

TOWN OF AJAX – WORK INSTRUCTION			Page 1 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
AUTHORED BY:	Alexander Harras	ISSUE #	4
APPROVED BY:	Nicole Cooper	ISSUE DATE:	21 / 11 / 11

1 PURPOSE

- 1.1 To establish procedures for responding to inquiries and observed or reported contraventions of the Municipal Elections Act, 1996, and municipal policies and by-laws related to an election during a regular election or by-election. This Work Instruction does not apply to complaints regarding certain matters of campaign finance which properly fall within the mandate of the Compliance Audit Committee.
- 1.2 To provide guidelines for the Town’s expected response to reports of contraventions of the MEA and municipal policies and by-laws related to an election. The Town is not obligated under the MEA to enforce or prosecute the provisions of the Act.

2 INPUTS

- 2.1 Electors, Candidates, and RTPAs may believe that other participants in the Election are not following the requirements of the *MEA* or municipal by-laws or policies, giving rise to a potential unfairness in the conduct of the Election, and may wish to file complaints with Election Staff to resolve the matter.
- 2.2 Anyone may inquire as to the appropriate behaviour of participants in an Election, and expect to receive timely and accurate information about the rules governing the Election.

3 OUTPUTS

- 3.1 Complaints and inquiries regarding the conduct of participants in the Election will be received and addressed in a timely, fair and equitable manner.

4 DEFINITIONS

- 4.1 Definitions and abbreviations applicable to this work instruction are listed in LIS-OP-050 Municipal & School Board Elections.

5 RESPONSIBILITIES

- 5.1 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 *MEA*, 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 *MEA* 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 agents acting on their behalf are

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Printed on: March 27, 2026

TOWN OF AJAX – WORK INSTRUCTION			Page 2 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
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ultimately responsible for their actions, and must determine their own level of comfort when determining how to conduct themselves and their campaign.

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

6 INTERESTED PARTIES (CUSTOMERS)

- 6.1 Electors
- 6.2 Candidates
- 6.3 RTPAs
- 6.4 Contributors
- 6.5 Complainants

7 LEVEL OF SERVICE

- 7.1 Inquiries & complaints shall be addressed in a timely, fair and equitable manner, having consideration for the nature of the potential contravention at issue in the inquiry or complaint.

8 QUALITY RECORDS

- 8.1 Written correspondence with complainants, Candidates, and RTPAs
- 8.2 Completed LIS-127 Town of Ajax Municipal Election Complaint Form

9 RISK-BASED THINKING

- 9.1 Inquiries and complaints regarding compliance with Election rules must be responded to in an accurate and timely manner. Failure to follow these Work Instructions may result in the following risks:
- 9.1.1 Potential violations of the MEA and/or municipal by-laws and policies will remain unresolved;
 - 9.1.2 Participants may choose to act without full or accurate information;
 - 9.1.3 There may be a loss of confidence in Election Staff and the outcome of the Election could be brought into question.

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TOWN OF AJAX – WORK INSTRUCTION			Page 3 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
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9.2 The risks identified herein are mitigated in the following manner:

9.2.1 All inquiries and complaints received by Elections Staff shall be responded to in a timely manner, based on the nature and severity of the matter or potential contravention at issue;

9.2.2 Candidates shall be provided with clear guidance about the Town’s expected response to complaints.

10 RESOURCES

- 10.1 Municipal Elections Act, 1996
- 10.2 Election Sign By-law
- 10.3 Campaign Contribution Rebate Program By-law
- 10.4 Use of Corporate Resources for Election Purposes

11 INSTRUCTIONS

Inquiries Regarding Compliance with the Municipal Elections Act

- 11.1 If a Candidate or their Agent, Registered Third Party Advertiser or their Agent, or Contributor makes an inquiry to Election Staff regarding how to be or remain in compliance with the Act, Election Staff shall attempt to assist the individual to understand election rules and their obligations under the Act in a general sense.
- 11.2 Where an individual appears to require legal or accounting advice or an opinion on a specific circumstance related to their campaign, Election Staff are to advise that the municipality cannot provide legal and/or specialized advice pertaining to compliance with the Act. The individual should be advised to discuss the matter with their legal counsel or accounting representative.
- 11.3 For matters relating to campaign finance rules, individuals may also be directed to contact the Ministry of Municipal Affairs for assistance. Election Staff shall report such instances to the Town Clerk and/or Deputy Clerk.

Contraventions of the Municipal Elections Act, Municipal Policies and By-laws relating to an Election

- 11.4 Should an individual wish to file a complaint regarding an alleged contravention, the following procedure shall be followed:
 - 11.4.1 Advise the individual that all complaints must be submitted in writing to the Town Clerk, and must include their full name and contact information using LIS-127 Municipal Election Complaint Form. If the individual is ready to submit their complaint in written

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TOWN OF AJAX – WORK INSTRUCTION			Page 4 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
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form, Election Staff may receive the written complaint and advise the individual that it will be forwarded to the Town Clerk for review.

