

Election Complaints Policy

Policy Number: ELEC-02
Sub-Topic: Elections
Topic:
Applies to: Municipal Elections and By-Elections

Policy Statement and Strategic Plan Linkages

In order to preserve the public trust and comply with the provisions of the Municipal Elections Act, 1996, (the “Act”) as amended, it is essential that the Town’s Elections staff make every effort to promptly resolve complaints about services within their jurisdiction.

For certain services and processes, there are legislated procedures for complaints and appeals that are outside the Town Clerk’s jurisdiction. Appendix A lists matters outside the scope of the Town Clerk’s Office Complaints Procedure.

Complaints regarding services and processes within the jurisdiction of Election staff are directed to the responsible Elections staff member.

Purpose

This policy creates a framework of responsibilities for a consistent approach for resolving election-related complaints directed at the Town by members of the public, registered third party advertisers, elector, and candidates for municipal office.

Principles

This policy and its procedures are based on the following complaint management principles:

Ease of comprehension & access	The process should be easy to understand and accessible to customers;
Accountability	The process should be well understood by staff and include routine monitoring of complaints by the Town Clerk to ensure matters resulting from repeated complaints are addressed;
Confidence	All complainants should have confidence in the reliability of the process;

Confidentiality	All complaints will remain confidential in accordance with applicable policies and to protect the complainant's privacy according to Protection of Personal Information Policy (CORP.1-08);
Fairness & independence	The process should be fair and include an independent review process;
Impartiality	The process should be impartial and filing complaints will not adversely affect the quality of future Town services and interactions delivered to complainants;
Effectiveness	Staff should address issues within their authority. Customers should be advised of options to resolve the complaint;
Flexibility	Staff should have the discretion to adjust and adapt their response based on the nature of the complaint; and,
Timeliness	Timelines should be established by staff in responding to complaints filed.

Definitions

Act means the Municipal Elections Act, 1996, as amended from time to time.

Business Day means the days and time between 8:30 AM and 4:30 PM Monday to Friday, and excludes Statutory Holidays.

Candidate means a person who has been nominated under the Municipal Elections Act.

Complainant means an elector, candidate, registered third party advertiser or third party making a complaint under this policy.

Complaint means a written or oral expression of dissatisfaction by a complainant about the Town's conduct of a Municipal Election or By-Election or about the actions of a candidate or registered third party advertiser in relation to a Municipal Election or By-Election. Examples include but are not limited to perceptions of:

- A failure to enforce or abide by the Election Sign provisions of the Town's Election Sign By-law (2017-74);
- A candidate intimidating an elector for the purpose of compelling a vote;
- An accessibility concern with regards to a voting opportunity or venue;
- A candidate colluding with a registered third party advertiser for advertising purposes.

Elector means an individual qualified to vote in a Municipal Election contest as detailed in the Act.

Election Sign means any sign as defined in the Town's Election Sign By-law (2017-74).

Frivolous means a complaint that is reasonably perceived by Town's Election staff to be (a) without reasonable or probable cause, (b) without merit or substance, or (c) trivial.

Harassment or **Harass** involves engaging in a course of behaviour, comment or conduct that is or ought reasonably to be known to be unwelcome and intended to motivate or discourage participation in a Municipal Election or By-Election. It includes but is not limited to any behaviour, conduct or comment that is directed at or is offensive to another person:

- (a) on the grounds of age, ancestry, citizenship, colour, creed, disability, ethnic origin, family status, marital status, place of origin, race, record of offenses, sex, and sexual orientation, as well as any other grounds under the provisions of the Human Rights Code; or,
- (b) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.

Intimidation means unwarranted conduct, including, but not limited to: Harassment, violence or threats of violence, profanity, personal insults or communication that is deemed threatening and intended to motivate or discourage participation in a Municipal Election or By-Election;

Ombudsman means the Ombudsman of Ontario or the Ombudsman appointed by Council in accordance with subsection 223.13 (1) of the Municipal Act, 2001, as amended from time to time.

Registered Third Party Advertiser means any individual, corporation, or trade union who is registered with the Town Clerk in accordance with the Act.

Third Party means any individual, corporation, or trade union who is not a registered candidate, political party, or constituency association who communicates with potential voters with respect to a Municipal Election or By-Election.

Town means the Corporation of the Town of Newmarket.

Town Clerk means the Director of Legislative Services/Town Clerk and Returning Officer for Municipal Elections and By-Elections, and includes his/her designate.

Vexatious means a complaint that is frivolous and which is pursued in a manner that is reasonably perceived by Town staff to be (a) malicious; (b) intended to embarrass or harass the recipient; or, (c) intended to be a nuisance.

