussed at further length later in this paper.

In a law review submitted to at the International Municipal Lawyers Association at its 75th Annual Conference, Jody E. Johnson, Aird & Berlis LLP, explores the subject of municipal election campaign finance enforcement. The review explores municipal election enforcement mechanisms across Canada. Through an examination of case law, Johnson illustrates that Canadian Courts have been hesitant in imposing the harshest of penalties (removal from office) on candidates who have been found to have contravened election campaign finance rules (Johnson 31). Johnson notes that the enforcement of election campaign finance rules is a complex, financially burdensome and time consuming process, which fails to yield an elector's desired results (Johnson 31). In light of this, and the relatively weak and inadequate enforcement regimes found throughout Canada, Johnson argues that municipal election campaign finance enforcement currently does not exist, noting that recent steps to strengthen enforcement mechanisms may have an impact in this regard (Johnson 31).

#### **Chapter 4: Deliberative Democracy and Campaign Finance**

Theoretical discourse on the subject of campaign finance reform centers on the political theory of deliberative democracy. Deliberative democratic theory calls for legitimate public participation and relegates the political official to acting as mere conduit of information for communicating the demands of the citizenry (Cohen 69). Under this theory, citizens – rather than elected representatives and government officials – determine the public good (Cohen 69). Proponents of deliberative democracy suggest that democracy and government legitimacy is strengthened through meaningful and authentic public discourse and debate – thus improving the quality and responsiveness of the decision making process. Under the theory citizens must move beyond the realm of private self-interest and embrace the collective interest in order to achieve the common good and improve political decision making processes (Elster 14). Deliberative democracy puts forward a vision of democracy where the will of the public realized through a collaborative and inclusive decision-making process (Cohen 68.). As a result, the theory of deliberative democracy is often described as an idealistic vision of political process (Cohen 68).

Although considerable theoretical discourse exists on the discussion of meaningful citizen participation, investigation continues on subject of deliberative democratic processes and the means by which to put the theory into practice. However, deliberative democratic theory can be seen as supporting the argument for campaign finance regulation and citizen participation in this regard (Pasquale 621).

On the subject of political liberties and in relation to his discussion of a just society, John Rawls described the need to preserve fairness and prevent money from unduly influencing the political agenda. Rawls stated as follows:

*“All citizens should have the means to be informed about political issues. They should be in a position to assess how proposals affect their well-being*

*and which policies advance their conception of the public good. Moreover, they should have a fair chance to add alternative proposals to the agenda for political discussion. The liberties protected by the principle of participation lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate. For eventually these inequalities will enable those better situated to exercise a larger influence over the development of legislation. In due time they are likely to acquire a preponderant weight in settling social questions, at least in regard to those matters upon which they normally agree, which is to say in regard to those things that support their favored circumstances (Rawls 198)."*

Above, Rawls describes the need to level the playing field with regard to political influence to protect against the influence of inequality of wealth in order foster democratic legitimacy and inclusiveness.

Similarly, deliberative democratic theory supports the notion of citizen participation as a means of legitimizing democracy and government process. If interpreted broadly, it is likely that deliberative democracy would be supportive of citizen participation in the regulation of election campaign finance, such as that witnessed through the compliance audit committee process. In this regard, political engagement is taken beyond the right to vote and extends it to providing direct input and involvement in campaign finance regulation – not only through the ability to file an application for an audit, but also in their ability to be appointed as a member of the committee.

## **Chapter 5: A Review of Legislative Intent**

Legislative amendments to the *Municipal Elections Act, 1996* have been described as being a response to real and perceived contraventions of campaign finance rules.

Intentional violations of these rules are of particular concern since they can be viewed as affecting the outcome of the electoral process. As described in greater detail below, the amendments were said to have been designed to preserve fairness and accountability and to protect against any one candidate from being successful in a bid for municipal

office by influencing the results of an election simply through the ability to outspend their political opponents (*Braid v. Georgian Bay (Township)* 4).

Legislative intent, as it relates to the establishment and purpose of compliance audit committees, is an important consideration because it sets out the guiding principles and purpose of the CAC process, which assists the descriptive analysis undertaken later in this paper. A review of provincial parliamentary debate is helpful in this regard.

On October 27, 2009, Bill 212 (the *Good Government Act, 2009*) received first reading at the Legislative Assembly of Ontario. Bill 212 (the Bill) introduced amendments to a number of provincial statutes. The Hansard Transcript of parliamentary debate informs that the recommended amendments were developed in consultation with various stakeholders including the AMCTO, the Association of Municipalities of Ontario, municipalities, and the general public (Bentley 8220). Minister's statement describes the purpose of the amendments as being to strengthen the integrity of municipal elections and to respond to issues identified by stakeholders, including changes to "help clarify campaign finance rules, enhance compliance and enforcement measures, and help to ensure a transparent municipal election process (Bentley 8220)."

Amendments, including the establishment CACs, were described as strengthening compliance and enforcement measures and removing conflicts of interest with respect to a municipal council's consideration of an application for a compliance audit (Watson 8470). On the subject of CACs, Minister Jim Watson commented as follows

*"These independent committees would hear and decide on applications for compliance audits. It would be the outgoing council that would appoint the compliance audit committee, and it would not be made up of municipal politicians, or any politicians, for that matter .... Compliance audits would not be prerequisites for bringing a legal action with respect to alleged contraventions of election finance rules. Right now, the situation is very awkward for municipal councils. If an individual wants to bring forward an allegation, most of the time he has to bring it right to the council where the councillor who is being accused sits as a member. It puts that individual and the rest of the council in a very awkward situation (Watson 8472)."*

During the debate, some members of parliament questioned the ability of a municipal council to appoint committee members that are truly independent from council (Prue November 2009, 8374). It was also suggested that the provincial electoral authority (currently charged with monitoring compliance with provincial campaign finance rules) should also be mandated to monitor compliance the municipal level (Prue, November 2009, 8374).

A review of the official transcripts also reveals prevailing perceptions regarding municipal election campaign finance reform in Ontario. Discussion on the need for reform appears throughout the transcripts and a number of members expressed the opinion that the proposed amendments failed to go far enough. In this regard, some members recommended an outright restriction on corporate and union donations, and a decreased maximum campaign contribution limit (Prue, December 2009, 9013).

The parliamentary debate reveals that establishment of compliance audit committees in Ontario was in response to real and perceived contraventions of financial reporting requirements provided under the Act. The debate confirms that CACs were designed to achieve increased compliance with campaign finance rules and to strengthen enforcement measures, all in an effort to attain enhanced integrity, transparency and fairness in the municipal election process.

## **Chapter 6: Case Study Analysis**

As outlined above, compliance audit committees have been established in order to foster increased accountability and transparency; however, the broad legislative parameters governing their operation has caused significant challenges in the effective operation and legitimacy of the compliance audit committee process. The following section examines the practical application of the legislative parameters outlined above. This process will be aided by the examination of the proceedings and facts surrounding four

compliance audit committee applications which played out in the municipalities of Pickering, Perth South, St. Catharines, and Toronto.

### **6.1 *Dickerson v. Compliance Audit Committee of the City of Pickering***

The City of Pickering received an application for a compliance audit concerning candidate Doug Dickerson's election campaign finances. The allegations included that the candidate exceeded the campaign spending limit, the candidate failed to declare an inventory of campaign signs remaining from previous elections and used during his 2010 campaign, disclosure of expenses related to a post-election appreciation party, and a discrepancy regarding funds related to fundraising, surplus and deficit amounts as reported in the candidate's financial statement (City of Pickering, 26 May 2011).

The candidate's response to the allegations stated that the Act is unclear and open to interpretation and cited examples of ambiguity (City of Pickering, 18 May 2011). The candidate stated that there was an error on the part of the auditor that prepared his financial statements, which resulted in the appearance that the campaign spending limit had been exceeded (City of Pickering, 18 May 2011). The candidate stated that under the Act, post-election celebrations are not considered an expense, and concluded by admitting that he did fail to report the value of signs from a previous election and used during his 2010 campaign (City of Pickering, 18 May 2011).

In one motion dealing with each alleged contravention, the Compliance Audit Committee granted the request for a compliance audit and later appointed an auditor (City of Pickering, 18 May 2011).

