



Policy Manual

Section:	Office of the Chief Administrative Officer
Subject:	Election Complaints Policy
Policy Number:	039
Approval Date:	September 8, 2020
Approved By:	Resolution No. _____
Prepared By:	Town Solicitor, Legal and Legislative Services/Clerk

1.0 Objective

To ensure that election services respond to and meet the needs of the community. This commitment includes ensuring that policies and procedures are in place to respond to complaints respecting services and information provided in the course of a Town of Essex municipal election.

2.0 Application and Purpose

The purpose of this policy is to create a framework of responsibilities for a consistent approach for resolving election-related complaints directed at the Town by members of the public, candidates, registered third party advertisers and electors.

Source

Municipal Elections Act, 1996, S.O. 1996, c. 32 (hereafter: "the Act").

Application

This policy establishes processes which apply only to complaints associated with municipal election services that are within the jurisdiction of the Clerk. It does not apply to matters for which a process has already been established by legislation or regulation.

3.0 Implementation

Legal and Legislative Services has established a process to acknowledge and review complaints related to election services and supporting processes as soon as possible. In extraordinary circumstances (e.g. on Voting Day, during advance voting opportunities or during a work stoppage), Legal and Legislative Services may not be in a position to guarantee that the established standard can be achieved.

4.0 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 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 prosecute in a court of law pursuant to the provisions of the Act. It is not the responsibility of the Town to prosecute any individual or organization for potential contraventions of the Act. This policy is administered by the Town Clerk. Any complaints that are 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.

5.0 Procedure

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@essex.ca
Phone: 519-776-7336 ext.1100 or 1101
Mailing address: Town of Essex

Elections Office
33 Talbot Street South
Essex, ON N7M 1A8

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 if applicable.
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 official with sufficient authority to address the scope of the complaint.
- 5.2 Relative to the complaint, the designated Election official 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:
 1. An outline of actions which will be taken by the Town with the intent of resolving the complaint;
 2. Any required actions to be taken;
 3. Estimated timeframes associated with the actions required to resolve the complaint;
 4. Any optional or mandatory appeal mechanisms available, both internally and externally;

5. and other information necessary to help inform the complainant of the Town's actions; and,

- 5.2.3 Should the designated Election official 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;
- 5.3 If the Election official decides to commence an investigation of a complaint they may supply a summary of the complaint and supporting evidence to the individual/business entity 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 official 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', the Election official determines that the complaint does not have merit, the Election official 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 pursuant to 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. Election 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. Nothing in this Policy precludes staff from reporting implied or implicit threats to the appropriate police authorities.

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

9. The Town Clerk does not have the authority to investigate complaints regarding threats or intimidation of persons who are not Election staff.
10. 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

11. 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 Solicitor to ensure valid complaints are heard and addressed in a professional and mutually respectful manner, while ensuring efficient use of Town resources.

12. Despite any step in this Policy, the Town Solicitor may recommend that the Elections staff refer a frivolous or vexatious complaint to the Ontario Ombudsman's Office and that the Town deem the complaint file closed.

Responsibilities of Employees

13. Staff will treat all complaints as confidential and protect the complainant's privacy according to applicable privacy legislation.
14. 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.

Appendix "A"

Matter	Complaint Process and Authority
Accessibility	<p>Complaints regarding the accessibility of election services may be submitted by email, by phone, or in writing:</p> <p>Email: Elections@essex.ca Ph: 519-776-7336 ext. 1100 or 1101</p> <p>Address: 33 Talbot Street South Essex, Ontario N8M 1A8</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. Complaints respecting campaign finance matters for the offices of Mayor, Deputy Mayor, Councillor and third-party advertisers registered with the Town of Essex are reviewed by the Town's Compliance Audit Committee. Contact:</p> <p>Email: clerks@essex.ca Phone: 519-776-7336 ext. 1100 or 1101 Address: 33 Talbot Street South Essex, Ontario N8M 1A8</p> <p>Complaints respecting campaign finance matters for the offices of Trustee, Essex County District School Board and Essex County Catholic District School Board as well as Conseil scolaire Viamonde and Conseil Scolaire Catholique Providence are addressed by the applicable school board's compliance audit committee.</p>