Responsibilities

It is the responsibility of all candidates, registered third party advertisers, contributors, and electors to ensure that they adhere to all applicable rules established in the Act, and to consult independent legal counsel where they are unsure of their obligations under the Act.

While the Town Clerk has a general duty to ensure the provisions of the Act are followed and that Candidates and electors are informed of their rights and obligations under the Act, the municipality is not responsible for providing individuals with advice or guidance intended to ensure compliance with specific provisions of the Act. Candidates and individuals acting on their behalf are ultimately responsible for their actions, and must determine their own level of comfort when determining how to conduct themselves and their campaign.

If an individual believes that a contravention of the Act has occurred, it is the responsibility of the individual to determine whether to pursue prosecution in a court of law pursuant to the provisions of the Act. Generally speaking, it is not the responsibility of the municipality to prosecute any individual or organization for potential contraventions of the Act. However, in exceptional circumstances, prosecutions may be initiated by the municipality in response to egregious violations of the Act, and the decision to do so rests solely with the municipality.

This policy is administered by the Town Clerk. Any complaints made that are within the Clerk's authority to investigate or remediate will be dealt with in accordance with 'Appendix A' and the procedures outlined below.

Procedure

Implementation

These established standards are followed for acknowledging receipt of a complaint:

- By telephone within 2 business days of being received
- By email within 1 business day of being received
- By mail within 4 business days of being received

In extraordinary circumstances, the Town's Elections Office may not be in a position to guarantee these standards can be satisfied, i.e., on or around the date of a Municipal Election or By-Election, during labour disruption, etc.

Contact Information

Email: elections@newmarket.ca
Phone: 905-953-5300 extension 2210
Mailing address: Newmarket Elections Office
395 Mulock Drive
Newmarket ON L3Y 4X7

General Complaint Procedures

1. Anyone personally affected or their representative can submit a complaint and it will be reviewed in accordance with this procedure. Anonymous complaints will not be accepted.
2. Complaints should be made through the Town's Elections Office by phone, email, letter, or by using the prescribed form.
3. Complaints made in-person should be recorded using the prescribed intake form.
4. At minimum, complaints should provide the following:
 - 4.1 The name and contact information of the complainant; and,
 - 4.2 The nature of the complaint, and any supporting documents to substantiate the complaint.

Step 1 – Review of Complaint

- 5.1 Complaints will be directed to and assessed by a designated Election contact with sufficient authority to address the scope of the complaint.
- 5.2 Relative to the complaint, the designated Election contact will advise the complainant of the following, in his or her own opinion, as applicable:
 - 5.2.1 If the matter is able to be dealt with under the authority of the Town Clerk as outlined in 'Appendix A'.
 - 5.2.2 If the complaint has merit:
 - i. An outline of actions which will be taken by the Town with the intent of resolving the complaint;
 - ii. Any required actions to be taken, including known fees or charges; and,
 - iii. Estimated timeframes associated with the actions required to resolve the complaint.
 - 5.2.3 Should the designated Election contact determine that he/she does not have sufficient authority to respond to the Complaint he/she will refer the complaint for further review under Step 2;
 - 5.2.4 Any optional or mandatory appeal mechanisms available, both internally and externally;

- 5.2.5 Other information necessary to help inform the complainant of the Town's actions; and,
- 5.2.6 Further review of the complaint as outlined in Step 2, if requested or required.
- 5.3 If the Election contact decides to commence an investigation of a complaint they may supply a summary of the complaint and supporting evidence to the individual/business entity/trade union whose conduct is in question with a request for a written response to be provided. Any response or explanation provided may form part of the written response to the complainant. The Election contact will ensure that the main parties involved in the complaint are given an opportunity to provide representations in an investigation.
- 5.4 If, after reviewing a complaint that is within the authority of the Town Clerk as outlined in 'Appendix A', and the Election contact determines that the complaint does not have merit, the Election contact will:
 - 5.4.1 Contact the complainant, to advise that the complaint does not have merit and that the matter will not be investigated any further; and,
 - 5.4.2 Contact the individual who the complaint was submitted against, and advise that a complaint was filed, but it was determined to have no merit.
- 5.5 Should the complainant believe that his/her complaint has not been adequately addressed in 5.3 or 5.4 of this Policy, he/she may refer the complaint for further review under Step 2.
- 5.6 Subject to 5.5, the complaint is deemed to be closed.

Step 2 – Review by the Town Clerk

- 6.1 Complaints will be directed to and assessed by the Town Clerk to address the scope of the complaint reviewed in Step 1.
- 6.2 The Town Clerk will review the assessment of the complaint in Step 1 and advise the complainant of the outcome of the review.
- 6.3 A brief written response will be provided to the complainant outlining the Town Clerk's assessment of the review undertaken in Step 2.
- 6.4 The Town Clerk will maintain a separate record of his/her review in accordance with the Town's records retention policies and protocols.
- 6.5 With the decision of the Town Clerk, the complaint filed is deemed to be closed.