The candidate subsequently filed an appeal of the Committee's decision with the Ontario Court of Justice (Calis). A review of *Dickerson v. Compliance Audit Committee of the City of Pickering* provides insight in to several issues facing the compliance audit committee process.

The first is the interpretation of the term “reasonable grounds”. The grounds for appeal submitted by Doug Dickerson argue that reasonable grounds for an audit failed to exist (*Dickerson v. Compliance Audit Committee of the City of Pickering* at para. 4). The court considered the question of reasonable grounds and the standard of judicial review to be applied (as per Supreme Court of Canada’s consideration in its decision of *Dunsmuir v. New Brunswick*).<sup>4</sup> Counsel for the compliance audit committee argued that the appropriate standard of review was one of “reasonableness” and the committee’s decision should be afforded deference due to the specialized knowledge and expertise of municipal election campaign finance possessed by the committee members (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 7). Under the “reasonableness” standard the Court would defer to the committee’s decision, providing it was considered a reasonable and a justifiable outcome (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 7). The appellant took the contrary position and argued that a standard of “correctness” should be applied, allowing the Court to undertake its own review and either uphold the Committee’s decision or substitute it with that of the Court (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 7). Thereby, to conduct a hearing *de novo*, meaning to start a new, and to decide the matter without deference to the conclusions made by the Committee (Cornell).

In the decision, Justice Bellefontaine acknowledged that some Courts have applied a standard of reasonableness in cases where the expertise of committee members has been established to such a point that it warrants deference to their decision (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 8). Justice Bellefontaine went on to note that the Act itself provides no requirement for

---

<sup>4</sup> *Lyras v. Heaps*, 2008 O.C.J. 524, 51 M.P.L.R (4<sup>th</sup>) 277, at para 7, as quoted in *Fuhr v. Perth South (Township)*, 2011 O.C.J. 413, at para. 12.

deference, but rather subsection 81(6) of the Act provides that the appeal court may make any decision the committee could have made (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 10). The decision notes that although matters falling under the *Municipal Elections Act, 1996* are uncommon for consideration by Court, the Court possesses the expertise necessary to determine whether reasonable grounds exist (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 10). This is compelling because it suggests that regardless of the level of knowledge and expertise possessed by the committee members, deference is not obligatory. The Court subsequently ruled that the appropriate standard of review was that of “correctness” and therefore proceeded to carry out an analysis of whether reasonable grounds had been established.

In reviewing the existence of reasonable grounds Justice Bellefontaine considered whether the analysis should be undertaken from the perspective of an elector and their belief of reasonable grounds (as outlined in the electors application and based on the limited information contained candidate’s financial statement), or whether the review should be undertaken from the Committee’s perspective (which would include consideration of any additional material submitted to Committee by the applicant or the candidate). With reference to legal precedence, Justice Bellefontaine concluded that to consider supplementary evidence in the determination of reasonable grounds would require the consideration information not available at the time of the application. In doing so, the Court would assume the role of auditor and trial judge to determine the authenticity of the alleged contraventions, which Justice Bellefontaine stated, was not the function of the Court at this stage in the proceedings (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 16). Subsequently, the Court ruled that the determination of reasonable grounds should be undertaken from the perspective of the



*elector*. The Court went on to find that reasonable grounds existed for each of the three applications.

In the decision, Justice Bellefontaine provided comment on the purpose and nature of the legislation, stating that the Act establishes an election campaign finance self-reporting and self-mentoring system (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 19). The Court ruled that in the case where reasonable grounds have been established a comprehensive and wide-ranging audit is required in order to meet the needs of public transparency (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 19). Justice Bellefontaine went on to explain that once reasonable grounds have been established, there is little discretion in whether to order an audit and the scope of the resulting audit is not restricted to the matters outlined in the complaint but rather should be wide ranging and comprehensive, as the identification of one potential violation may give rise to the discovery of others (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 19). The Court noted that the legislative powers granted to the auditor under the Act confirm the wide-ranging scope of the audit process (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 19). These comments provide insight into the Court's interpretation of the legislation and demonstrate that a high standard is to be applied in order to meet the needs of public transparency. The Court dismissed the appeal and upheld the Committee's decision to order a compliance audit of Doug Dickerson's campaign finances.

A compliance audit was carried out and in June 2012, the committee received the auditor's report (City of Pickering, 6 June, 2012). The auditor found that the candidate did not comply with the accounting and reporting requirements of the *Municipal Elections Act, 1996* (Molson 2). Subsection 81(14)(a) of the Act provides that the committee may commence a legal proceeding against the candidate for the apparent

contravention. The Committee resolved to commence legal proceedings and, at its meeting of July 18, 2012 appointed a special prosecutor for this purpose (City of Pickering, 18 July, 2012). Councillor Dickerson pled guilty to contravening the Act by filing an incorrect financial statement and exceeding the campaign spending limit. On July 19, 2013, the Court ruled that Dickerson would not be removed from office, but ordered the Councillor to return almost \$30,000 in surplus campaign finances to the City of Pickering and pay \$17,500 in fines (Dillon).

## **6.2 *Fuhr v. Perth South (Township)***

The Township of Perth South received an application for a compliance audit of the campaign finances of eight candidates (Township of Perth South, 26 April, 2011). The applicant was an unsuccessful mayoral candidate. The application states that as a result of the absence of bank charges from the list of each candidate's expenses, there was reasonable grounds to believe the candidates contravened the provisions of the Act by failing to open election campaign accounts for their respective campaigns (Township of Perth South, 26 April, 2011). The Committee denied the application and provided four reasons for their decision. First, that there was nothing to audit for some of the candidate's financial reports filed with the clerk. Second, that there were minimal expenses incurred by some of the candidates. Third, that signed affidavits of completeness had been submitted by the candidates. Fourth, that no penalty benefitted the nature of the offense (Township of Perth South, 26 April, 2011).

A supplementary application was submitted by the applicant, specifically with regard to the financial statements of the successful candidate for mayor and alleging that the candidate failed to open a campaign account (Township of Perth South, 9 May, 2011). The Committee denied the applications. In a report by a local radio station, the candidate stated that he "admitted to not opening a separate campaign bank account as

required under the Municipal Elections Act but the committee found it to be a 'non substantial' breach (101.7 The One News)".

The applicant subsequently filed an appeal of the Committee's decision. The Court allowed the appeal in part. The Court upheld the Committee's decision to dismiss the application for five candidates where the financial statements revealed that no expenses had been incurred. The Court also upheld the decision of the Committee to dismiss the application with respect to a candidate where the financial statements confirmed that a bank account had in fact been opened. The Court referenced the decision of *Jackson v. Vaughan (City)* and noted that once reasonable grounds have been established, there is little discretion on whether to order an audit.<sup>5</sup> Despite the modest expenses incurred by candidates Charles Armstrong and Robert Wilhelm (\$50.89 and \$1,807.50 respectively) the Court allowed the appeal and a compliance audit was ordered for these two candidates.

The Committee was charged with appointing an auditor, which subsequently confirmed that the candidates had not opened campaign accounts, but that no fraud had been detected and that the candidates' actions had been transparent (South Western Media Group). At its meeting of January 11, 2012, after receiving the auditor's report, the committee resolved that it would not proceed with prosecution for either candidate and provided the following reasons for its decision: that they were considered to be slight apparent contraventions; that there was no impact on the results of the election; that the candidates had incurred a nominal amount of contributions and expenses; that there was a slight breach but the auditor proved that transparency was present; no changes based on the auditor's findings; and that the committee's decision was reasonable

---

<sup>5</sup> *Jackson v. Vaughan (City)*, 2009, O.C.J. No. 1057, at paras. 51, as quoted in *Fuhr v. Perth South (Township)*, 2011 O.C.J. 413, at para. 20.

having regard to what was contained in the auditor's report (Township of Perth South, 11 January, 2012).