Candidate Meetings and Other Events Held During the Campaign	<p>The Clerk performs an administrative function related to the conduct of the municipal election within the framework established by the Act. Candidate-related events organized by other institutions or organizations during the municipal campaign period, such as all-candidates debates or fundraising events do not fall within the mandate, authority or responsibility of the Clerk.</p>
Conduct of a Candidate or Member of Council	<p>The Clerk performs an administrative function related to the conduct of the municipal election within the framework established by the Municipal Elections Act. The Act does not provide the Clerk with investigative or enforcement powers.</p> <p>Any complaints against the Municipal Elections Act are referred to the Minister of Municipal Affairs who has ministerial authority of the Act.</p> <p>An individual with concerns about the conduct of an individual candidate may further seek legal counsel and/or contact Ontario Provincial Police if the matter relates to an offence under the Criminal Code of Canada.</p> <p>The Town's Integrity Commissioner plays a role in ensuring the appropriate conduct of sitting Members of Council. Additional information, including information on how to file a complaint under Council's Code of Conduct is available at: https://www.essex.ca/en/town-hall/integrity-commissioner.aspx</p>
Use of Corporate Resources for Election Purposes Policy	<p>Complaints regarding the Use of Corporate Resources for Election Purposes Policy may be submitted by email, by phone, or in writing:</p> <p>Email: elections@essex.ca</p> <p>Phone: 519-776-7336 ext. 1100 or 1101</p> <p>Address: 33 Talbot Street South Essex, Ontario N8M 1A8</p> <p>Please note the nature of the complaint will dictate the response to the complaint filed.</p>

Conduct of Voting Place Staff	<p>Complaints regarding the conduct of Voting Place Staff can be submitted by email, by phone, or in writing:</p> <p>Email: elections@essex.ca</p> <p>Phone: 519-776-7336 ext. 1100 or 1101</p> <p>Address: 33 Talbot Street South Essex, Ontario N8M 1A8</p>
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 8g 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>
Election Results Recount	<p>The Clerk does not possess the authority to independently direct a recount beyond the circumstances provided for by the Municipal Elections Act.</p> <p>An eligible elector may request Town of Essex Council to consider a recount, or apply to the Superior Court of Justice. A decision of Town of Essex Council and the Superior Court of Justice may be appealed to the Divisional Court.</p>
Controverted Election	<p>An application may be made to the Superior Court of Justice to challenge the validity of an election. A decision of the Superior Court of Justice may be appealed to the Divisional Court.</p>

Election Signs	<p>Responsibility for the enforcement of election sign standards established by the Town of Essex rests with the Town's Municipal Law Enforcement section in consultation with the Town Clerk. Complaints respecting non-compliant signage may be submitted by email, by phone, in writing or in person:</p> <p>Email: elections@essex.ca</p> <p>Phone: 519-776-7336 ext. 1100 or 1101</p> <p>Address: 33 Talbot Street South Essex, Ontario N8M 1A8</p>
Late Filing of Financial Statements	<p>All candidates and registered third party advertisers must file a financial statement (and auditor's report in certain circumstances) with the Clerk before 2:00 p.m. on the last Friday in March in the year following the election, or by the legislated deadline where a supplementary and/or subsequent financial statement is required.</p> <p>The Clerk does not have authority to grant an extension or set aside the requirement to file a financial statement. Additionally, the Clerk and cannot waive any mandatory penalties that may apply due to the failure of a candidate or registered third party to file a financial statement prior to the deadlines established by the Municipal Elections Act.</p> <p>If a candidate or third party advertiser misses the deadline, they may file within a 30-day grace period, provided a \$500.00 late filing fee is paid.</p> <p>The candidate or registered third party may also, before the last day for filing, apply to the Superior Court of Justice for an order extending the time for filing the financial statement. A judge may grant an extension for the minimum period of time necessary for the candidate or third party advertiser to file the statement, but may not issue an order granting an extension of more than 90 days.</p>
Voting Places	<p>Complaints respecting voting places can be made to the Town Clerk</p> <p>Services by email, by phone, or in writing:</p> <p>Email: elections@essex.ca</p> <p>Phone: 519-776-7336 ext. 1100 or 1101</p> <p>Address: 33 Talbot Street South Essex, Ontario N8M 1A8</p>