Threats or Intimidations made towards Election Staff

7. Staff should report to their designated or senior department contact and the Human Resources department immediately:
 - 7.1 Any implied or explicit threats made against the safety of the staff member or the safety of others in the course of handling the complaint;
 - 7.2 Any Intimidation behaviour in the course of handling the complaint, which may be established by a variety of circumstances that may include:
 - i. The content, tone and language of a person's correspondence, especially if the language used is insulting, offensive or abusive; or,
 - ii. Unsubstantiated, derogatory or inflammatory allegations against Town staff.
8. Harassment, discrimination, threats or matters of a similar nature will be dealt with through the Harassment and Discrimination Free Workplace Policy (HR. 13-04).
9. Nothing in this Policy precludes staff from reporting implied or implicit threats to York Regional Police at any time.

Threats or Intimidations made towards Candidates, Electors, Registered Third Party Advertisers, or the general public

10. The Town Clerk does not have the authority to investigate complaints regarding threats or intimidation of persons who are not Election staff.
11. Any implied or explicit threats made against the safety of a person should be reported to the appropriate police authorities.

Potentially Frivolous or Vexatious Complaints

12. Where the complaint may be considered frivolous or vexatious or there appears to be a pattern of frivolous or vexatious complaints, Elections staff may seek advice from the Town Clerk to ensure valid complaints are heard and addressed in a professional and mutually respectful manner, while ensuring efficient use of Town resources.

13. Despite any step in this Policy, the Town Clerk may recommend that the Elections staff refer a frivolous or vexatious complaint to the Ombudsman and that the Town Clerk deem the complaint file closed.

Responsibilities of Employees

14. Staff will treat all complaints as confidential and protect the complainant's privacy according to Protection of Personal Information Policy (CORP.1-08).
15. A record of all complaints will be maintained in the Town's Customer Relationship Management System.
16. The Town will fully cooperate with the Ombudsman in executing his or her statutory duties.

Review Period

Periodic reviews of this Policy and process may be undertaken.

Cross-References

The Municipal Elections Act, 1996
Protection of Personal Information Policy
Harassment and Discrimination Free Workplace Policy
Town of Newmarket Election Sign By-law 2017-74
Use of Corporate Resources & Election Campaign Activities Policy

Contact

Lisa Lyons
Town Clerk
Legislative Services Department
llyons@newmarket.ca

Details

Approved by: Town Clerk
Adoption Date:
Policy Effective Date:
Last Revision Date:
Revision No: 000

Types of Election-Related Complaints

Matter	Complaints & Review Process Details regarding authority	Town's Authority	Other Agency's Authority
Accessibility	<p>A complaint regarding accessibility can be made by email, verbally and in writing.</p> <p>Email: Elections@newmarket.ca</p> <p>Phone: 905-953-5300 extension 2210</p> <p>Address: Newmarket Elections Office 395 Mulock Drive, Newmarket, ON, L3Y 4X7</p>	✓	
Campaign Finance Offences	<p>A corporation or trade union that contravenes any of the campaign financing provisions of the Act is guilty of an offence and is liable on conviction to a fine of up to \$50,000.</p> <p>An individual that contravenes any of the campaign financing provisions of the Act is guilty of an offence and is liable on conviction to a fine of up to \$25,000.</p> <p>A candidate is guilty of an offence if he or she files an incorrect financial statement or exceeds the spending limit for the office. In addition to any other penalty that may be imposed under the Act, the candidate forfeits any office to which he or she was elected, is ineligible to be elected or appointed to any office until after the next regular election and is liable to a fine equal to the excess spending.</p> <p>An eligible elector may apply to the Town Clerk for a compliance audit of a candidate's campaign finances. The Town Clerk shall forward the application to the York Region Joint Compliance Audit Committee. The Committee shall consider the application and make a decision within 30 days whether to accept or reject the application. The decision of the Committee to grant or reject an application for a compliance audit may be appealed to the Ontario Court of Justice. If an audit is approved and conducted, the Committee may commence legal proceedings against a Candidate for any apparent contraventions of the Act.</p> <p>The application for a compliance audit will be made available on the Town's website in Q1 2019.</p>		✓