In the decision of *Fuhr v. Perth South (Township)* and in reference to the modest expenses claimed by two of the candidates, Justice McKerlie noted as follows:

*"As noted in the April 26, 2011 decision of the Compliance Audit Committee, the campaign period expenses incurred by the candidates were indeed "minimal". I also note that the sole contributors to the campaigns in question were the candidates themselves. However, while the doctrine of de minimis non curat lex ("the laws does not concern itself with trifles") may apply to a review of a decision whether to prosecute under s. 81(14), the issue at this stage of the review is simply whether the appellant had reasonable grounds to believe that the candidates contravened a provision of the Act relating to election campaign finances.*

*Despite the modest expenses claimed by Candidates Charles Armstrong and Robert Wilhelm, I am unable to find that the Compliance Audit Committee reached the correct decision in rejecting the request for a compliance audit respecting these two candidates Fuhr v. Perth South (Township) at paras. 44-45)."*

The Court's findings are compelling, particularly following the committee's consequent decision not to pursue prosecution. This raises the question of whether the legislation and the self-regulating process under the compliance audit committee is an appropriate one for all circumstances. Indeed, the purpose of election campaign finance rules is to ensure transparency and fairness in the municipal election process; however are the provisions suitable in all circumstances, particularly in situations where candidates incur nominal contributions and expenses? At the present time, the committee is not in a position to render penalties; their decision is restricted to pursuing prosecution. However, this case suggests that it might be appropriate to expand the authority to the committee to impose lesser penalties in circumstances where a breach has been minor in nature and has been as a result of an inadvertent error or omission. The above will be explored in greater detail later in this paper.

### **6.3 Lancaster v. St. Catharines (City) Compliance Audit Committee**

The City of St. Catharines Compliance Audit Committee<sup>6</sup> received an application for a compliance audit of the campaign finances of candidates Brian Dorsey, Matthew Harris, Mathew Siscoe and Len Stack. The applicant, Eleanor Lancaster, submitted that there were reasonable grounds to believe that the candidates violated the provisions of the Act and made contributions in excess of the \$750 limit (*Municipal Elections Act, 1996 s. 71(1)*) by companies that appeared to be associated under the *Income Tax Act (Canada)*(City of St. Catharines 2). Section 72 of the Act provides that associated corporations pursuant to the section 256 of the *Income Tax Act (Canada)* shall be deemed to be a single corporation. In addition, the applicant stated that three of the candidates failed to properly complete their financial statements (known as Form 4),<sup>7</sup> more specifically that contributions had been listed erroneously under the under contributions from individuals as opposed to from corporations and had also failed to list the president/business manager/cheque signatory, as required by Form 4 (City of St. Catharines 3). Subsection 80(2)(a) of the Act imposes a strict penalty for the submission of a Form 4 that is incorrect or that otherwise does not comply with the provisions of the Act – that penalty being the forfeiture of office.

The candidates submitted that when they became aware of the contributions made by associated corporations, they promptly refunded the money (City of St. Catharines 3). The candidates also submitted that the Form 4 errors were made inadvertently and unintentionally (City of St. Catharines 3).

---

<sup>6</sup> A partnership was formed between the twelve lower-tier municipalities located in the Niagara Region, the Regional Municipality of Niagara, the District School Board of Niagara and the Niagara Catholic District School Board, in order to establish joint compliance audit committee, known as the Niagara Compliance Audit Committee. Information concerning the Committee is available at <http://www.niagaracomplianceaudit.ca/>.

<sup>7</sup> Subsection 78(1) of the Act provides that a candidate shall file with the clerk with whom the nomination was filed a financial statement and auditor's report, each in the prescribed form, reflecting the candidate's election campaign finances. The prescribed form is Form 4.

At its meeting of July 19, 2011, the Committee considered the application and resolved to reject it on the basis that reasonable grounds had not been established (City of St. Catharines 3). The Committee's decision was appealed to the Ontario Court of Justice. In considering the appropriate standard of review to be applied, and as a result of the materials submitted to the Court, Justice Harris determined that the membership of the Committee demonstrated that it possessed the expertise necessary to decide on the application and that it was free from political influence (*Lancaster v. St Catharines (City) Compliance Audit Committee*, at para. 9). As a result, the Court determined that the Committee was entitled to deference and therefore the appropriate standard of review would be that of "reasonableness" (therefore not a hearing *de novo*) (*Lancaster v. St Catharines (City) Compliance Audit Committee*, at para. 12).

Justice Harris went on to determine that the test to be applied for determining reasonable grounds was whether the *Committee* believed on reasonable grounds that the candidate had contravened a provision of the Act (*Lancaster v. St Catharines (City) Compliance Audit Committee*, at para. 20). In considering this matter, the Court reasoned that due to the information available at its disposal, the Committee was in a better position than the elector to make a determination of reasonable grounds.

In considering the matter of contributions from associated companies, Justice Harris commented as follows:

*"Had the Committee based its decision solely on the information set out in the Financial Statements and Auditors Reports filed by the four candidates, there might well have been a basis to believe on reasonable grounds that the candidates had contravened a provision of this Act relating to election campaign finances. The Committee however heard and accepted the uncontradicted evidence to the effect that each candidate had returned the excess money contributed in contravention of the Act as soon as possible after the candidate had become aware of the contravention. In those circumstances, the only reasonable conclusion that the Committee could have reached was that there were not reasonable grounds to believe that the candidates had contravened the Act (Lancaster v. St Catharines (City) Compliance Audit Committee, at para. 40)."*

This contradicts the decision of *Dickerson v. Compliance Audit Committee of the City of Pickering*, wherein the Court determined that the test to be applied was whether the *elector* had reasonable grounds as of the time of the application. In that case the Court determined that the review of reasonable grounds should be confined to the information available to the elector at that time, and should not extend to the consideration of supplementary evidence. The Court's decision concerning deference and the standard of review in each of these cases differs. A comparison of these cases illustrates that disagreement exists regarding the appropriate test for reasonable grounds.

In its decision, the Court noted that the committee accepted the candidates' submission that the failure to appropriately list corporate contributors on the Form 4 was unintentional (*Lancaster v. St Catharines (City) Compliance Audit Committee*, at para. 20). In considering these errors and the strict penalty imposed by the Act, Justice Harris quoted the decision of *Braid v. Georgian Bay (Township)* as follows:

*"In my opinion this dichotomy between a strict liability for complete failure to file and a more lenient approach where the document is filed but incorrect in some way, is entirely consistent with the aims of the Act. Failure to file leaves the public no ability to examine the expenses of a candidate. Such a failure leaves the interested person whether rival candidate, or member of the public, with no starting point from which to begin an examination. It strikes at the very heart of the Act's purpose.*

*Filing a document that is flawed in some way is quite a different proposition. In contractual language there has been substantial compliance. Even a flawed financial statement provides a starting point for an examination of the candidate's expenses. The direction to the Court in subsection 92(6), that the draconian penalty of forfeiture does not apply where a candidate has made a mistake while acting in good faith, is a recognition that mistakes happen and that the will of the electorate should not be frustrated by the removal from office of the successful candidate in such circumstances (*Braid v. Georgian Bay (Township)* at paras. 28-29)."<sup>8</sup>*

---

<sup>8</sup> *Braid v. Georgian Bay (Township)*, 2011 O.S.C.J. 3618. CV-11-59-00.at para. 28 and 29, as quoted in *Lancaster v. St Catharines (City) Compliance Audit Committee*, 2012 O.C.J. 70, No. 2111.

The Court accepted this reasoning and after examining each of the grounds for appeal and the committee's decision thereto, determined that there was no reason to interfere with the decision of the Committee.

The appellant subsequently went on to appeal the Court's decision to the Superior Court of Justice. The Superior Court upheld the decision of the Ontario Court of Justice (including the test for reasonable grounds) except on the matter of the improper completion of Form 4. On this subject, Justice Quinn noted that the importance of the legislative requirement to properly complete and file a Form 4 is evidenced by the penalty provisions under the Act (*Lancaster v. St Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 15). The Superior Court disagreed with the opinion of *Braid v. Georgian Bay (Township)*, and stated that contraventions of the Act should be "determined on the basis of strict liability, irrespective of intention....[t]o conflate contravention and intention invites ignorance as a defence to breaching the Act. Ignorance of the Act is not a defence; neither is relying on the ignorance of others (*Lancaster v. St Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 84)."