11.4.2 The Town Clerk or their designate shall review the complaint and assess it according to the governing legislation/policies/by-laws and the merits of the complaint. If necessary, the Town Clerk or their designate may gather additional information and communicate with involved individuals in order to ascertain the veracity of the complaint. Where the Clerk dismisses a complaint for any reason, the Clerk may at their discretion notify the individual named in the complaint, but is under no obligation to do so.

11.4.3 If the reported contravention is deemed to be substantiated, the Town Clerk or their designate shall respond in one of two manners based on the severity of the contravention:

- For minor contraventions and/or where it is apparent the contravention was made in error and without intent, the Town Clerk or their designate shall advise the individual and/or their campaign of the contravention, either verbally or by way of written letter or e-mail, identifying the nature of the contravention, relevant sections of the Act/policy/by-law, actions necessary to remedy the contravention, and consequences for failure to remedy the contravention. Examples of minor contraventions include but are not limited to:
 - Advertising by a Third Party that has not registered with the Town
 - Use of municipal assets on campaign materials, such as logos and documents
- For significant contraventions, the Town Clerk shall forward the complaint and all associated documentation to the appropriate authorities (if applicable), who shall determine whether to prosecute the complaint. The Town Clerk may also respond to the significant contravention in accordance with the Town’s policies and procedures as deemed appropriate. Examples of significant contraventions include but are not limited to:
 - Theft of Voter Information Letters / mail tampering
 - Casting ballots without being entitled to do so
 - Attempting to interfere with the Voting System or with electors’ right to vote
 - Corrupt practices as defined within the Act

11.5 If a complaint is in relation to contraventions of a municipal by-law such as the Town’s Election Sign By-law, the complaint shall be directed to the Town’s By-law Services division for investigation and possible enforcement.

11.6 In the event of continued non-compliance by an individual despite notification provided by the

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TOWN OF AJAX – WORK INSTRUCTION			Page 5 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
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Town Clerk, the continued contravention shall be documented. All formal correspondence and documentation pertaining to a contravention of the Act or related municipal policy or by-law shall be kept on file in the event of future legal action.

- 11.7 If an Election Official or other Town staff member observes an individual engaging in a potential or actual contravention of the Act or is made aware of a previous potential or actual contravention of the Act during the election, they shall report this information to the Town Clerk for investigation as soon as is practicable.

Prosecution

- 11.8 After the Election, determination of whether the municipality will engage in legal action shall be made in consultation with the appropriate authorities and the Town’s solicitor.
- 11.9 Despite anything contained in this Work Instruction, the Town may engage in prosecution of any violation of its municipal by-laws during the Campaign Period, including but not limited to those governing the erection of Election Signs.
- 11.10 If an individual believes that a contravention of the Act has occurred, nothing in this Work Instruction prevents that individual from pursuing legal action in a court of law on their own accord.

Confidentiality of Complaints

- 11.11 The Town of Ajax has a general duty to protect the identity of complainants; by contrast, municipal elections are intended to be open and transparent processes. The Town Clerk and Election Staff acknowledge the validity of both of these two principles, and shall carefully weigh the right to privacy against the right to access for all parties involved in a complaint related to election activities.
- 11.12 Anonymous complaints will be accepted; however, the Clerk’s ability to assess and verify the allegations are significantly limited by the absence of a complainant’s name and contact information. The Clerk may choose not to pursue anonymous complaints if the Clerk lacks sufficient information to determine that an alleged contravention may have indeed occurred, or if in the opinion of the Clerk the anonymous complaint was not filed in good faith.
- 11.13 Candidates have a right to know about allegations that have been levied against them under this policy, except where the complaint is dismissed outright by the Clerk. However, candidates are not entitled to know the identity of the complainant. Similarly, complainants do not have an absolute right to privacy or anonymity, as there may be circumstances where disclosure of the complainant’s identity is necessary or implied. The Clerk shall exercise discretion in determining whether a complainant’s identity should remain confidential, and in doing so shall have regard to the rights of both the complainant and the respondent.

TOWN OF AJAX – WORK INSTRUCTION			Page 6 of 6
DOCUMENT TITLE: Municipal Elections – Inquiries & Complaints Regarding Compliance with the Act and Municipal Election By-laws/Policies			NO.: LIS-WI-066
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12 RELATED DOCUMENTATION

- 12.1 LIS-OP-050: Municipal & School Board Elections
- 12.2 LIS-WI-065: Election Sign Enforcement
- 12.3 Policy 076: Use of Corporate Resources for Election Purposes
- 12.4 LIS-127: Municipal Election Complaint Form