	A person may also pursue legal action at any time, including under the Provincial Offences Act with respect to an alleged contravention of the Act relating to election campaign finances. A person should consult with their own legal counsel in this regard.		
Candidates Meetings and Events held During the Election	The Town Clerk performs an administrative function in the conduct of the municipal election within the legislative framework established by the province. Candidate-related events organized by other institutions or organizations during Newmarket municipal elections, such as all-candidates debates, do not fall within the mandate, authority or responsibility of the Town Clerk.		✓
Conduct of a Candidate	The Town Clerk performs an administrative function in the conduct of the municipal election within the legislative framework established by the province. The Act does not provide the Town Clerk with any investigative or enforcement powers. An individual with concerns about the conduct of a candidate may seek legal counsel or contact York Regional Police.		✓
Conduct of Voter Assistance Centre staff	A complaint regarding the conduct of Voter Assistance Centre Staff or can be made by email, verbally and in writing and directed to the attention of the Elections Coordinator at: Email: Elections@newmarket.ca Phone: 905-953-5300 extension 2210 Address: Newmarket Elections Office 395 Mulock Drive Newmarket, ON L3Y 4X7	✓	
Corrupt Practices	If a judge convicts a person of an offence under section 89 of the Act, and finds that the person committed the offence knowingly, the offence also constitutes a corrupt practice and the person is also liable to a term of imprisonment of not more than six months. A person convicted of bribery (in connection with the exercise or non-exercise of an Elector's vote or to induce a person to become a candidate or withdraw his or her candidacy) is also guilty of a corrupt practice and is liable on conviction to a fine		✓

	<p>of up to \$25,000, a term of imprisonment of up to six months and is disqualified from voting until the next regular election has taken place.</p> <p>The Town Clerk or an election official is guilty of a corrupt practice if he or she willfully fails to perform a duty imposed by the Act and is liable upon conviction to a fine of up to \$25,000 and a term of imprisonment of up to six months. If a candidate is convicted of a corrupt practice under the Act, or of an offence under the Criminal Code of Canada, in connection with an act or omission relating to an election, any office to which he or she was elected is forfeited and he or she is ineligible to be nominated for or elected or appointed to any office until the next two regular elections have taken place.</p> <p>The Town Clerk performs an administrative function in the conduct of the municipal election within the legislative framework established by the province. The Municipal Elections Act, 1996 does not provide the Town Clerk with any investigative or enforcement powers. An individual with concerns about potential corrupt practices may seek legal counsel or contact the appropriate Police authority.</p>		
Election Results	An eligible elector may apply to the Superior Court of Justice to challenge the validity of an election. The order of this Court may be appealed to Divisional Court.		✓
Election Signs	Responsibility for enforcing the Election Sign provisions of the Newmarket Election Sign By-law (2017-74) rests with Newmarket's By-law enforcement team.	✓	
Late Filing of Financial Statements	All nominated candidates must file a financial statement (and auditor's report in certain circumstances) with the Town Clerk by 2:00 PM on the last Friday in March in the year following the election. The candidate may, before the last day for filing, apply to the Ontario Court of Justice for an order extending the time for filing the financial statement. The judge may grant an extension for the minimum period of time necessary for the candidate to file the statement but the court shall not grant an extension of more than 90 days, in accordance with the Municipal Elections Act, as amended.		✓

	The candidate may also file his or her financial statement 30 days following the last Friday in March if he or she accompanies it with the \$500 late filing fee.		
Municipal Elections Act, 1996 provisions, (Complaints against the Act)	The Town Clerk performs a statutory role in the conduct of an election and must follow the provisions of the Act. Any complaints against the provisions of the Act are referred to the Minister of Municipal Affairs who has ministerial responsibility for the Act.		✓
Municipal Questions on the Ballot	The Minister of Municipal Affairs, or any other person or entity may appeal to the Chief Electoral Officer (CEO) of the Province of Ontario on the limited grounds that the question is not clear, concise and neutral or that it is incapable of being answered in the affirmative or negative. The CEO shall hold a hearing within 60 days and dismiss the appeal or allow the appeal in whole or in part.		✓
Offences (under the Municipal Elections Act)	<p>An individual is guilty of an offence and liable upon conviction to a fine of not more than \$25,000 if he or she, among other matters, votes without being entitled to, votes more times than the Act allows, induces a person to vote when that person is not entitled to do so, publishes a false statement of a candidate's withdrawal or furnishes false or misleading information to an election official. (See section 89 for a complete listing of the offences.)</p> <p>A corporation or trade union that is convicted of an offence is liable to a fine of not more than \$50,000.</p> <p>The Act prohibits corporations and trade unions from making campaign contributions to candidates.</p>		✓
Use of Corporate Resources	A complaint made regarding the use of corporate resources by a candidate will be dealt with in accordance with the Use of Corporate Resources & Election Campaign Activities Policy. A complaint regarding the use of Corporate Resources, including activities of a candidate while at a Town facility or at a Town event should be directed to the Election Coordinator and should include a full description of the suspected violation. The Town Clerk has the authority to refer this type of complaint directly to the Integrity Commissioner.	✓	