The Superior Court ruled that it was unreasonable for the Committee to determine that the improper completion of Form 4 was not a contravention of the Act, and that it was an error in law for the Ontario Court of Justice to have upheld the Committee's decision (*Lancaster v. St Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 86). Despite this conclusion, the Superior Court upheld the Committee's decision to deny the application for an audit because, the Court reasoned, that a contravention does not necessarily compel an audit. Justice Quinn stated that once reasonable grounds have been established, a compliance audit committee is not bound to appoint an auditor (*Lancaster v. St Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 93). Rather, the committee has the authority to determine whether an audit is required after considering all of the contributing circumstances



*(Lancaster v. St Catharines (City) Compliance Audit Committee, O.N. S. C. at para. 93).* The Court found the evidence to confirm that the contraventions were unintentional and no further information could be obtained from an audit (*Lancaster v. St Catharines (City) Compliance Audit Committee, O.N. S. C. at para. 94*). This finding is contrary to that of *Fuhr v. Perth South (Township)* and *Dickerson v. Compliance Audit Committee of the City of Pickering*, which both reference the reasoning put forward by the Court in *Jackson v. Vaughan (City)*, which as outlined above, provided that once reasonable grounds had been established there is little discretion in considering whether to order an audit.

#### **6.4 *Ford v. Toronto (City) Compliance Audit Committee***

An application was submitted by the applicants, Max Reed and Adam Chaleff-Freudenthaler, for a compliance audit of the campaign finances of Toronto Mayor Rob Ford. The application alleged that the candidate violated the provisions of the Act since campaign expenses were paid by non-campaign sources, the campaign incurred election expenses before Ford was officially a candidate, the campaign received a loan from Doug Ford Holdings Inc. (an ineligible lending institution), the campaign exceeded the maximum spending limit, and the candidate accepted corporate campaign contributions (which has been prohibited by the City of Toronto) (City of Toronto, Compliance Audit Application). Following the initial submission, the applicants submitted further reasons in support of their application, including that the candidate improperly categorized campaign events as fundraisers and failed to properly assess the fair market value of goods and services purchased for the campaign (City of Toronto, Additional submission). Three subsequent applications for a compliance audit of the candidate's campaign finances were received by the City. Subsequent applications reiterated and/or

expanded on the previously submitted allegations. One application for compliance audit was withdrawn.

The candidate provided submissions to the Committee denying all allegations that he breached the provisions of the Act (City of Toronto, Candidate Submission). The submission states that the candidate's financial statement was filed in accordance with the Act, and as a result, the applications should be dismissed (City of Toronto, Candidate Submission).

The Compliance Audit Committee granted the first application for a compliance audit and requested the City Clerk, in consultation with the Chief Purchasing Official, to research experienced and knowledgeable individuals or firms and present the Compliance Audit Committee with a list for the Committee's consideration (City of Toronto, Minutes 13 May 2011).

The subsequent applications were denied, and although the formal decision issued by the Committee did not provide reasons for the rejection, it was reported by news media that the applications were rejected since the previously ordered audit would be inclusive of all aspects of the candidate's campaign finances.

Following the Compliance Audit Committee's decision the candidate filed an appeal with the Ontario Court of Justice on various grounds including that the candidate's financial statement fully complied with the provisions of the Act, that because the candidate's campaign period had been extended (in accordance with the Act) the committee's determination to order an audit was premature, and finally that the Compliance Audit Committee erred in its interpretation and application of the law. After the Court's decision on a preliminary motion concerning how the appeal should be conducted, the appeal was withdrawn. The auditor's report subsequently found that Ford had committed various apparent contraventions including exceeding the campaign spending limit by \$40,168 (Froese 4).

After receiving the report, the Committee determined that it would not commence legal proceedings or pursue charges for alleged violations of the Act against Ford (City of Toronto, Minutes 25 February, 2013). Reasons for the Committee's decision were not provided.

### **Chapter 7: A Summary of the Evidence in Support of Legislative Review**

The cases outlined above illustrate that conflicting legislative interpretations exist concerning the function and powers of compliance audit committees. These contradictory understandings support the argument for legislative review and increased statutory clarity regarding the committee's authority and function.

An examination of four cases, each having resulted in an appeal to the Ontario Court of Justice, has been outlined above. The number of appeals heard by the Court to date is limited; however the above review is not exhaustive. Rather the case study analysis has been purposefully restricted to some of the most relevant cases for providing insight into an assessment of the CAC process and the governing legislation.

As demonstrated above, the CAC process is one that requires the committee to consider both factual and legal matters. Naturally, the legislative right of appeal to the Ontario Court of Justice will include questions of law, and there is no better mechanism for the consideration and interpretation of these matters than Court. This is not the only municipal body whose decisions are subject to appeal. However, a lack of legislative clarity, compounded by conflicting judicial interpretation, certainly muddies the waters in respect to the committee's appropriate function and role.

On the subject of the Act, and in considering the matter of a hearing *de novo*, Justice Schneider commented as follows:

*"In many respects the [Municipal Elections Act, 1996] does not give a lot of direction. The statute doesn't provide for what kind of "evidence" goes before the Committee. It simply says an application goes before the Committee. It's not under oath. It provides for written submissions. It doesn't say what the*

*record is or what it must include. It doesn't say what record should go to the appeal. It doesn't talk about reasons for decisions of the Committee. Does a lack of 'formality' or specificity in terms of how the Committee holds its hearings suggest a hearing de novo for appeals against decisions of the Committee? Does the fact that the Court may make any decision that the Committee could have made necessarily imply a hearing de novo (Ford v. Toronto (City) Compliance Audit Committee at para. 13)?"*

The Court's comments above, and as described throughout this paper, illustrate that the Act provides little direction with regard to how the committee is to go about considering an application. The cases examined herein demonstrates the Court's interpretation of the legislation and assists in uncovering key areas of interest which warrant further review. A summary of lessons learned and recommendations thereto are provided below.

### **7.1 Selection Criteria, Operational Policies and Procedures**

Subsection 81.1(4) of the *Municipal Elections Act, 1996* and section 238 of the *Municipal Act, 2001* require the CAC to adopt its own "administrative practices and procedures", however the application of these provisions is seen to be varied across municipalities in Ontario. This section will explore the subject of administrative practices and procedures and make recommendation regarding their content.

In examining the role of the CAC, there is likely some consideration due to the reality that the committee is composed of citizen members. In this regard, the committee functions as a jury of one's peers. The committee not only acts as an accountability mechanism, but also provides electors the opportunity to participate in the regulatory function. In effect, it is a grass-roots and participatory instrument for compliance and enforcement. However, the decisions examined above bring the matter of necessary skill and expertise into question. When considering an appeal of a committee's decision, the Court first determines the appropriate standard of review to be applied. When undertaking this process, consideration is given to whether the members can be found to

possess specialized expertise in matters of municipal election campaign finance rules. As demonstrated above, and acknowledged in *Dickerson v. Compliance Audit Committee of the City of Pickering*, the courts have taken different approaches on this matter.

In cases where committee members have been shown to possess demonstrated knowledge and experience, the Court has determined that the committee should be afforded deference. In the case of *Lancaster v. St Catharines (City) Compliance Audit Committee*, the Committee members were of professional backgrounds whose qualifications included a professional engineer, a Bachelor of Commerce, and a Certified General Accountant, and all of whom possessed experience with financial accounting and audit functions (*Lancaster v. St Catharines (City) Compliance Audit Committee*, at para. 28). In addition, the Committee had been established through a terms of reference which outlined the necessary qualifications of its members.<sup>9</sup> The Committee adopted procedures to govern the consideration of applications. The members had also received training from the Ministry of Municipal Affairs and Housing (*Lancaster v. St. Catharines (City) Compliance Audit Committee*, at para.10). These factors came to bear on the Court's affirmation that it would have regard to the Committee's decision.

A committee's decision will be afforded deference in cases where the members can be shown to have specialized knowledge and expertise. Judgments which uphold the decision of a CAC lend credence to the process and add to the legitimacy of the

---

<sup>9</sup> The Terms of Reference for the Niagara Compliance Audit Committee stipulate that the Committee shall be composed of members with accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates; academic – college or university professors with expertise in political science or local government administration; legal profession with experience in municipal law, municipal election law or administrative law; professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals, and other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

committee's authority – thereby supporting its function to promote compliance and increase public accountability.

The Act provides that it is the committee's role to consider whether the application for a compliance audit should be granted or rejected, however it is silent on the subject of how this is to be carried out. Similarly, the Act provides no guidance on the knowledge or experience which should be possessed by the members. As a result, a number of municipalities proceeded with the adoption of terms of reference and procedures to provide further guidance. There is no legislative requirement for the adoption of such policies.

Previously, applications for a compliance audit were submitted to and considered by council. The establishment of a committee composed of civilian members has increased legitimacy, because a council's ability to impartially carry out this function was put at risk due to a lack of independence and a perceived conflict of interest. Nevertheless, similar challenges continue to exist for a civilian body. If a CAC is to effectively contribute to increasing integrity, then the operation of the committee itself must be independent from council and free to exercise authority autonomously and without fear of retribution. This is important not only to ensure that the committee's mandate can be properly carried out – but also to assist in increasing integrity of the election process and fostering public confidence. Similarly, the committee members themselves must be free from distrust. As a result, selection criteria, terms of reference and related policies should clearly articulate the need for members to be impartial and free from political association.

As discussed above, deference to a committee's decision imparts credibility, which serves to support the purpose and spirit of the legislation. As a result, consideration should be given to including provisions under the Act which would encourage the Court's favourable consideration of deference. Such provisions should

include requirements governing committee member selection criteria. It should also include the requirement for the adoption of policies and procedures to govern the committee's operation, including a terms of reference which speaks to independence and policies respecting the consideration of applications.

Inclusion of these provisions would serve to increase the opportunity for consistency in the Court's consideration of appeals, and would increase the likelihood of a committee's decision being upheld on appeal.

## **7.2 Reasons for Decision**

Under the Act, there is no statutory obligation for a CAC to provide reasons for its decision. There is mixed practice between municipalities in this regard - with some committees providing detailed reasons and others providing none.

Similarly, commentary from the Court on this subject is varied. In the decision of *Dickerson v. Compliance Audit Committee of the City of Pickering*, Justice Bellefontaine noted that "...[t]he lack of reasons for the decision of the committee creates a significant hurdle in evaluating the reasonableness of the decision making process (*Dickerson v. Compliance Audit Committee of the City of Pickering*, at para. 11)."

Conversely, in the decision of *Lyras v. Heaps*, Justice Lane stated that the absence of reasons is not a substantial factor when considering the committee's function, noting that "[w]hen judicial or quasi-judicial officers are acting in a "gatekeeper" function, not giving reasons is not an unusual practice. I note that a justice of peace or judge does not normally give written reasons for issuing or denying a search warrant, nor does the Supreme Court of Canada give reasons for refusing leave to appeal (*Lyras v. Heaps*, at para. 18)."

Nevertheless, if there is a desire to promote public accountability and advance legitimacy of process, the committee should be required to substantiate the reasons for

the decisions it makes. A statutory provision necessitating reasons for decision would, when combined the selection criteria recommended above, further increase the Court's favourable consideration of affording deference. Reasons for decision might also limit the potential for political pressures or other external factors to influence the CAC process.

Undoubtedly, failing to justify the basis for a decision risks the opportunity for questions of legitimacy and appropriateness. The values of accountability and transparency would be supported by the substantiation of a decision. Moreover, the CAC process in and of itself is designed to be open and transparent. Even so, in accordance with the provisions of the *Municipal Act, 2001*, CACs possess the legislative authority to resolve into closed session and consider matters behind closed doors. A requirement of reasons would allow the public the opportunity to understand the basis for a CAC's decision. An appropriate example is that of *Ford v. Toronto (City) Compliance Audit Committee*, where despite the finding of apparent contraventions, the Committee determined that it would not commence legal proceedings against the candidate. In that case, reasons for decision were not provided and the public was left to speculate. As illustrated in this example, justification of decision would advance the purpose of election campaign finance rules, which is to increase the integrity of municipal elections and encourage public confidence. For these reasons, the committee should be duty-bound to substantiate and justify the decisions it makes.

### **7.3 Form 4 Revisions**

In the Superior Court's decision of *Lancaster v. St. Catharines (City) Compliance Audit Committee*, the Court emphasized the need for a complete and accurate submission of the Form 4 and noted that a significant error or omission amounts to a contravention of the Act (*Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N. S. C. at



para. 89). If such weight is to be put on the correct completion of financial statements, the Ministry of Municipal Affairs and Housing is compelled to provide increased clarity and detailed instruction for candidates in this regard. The Court noted that an amendment to Form 4 to provide guidance regarding the definition of “associated corporations” would also be helpful (*Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 88).

Although the Ministry made training available for candidates leading up to and during the 2010 municipal election, increased emphasis on the importance of financial reporting is required. Candidates with experience running in previous municipal elections were particularly prone to disregarding the significance of the new provisions. As a result, many neglected to attend the training sessions. The Superior Court's consideration of *Lancaster v. St. Catharines (City) Compliance Audit Committee* spoke to the carelessness with which candidates undertook the responsibility of the completion of Form 4 (*Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N. S. C. at endnote 28). Candidates, their campaign managers and auditors should be encouraged to contact the Ministry directly should they have questions regarding the completion of Form 4. A statement inviting direct contact with the Ministry, including appropriate contact information would be particularly beneficial. Similarly, it would be prudent for the Ministry to reach out to financial accounting and auditing firms to ensure financial reporting requirements are well communicated and understood in these professions. The Court has stated that ignorance of the Act, whether it is the ignorance of the candidate or of his/her campaign workers, is not a defence of contravention (*Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N. S. C. at para. 84). The Court's criticism of the Ministry's Ontario Municipal Elections 2010 Guide also confirms the need

for increased guidance to candidates.<sup>10</sup> The completion and submission of financial statements is the sole responsibility of the candidate and municipal clerks are not responsible for providing direction on the completion or correction of financial statements. The Ministry should assume a more active and direct role in communicating and assisting candidates in understanding and fulfilling the financial reporting requirements.

Correspondingly, conflicting practice illustrates the need for legislative clarity surrounding the matter of whether a candidate is permitted to make a supplementary Form 4 submission to the clerk. The significance of the penalty and the Superior Court's decision of *Lancaster v. St. Catharines (City) Compliance Audit Committee (Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N.S.C. at endnote 10), supports the argument for legislative amendment to expressly allow the candidate this opportunity.

The significance of the rules governing election campaign finance is demonstrated through the penalty provisions under the Act. The consequences for filing an improper financial statement are substantial. The magnitude of these provisions reinforces the need for greater clarity surrounding the completion of the Form 4. Improved direction and clarity on the completion of Form 4, combined with increased access to Ministry support and emphasis on candidate information sessions would eliminate ambiguity and the propensity for inadvertent contraventions. Furthermore, these provisions would foster a greater appreciation and regard for the rules governing election campaign finance.

---

<sup>10</sup> In its decision of *Lancaster v. St. Catharines (City) Compliance Audit Committee*, the Superior Court characterised the Ontario Municipal Elections 2010 Guide as not only vague, but unhelpful (see *Lancaster v. St. Catharines (City) Compliance Audit Committee*, O.N.S.C, at endnote 27).

#### 7.4 Decision Making Criteria

As noted above, the CAC process requires the committee to consider matters of both fact and law. CAC members generally possess knowledge with regard to municipal election campaign finance, but are not in a position to interpret matters of law. In fact, the CAC process in and of itself is not designed to be an exercise in law but rather a self-monitoring compliance and enforcement mechanism administered by citizens for citizens. Nevertheless, questions of law permeate the process and, as demonstrated above, the Court has provided conflicting interpretations regarding the appropriate test to be applied for the determination of “reasonable grounds.” These conflicting interpretations frustrate the process and complicate the committee’s ability to properly carryout its function. In addition, conflicting interpretations undermine the purpose of the legislative provisions because it creates uncertainty for candidates and electors, therefore upsetting public confidence.

In considering the matter of reasonable grounds the Court has frequently referred to the interpretation set out in *R. v. Sanchez*, which provides the following:

*“Judicially interpreted, the standard is one of credibly based probability ...*

*Mere suspicion, conjecture, hypothesis or "fishing expeditions" fall short of the minimally acceptable standard from both a common law and constitutional perspective. On the other hand, in addressing the requisite degree of certitude, it must be recognized that reasonable grounds is not to be equated with proof beyond a reasonable doubt or a prima facie case.... The appropriate standard of reasonable or credibly-based probability envisions a practical, non-technical and common-sense probability as to the existence of the facts and inferences asserted.*

*Not only must the [appellant] subjectively or personally believe in the accuracy and credibility of the grounds of belief, but. .. [the standard] also requires that the [appellant] establish that, objectively, reasonable grounds in fact exist. In other words, would a reasonable person, standing in the shoes of the [appellant], have believed that the facts probably existed as asserted and have drawn the inferences therefrom submitted by the [appellant].”<sup>11</sup>*

---

<sup>11</sup> *R. v. Sanchez and Sanchez* (1994), 93 C.C.C (3d) 357, at paras. 28-30, as quoted in *Fuhr v. Perth South (Township)*, 2011 O.C.J. 413, at para. 22.

As demonstrated above, the matter of reasonable grounds is a question of law, which, as outlined by Justice Bellefontaine, is a matter best considered by the Court. However, in considering appeals, the Court's role is limited to this consideration and it is beyond the Court's responsibility to make a determination about whether a contravention has occurred.

The standard for establishing reasonable grounds is low, because it is not reliant on the provision of proof beyond a reasonable doubt. A low standard is consistent with the purpose of the Act because it increases the ability for public scrutiny. However, legislative clarity concerning the appropriate perspective from which to determine reasonable grounds – whether it be from that of the *elector* or, alternatively, that of the *committee*, is required. In addition, a test or some other legislative tool for assessing reasonable grounds would assist the committee in properly undertaking its role in determining whether to grant or reject an application. This would serve to quell uncertainty for electors, candidates, committee members and the public. In addition, these provisions would increase consistency of decisions issued by compliance audit committees and the Court upon hearing an appeal.

Legislative clarity on the appropriate perspective from which to consider “reasonable grounds,” and the provision of a test by which the committee can base their determination would serve to significantly enhance the existing process.

## **7.5 Exercise of Discretion**

The question of the committee's authority to exercise discretion in whether to proceed with an audit is also an important. Again, differing interpretations have been put forward by the Court. *Dickerson v. Compliance Audit Committee of the City of Pickering* provides that once reasonable grounds have been established, there is little discretion in

deciding whether to proceed with an audit. Conversely, the decision of *Lancaster v. St. Catharines (City) Compliance Audit Committee* stated that the affirmation of reasonable grounds does not compel the appointment an auditor.

Subsection 81(7) of the Act provides that if the committee decides to grant the application it *shall* appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. Generally, the use of the word "shall" restricts the use of judgement and compels a particular action. This wording appears to support the position that an audit is compelled upon the determination of reasonable grounds.

The decision of *Dickerson v. Compliance Audit Committee of the City of Pickering* stated that the scope of the audit is broad and not restricted to the grounds outlined in the application because the identification of one contravention may give raise to the discovery of others. This suggests that the legislation should be interpreted in a manner that allows for the greatest opportunity for public scrutiny.

Nevertheless, would it be appropriate for the committee to be granted the authority to exercise judgement in this regard? In its submission to the Ministry of Municipal Affairs and Housing, AMCTO recommended that the committee's role be reviewed for the purpose of allowing it to consider the severity of the violation in making its determination.

The consideration of frivolous and vexatious applications is also relevant. The CAC process is susceptible to the filing of meritless applications. In these cases the process may be used by displeased electors or defeated candidates as a way in which to attack a candidate in an attempt to damage future political prospects. As a result, the question remains whether there is a proper balance in the legislation to preserve accountability and transparency against the need for legitimacy in process and protections against abuse, particularly given the limited consequences provided for those to file meritless claims. Currently the legislation provides that if the results of an

audit reveal no contravention, a council can seek to recover the costs of the audit against the applicant. In the decision of *Dickerson v. Compliance Audit Committee of the City of Pickering*, Justice Bellefontaine awarded costs to the respondent (the Committee) noting the important function the awarding of costs has under the Act in discouraging frivolous applications for a compliance audit.

There is merit to the notion of discretion. The rules respecting municipal election campaign finance set out a regulatory system designed ensure that municipal elections are carried out in a fair and open manner. Under the *Municipal Elections Act, 1996*, a committee has been charged with a central role in executing this function. With the significance of the committee's role in mind, it is reasonable to argue that the exercise of discretion is a natural function its role under the Act. The exercise of discretion would be appropriate in cases where a candidate has conducted little to no fundraising activities and has incurred only a nominal amount of expenses. The use of discretionary authority would expand the role of the committee beyond its current gate-keeper function, thereby allowing the committee upon determination of reasonable grounds to consider the range of contributing circumstances and determine whether an audit is appropriate. This would impart greater authority to the committee and its role.

For example, in the matter of *Fuhr v. Perth South (Township)* a clear articulation regarding the committee's authority to exercise discretion would have allowed the committee to find that in light of the evidence and in considering the nominal contributions and expenses incurred, a compliance audit was not warranted. Good judgment is requisite to the appropriate exercise of discretion.

The exercise of discretion would also support an argument for the committee to be granted the authority to impose modest penalties. At the present time, the committee is not in a position to render penalties: their decision is restricted to pursuing prosecution. However, the case of *Fuhr v. Perth South (Township)* gives rise to the

consideration of whether it would be appropriate to expand the authority of the committee to impose lesser penalties in circumstances where a breach has been minor in nature and has been as a result of an inadvertent error or omission. This would strengthen their ability to respond to cases where an audit is not ordered, despite an apparent contravention. These provisions could take a similar form as those outlined under section 223.4(5) of the *Municipal Act, 2001*. This provision provides that a municipality may impose a penalty (either a reprimand or a suspension of remuneration) in cases where a councillor has been found to have contravened the municipality's code of conduct.

Limited discretion can be argued to reduce the impact of external pressure imposed on committee members because the appointment of an auditor is compelled by legislation. Alternatively, it is reasonable to argue, and indeed the Court has supported the notion, that the intention of the Act is not to upset the will of the electorate through the removal of a successful candidate from office due to a minor and inadvertent contravention. Discretion would allow the committee to consider the severity of the contravention and associated evidence when making its determination of whether to grant or reject an application.

If the use of discretion were more clearly articulated and provided for under the legislation, reasons for decision would be a prerequisite. In addition, if discretion were to be provided, the test for reasonable grounds would also require amendment in order to expressly state that the test would be from that from the perspective of the committee.

In either case, as evidenced by conflicting legal interpretation, greater certainty is required surrounding the committee's decision making authority, whether it be restrictive or broad.

## 7.6 Campaign Spending Limits

If greater discretion is not to be afforded, legislative reform should be considered in order to address differences in campaign spending limits as observed between municipalities of small and large populations.<sup>12</sup> More specifically, the legislation fails to respond to the reality that in municipalities with higher campaign spending limits there is a greater propensity for financial misconduct that could impact the outcome of the election. There are significant differences between the campaigns run by candidates in large and small municipalities (referring to population size). Strict provisions regarding campaign expenses are most certainly in order for municipalities with higher campaign spending limits. However, in municipalities with a smaller number of eligible electors, which results in campaign spending limits of a lesser dollar amount, candidates often engage in minimal or no fundraising, and incur relatively little expenses. As a result, there is a minimal threat for candidates to influence the outcome of an election through financial misconduct. Therefore, the case for a highly stringent financial reporting and regulatory framework is diminished. It is questionable whether the CAC process in small municipalities is requisite to safeguarding compliance with municipal election campaign finance regulations, when compared to a municipality with a large population.

In expressing concern regarding the compliance audit committee process, one practitioner commented as follows:

*"I can appreciate in some of the large centres that there are some bad dudes out there, but to expect a municipality in some remote area with a population of 200 or less to appoint a compliance audit committee, when they may barely have enough electors to field a slate of candidates, is a bit absurd to me. I support ensuring that all candidates play a fair game but this is overkill. How many claims were made by the public in the last municipal election? Probably about the same as there were against provincial candidates. One she size does not fit all, and this seems to be the tactic employed by the*

---

<sup>12</sup> A candidate's maximum campaign spending limit is calculated by the clerk using the formula prescribed under the Act (which is based on the number of municipal electors). See section 76 of the *Municipal Elections Act, 1996*.



*Province: every time a few people go astray, we all get punished. Surely there is a better way – consult with municipal experts (Watson 16).”*

Similarly, the legislation governing the CAC process should be reviewed to address the circumstance where a candidate has been acclaimed to office. Clearly under this situation, a compliance audit is not in order since there is no threat of campaign expenditures having had an undue influence on the outcome of the election where a candidate has been acclaimed. These observations echo those made by AMCTO in its submission on legislative review to the Ministry of Municipal Affairs and Housing.

In the absence of discretionary powers, consideration should be given to amending the legislation in a manner that accounts for cases where candidates have engaged in minimal financial activity or have been acclaimed to office. Undoubtedly, an application for a compliance audit in these cases is not appropriate, as there is no threat of money having had an undue influence on the electoral process.

## **7.7 An Exploration of Alternatives**

It is clear that under the CAC method the onus of initiating the process to identify possible contraventions and commencing an audit rests with the elector. A fulsome exploration concerning the question of whether this is the most effective means of promoting compliance and delivering enforcement is beyond the scope of this paper. Nevertheless a brief review of enforcement mechanisms outside of Ontario illustrates that alternative approaches do exist. Consideration should be given as to whether there is a more appropriate method of achieving the purpose of the Act. A brief discussion is provided below.

In its present form, the legislation provides for a decentralized regulatory system, under which municipalities across Ontario are responsible for establishing their own committees. There are some examples where municipalities have formed partnerships

to establish a joint compliance audit committee serving several municipalities. This approach allows municipalities to leverage available resources. However, this was not the predominant approach witnessed during the 2010 municipal election. What is the value of a decentralized system? One may reference the concept of laboratory federalism and argue that there are advantages in parallel regulatory systems, which operate independently because they provide best practice and encourage policy innovation (Oates 1133). In effect, decentralization allows municipalities to act as “laboratories” for public policy (Oates 1133). Additionally, one might argue that a decentralized system provides for flexibility to respond to each municipality’s unique circumstances and realities. However, legislative intent informs that fairness and increased public confidence are the founding principles of the CAC process. As evidenced above, the current system has created variance in operational practice and resulted in inconsistency in the application of the legislation. Such irregularities serve to foster uncertainty as opposed to confidence.

Johnson’s exploration of municipal election campaign finance law across Canada summarizes enforcement provisions and mechanisms under provincial statutes across the Country. Johnson informs that enforcement mechanisms differ across the provinces and explains that several regimes exist including the following: the filing of an appeal/application to the court, laying of a private information and proceeding by way of provincial offense, police investigation and the laying of charges, and review by a municipal council, an election official or audit committee (Johnson 6). Johnson notes the importance of provincial governments taking an active role in the education and training of candidates, electors and administrators (Johnson 31).

The literature speaks to alternative methods including a centralized system established under Elections Ontario. Elections Ontario currently monitors provincial election campaign finance activities. In 2010, the British Columbia Local Government

Elections Task Force recommended a centralized compliance and enforcement role to be established under Elections British Columbia (BC Local Government Election Task Force 21). Alternatively, the monitoring of election campaign finance activities could be brought under the jurisdiction of the Ontario Ombudsman, whose mandate currently includes the investigation of contraventions of the closed meeting legislation under the *Municipal Act, 2001*. A central criticism of the CAC process is the inconsistent interpretation and application of the legislation by committees and the Court. A provincially established system, whether it is under Elections Ontario or the Ontario Ombudsman, would result in a centralized regulatory mechanism, which would ensure consistent application and interpretation of the Act.

While alternative approaches are available, so too are examples of practices similar to that of Ontario. In its recommendation for the establishment of an independent election finance review body, the Toronto Election Review Task Force referred to the New York City Campaign Finance Board (NYCCFB). The NYCCFB was created in 1988 and is an independent, non-partisan city body with a mandate to enhance citizen participation in New York City elections. The NYCCFB's mandate is also to make campaign finance information available to the public, encourage citizens to run for elected office, decrease the role of large financial contributors, and reduce real and perceived corruption (New York City Campaign Finance Board). The NYCCFB also has a searchable database of campaign finance activities of both candidates and contributors, and enforcement information.

The purpose of this paper is not to draw conclusions regarding the preferred method of compliance and enforcement. Nevertheless, there are lessons to be learned from alternative approaches. The information outlined above is intended to illustrate that a number of alternative methods are in place outside of Ontario. It can only be presumed

that prior to the establishment of CACs, the Ministry of Municipal Affairs and Housing undertook a review of possible alternative methods.

### **Chapter 8: Future Evaluation and Analysis**

Due to the limited time that has elapsed since their inception, the effectiveness of compliance audit committees in delivering their intended outcomes it yet to be determined. In practicality, to undertake an empirical analysis for the purpose of measuring effectiveness would prove challenging due to the identification of appropriate measures. Consider for instance what evidence should be present to indicate the CAC process has been effective in delivering the indented outcomes of fairness, accountability and transparency. One might expect to observe a demonstrated decrease in applications due to an increased rate of compliance amongst candidates. Conversely, effectiveness could be demonstrated by an increase in applications, thereby demonstrating the program's use as a regulatory mechanism for electors. This would support an argument that there is value in political participation and therefore the process itself which is independent from the outcome. In any case, fulsome empirical analysis is restricted due to the limitations of current data, including time, the number of cases, and the accessibility of data. Nevertheless, the fullness of time will present an opportunity for future evaluation and empirical investigation. An exploration of what demonstrated impact CACs have had on in increasing compliance would be worthwhile once further information can be obtained.

The creation of a provincial repository to document and inventory cases for the public would prove to be a particularly helpful tool. This would ensure readily accessible data and maximize the opportunity for public scrutiny and participation. The repository should maintain a record of complaints, committee decisions, the disposition of appeals,

and final outcomes. At the present time, this information is only available through a manual search of individual cases.

## **Chapter 9: Conclusions**

This paper undertakes a descriptive analysis of the compliance audit committee process and explores the practical application of legislative parameters. It provides an assessment of the CAC process, and makes a number of recommendations for legislative review. The examination has drawn on lessons learned from four case study municipalities and subsequent case law. The case study review has illustrated that conflicting legislative interpretations exist concerning the function and powers of compliance audit committees. These conflicting interpretations and the persistent legal ambiguity support an argument for legislative review and increased statutory clarity regarding the committee's authority and function.

Consideration is owed to a number of recommendations. Deference to the committee's decision imparts credibility, thereby supporting the rules governing election campaign finance. The Act should be amended for the inclusion of selection criteria guiding committee appointments and the adoption of policies and procedures governing the committee's operation. Such provisions would increase the consistency of decisions and the Court's favourable consideration of deference. Similarly, reasons for decision are recommended for this purpose.

Due to the severity of penalties associated with the improper completion and submission of the Form 4, a number of improvements are recommended. These include increased instruction for completion, training, and legislative clarity concerning the submission of a supplementary Form 4. The severity of penalties compels a response to these matters.

Legislative clarity is required concerning the appropriate perspective from which to determine reasonable grounds and the provision of a test or some other form of criteria by which the committee can base its determination. Correspondingly, greater certainty is required surrounding the committee's decision making authority and its ability to exercise discretion. In the absence of discretionary authority, the Act should be amended to respond to cases where candidates have engaged in minimal financial activity and where candidates have been acclaimed to office.

Finally, alternative enforcement models do exist. Consideration of a centralized enforcement mechanism under the province of Ontario, such as Elections Ontario or the Ontario Ombudsman, is warranted. A centralized enforcement remedy would eliminate inconsistency, and in doing so would increase public confidence.

The effectiveness of compliance audit committees as it relates to encouraging adherence to municipal campaign finance legislation is yet to be determined. CACs provide a regularity function designed to assist in overseeing and enforcing compliance with election campaign finance rules. Due to their fledgling state of existence, it is not surprising that their activities have been the subject of criticism. Despite their operational challenges, their role and function cannot be described as being a failure. On the contrary, the CAC process is a participatory program through which citizens can actively participate in regulation and enforcement. Nevertheless, their mandate and authority could be strengthened in order to improve their ability to adequately enforce campaign finance rules and deter malfeasance. Such improvements would serve to decrease legislative ambiguity, increase public confidence and preserve the intent of municipal election campaign finance rules in Ontario.

**References:**

- AMCTO (Association of Municipal Managers Clerks and Treasurers of Ontario). *2006 Ontario Municipal Elections AMCTO Post-Election Survey Final Report* (July 17, 2007). Web. 8 June, 2011.
- BC Local Government Election Task Force. *Report of the Local Government Elections Task Force* (28 May, 2010). Web. 19 July, 2013.
- Bentley, Christopher. "Statements by the Ministry and Responses, Good Governance." *Edited Hansard*. Ontario. Legislative Assembly. 39<sup>th</sup> Parl. 1<sup>st</sup> sess. No. 179. Official Records for 27 October 2009. Web. June 3, 2013.
- Braid v. Georgian Bay (Township)*, 2011 O.S.C.J. 3618. CV-11-59-00. N.d. Web. 10 January, 2013.
- Calis, Kristen. "Pickering Councillor Appeals Election Expense Audit." *Oshawa This Week* [Durham], 1 June, 2011, Web. 9 June, 2011.
- City of Ottawa. *Reforming Ottawa's Municipal Election Finances*. Staff Report to Corporate Services and Economic Development Committee and Council (26 May, 2009) Web. 10 July, 2013.
- City of Pickering, *2010 Election Compliance Audit Committee Meeting Minutes (18 May, 2011)*. Web. 9 June, 2011.
- City of Pickering, *2010 Election Compliance Audit Committee Meeting Minutes (26 May, 2011)*. Web. 9 June, 2011.
- City of Pickering, *2010 Election Compliance Audit Committee Meeting Minutes (6 June, 2012)*. Web. 18 June, 2013.
- City of Pickering, *2010 Election Compliance Audit Committee Meeting Minutes (18 July, 2012)*. Web. 15 June, 2013.
- City of St. Catharines, *St. Catharines Compliance Audit Committee, Minutes of Meeting (19 July, 2011)*. Web. 7 July, 2013.
- City of Toronto, *Additional submission from Max Reed and Adam Chaleff-Freudenthaler*, N.d. Web. 8 June, 2011.
- City of Toronto, *Candidate Submission re: Compliance Audit Application by Max Reed and Adam Chaleff-Freudenthaler*. N. d. Web. 8 June, 2011.
- City of Toronto. *Compliance Audit Application: Applicants Max Reed and Adam Chaleff-Freudenthaler, Candidate Rob Ford, Attachment 1*. N.d. Web. 8 June, 2011.
- City of Toronto, *Election Finance Review Task Force*, N.d. Web. 4 January, 2012.

- City of Toronto. *Establishment of a Compliance Audit Committee for the 2010 Municipal Election, Staff Report to the Executive Committee* (24 August, 2009). Web. 2 January, 2013.
- City of Toronto, Minutes - Compliance Audit Committee (25 February, 2013). Web. 18 July, 2013.
- City of Toronto, Minutes - Compliance Audit Committee (13 May, 2011). Web. 9 June, 2011.
- Cohen, Joshua. "Deliberation and Democratic Legitimacy." *Deliberative Democracy: Essays on Reason and Politics*, Ed. James Bohman and William Rehg. MIT Press, 1997. 67-92. Print.
- Cornell University Law School, *Legal Information Institute*, definition provided by *Nolo's Plain-English Law Dictionary*. 19 August, 2010. Web. 7 July, 2013.
- Dickerson v. Compliance Audit Committee of the City of Pickering*, 2011 O.N.C.J. No. 2811999. N.d. Web. 10 January, 2013.
- Dilanni, Larry. "A Hard Act to Follow, But an Essential One To Adhere To." *Municipal World* October 2006. Print.
- Dillon, Moya. "Pickering Councillor Will Keep his Job After Pleading Guilty to Election Finance Violations." *Pickering News Advertiser* [Durham], 19 July, 2013. Web. 24 July, 2013.
- Election Finance Review Task Force. *Municipal Election Financing Discussion Paper* (March 2004). Web. 2 January, 2013.
- Elster, Jon. "The Market and the Forum: Three Varieties of Political Theory." *Deliberative Democracy: Essays on Reason and Politics*, Ed. James Bohman and William Rehg. MIT Press, 1997. 3-34. Print.
- Ford v. Toronto (City) Compliance Audit Committee* (2012) O.N.C.J. 92. N.d. Web. 10 January, 2013.
- Froese Forensic Partners Ltd. *Compliance Audit Report for the City of Toronto Re: Rob Ford* (1 February, 2013). Web. 18 July, 2013.
- Fuhr v. Perth South (Township)*, 2011 O.N.C.J. 413. N.d. Web. 10 January, 2013.
- Gardner, Susan M. "Editor's Note." *Municipal World* [St. Thomas], October 2006. Print.
- Gatien, Daniel. Association of Municipal Managers Clerks and Treasurers of Ontario. "Municipal Election Financing Policy and Legislative Review." Letter to Ministry of Municipal Affairs and Housing. 17 October, 2011. Web. 10 January, 2013.
- Johnson, Jody E. "Municipal Election Enforcement: Does it Really Exist?" Presented at the *International Municipal Lawyers Association, 75<sup>th</sup> Annual Conference, Canadian Department Meeting, 2010*. Print.



- Lancaster v. St Catharines (City) Compliance Audit Committee*, 2012 O.N.C.J. 70, No. 2111. N.d. Web. 10 January, 2013.
- Lancaster v. St Catharines (City) Compliance Audit Committee*, 2012 O.N. S. C. 5629, No. 4696. N.d. Web. 10 January, 2013.
- MacDermid, Robert. "Funding Municipal Elections in the Toronto Region." Presented at the *Annual General Meetings of the Canadian Political Science Association*, 2006. N.d. Web. 3 January 2013.
- MacDermid, Robert. *Presentation to the Administration Committee of the City of Toronto on the Final Report of the Toronto Election Finance Review Task Force* (28 June, 2004). Web. 3 January, 2013.
- Molson, William. *Report for the Council of The Corporation of the City of Pickering, Municipal Election Compliance Audit of the Campaign Finances of Candidate Doug Dickerson* (15 May, 2012). Web. 11 July, 2013.
- Municipal Elections Act, 1996* S.O. 1996, c. 32. Print.
- New York City Campaign Finance Board. About Us. N. d. Web. 15 July, 2013.
- Oates, Wallace E. "An Essay of Fiscal Federalism." *Journal of Economic Literature*, Vol. 37, No. 3 (1999): 1120-1149. Print.
- Pasquale, Frank. "Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform." *University of Illinois Law Review* (2008), 599-660. N.d. Web. 20 July, 2013.
- Peat, Don. "Audit of Mayor Rejected Because of Other Audits," *Toronto Sun* [Toronto], 6 June, 2011. Web. 10 June, 2011.
- Prue, Michael. "Orders of the Day, *Good Government Act, 2009*." *Edited Hansard*. Ontario. Legislative Assembly. 39<sup>th</sup> Parl. 1<sup>st</sup> sess. No. 182. Official Records for 2 November 2009. Web. June 3, 2013.
- Prue, Michael. "Orders of the Day, *Good Government Act, 2009*." *Edited Hansard*. Ontario. Legislative Assembly. 39<sup>th</sup> Parl. 1<sup>st</sup> sess. No. 196. Official Records for 2 December 2009. Web. June 3, 2013.
- Rawls, John. *A Theory of Justice: Revised Edition*. Cambridge: Belknap, 1999. Print.
- South Western Media Group, "No Legal Action to be Taken Against Wilhelm, Armstrong." 25 January, 2012. Web. 12 June, 2013.
- Stronger City of Toronto for a Stronger Ontario Act, 2006*, S.O. 2006. c. 11. Print.
- Township of Perth South, *Compliance Audit Committee Minutes* (26 April, 2011). Web. 12 June, 2011.

Township of Perth South, *Compliance Audit Committee Minutes* (9 May, 2011). Web. 12 June, 2011.

Township of Perth South, *Compliance Audit Committee Minutes* (11 January, 2012). Web. 6 June, 2013.

Watson, Jack. "Your Turn". *AMCTO Municipal Monitor* [Toronto] September/October 2010. Print.

Watson, Jim. "Orders of the Day, *Good Government Act, 2009.*" *Edited Hansard*. Ontario. Legislative Assembly. 39<sup>th</sup> Parl. 1<sup>st</sup> sess. No. 184. Official Records for 4 November 2009. Web. June 3, 2013.

101.7 The One News. "Perth South Election Appeal" [Wingham], 16 May, 2011. Web. 12 June, 2011.