

April 11, 2018

VIA E-MAIL to peggy@E4m.solutions

E4M
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SUDBURY, ONTARIO P3A 2A4

Dear Sir/Madam:

**Re: Audit Compliance Committee Meetings
Our File No: 17071-2**

You have asked for our opinion regarding whether the Compliance Audit Committee appointed under the *Municipal Elections Act*, may hold its meetings electronically.

We have reviewed sections 88.33 to 88.37 of the *Municipal Elections Act* under the heading "Compliance Audits and Reviews of Contributions", as well as sections 207 and 208.1 of the *Education Act*. Based on our review of the legislation and relevant case law, it is our opinion that there is nothing in the *Municipal Elections Act* which would prevent the audit committee from holding its meetings electronically so long as the meeting is open to the public. Moreover, electronic meetings would be consistent with the spirit of the legislature in light of the direction in Bill 68 which allows electronic participation in council meetings.

Pertinent Sections of the *Municipal Elections Act*

Under the *Municipal Elections Act*, municipal councils or local boards are required to establish a Compliance Audit Committee.

Pursuant to subsection 88.33 (5.1) of the Act, the Compliance Audit Committee is required to hold meetings which are open to the public. Specifically, 88.33(5.1) provides:

Open meetings

(5.1) The meetings of the committee under this section shall be open to the public, but the committee may deliberate in private. 2017, c. 20, Sched. 10, s. 1.

Subsection 88.33 (5.1) of the Act does not state *where* the meeting must take place or that the meeting must take place in person. Section 5.1 simply requires that the meetings be open to the public. There is nothing in the *Act*, therefore, preventing a compliance audit committee from holding its meetings electronically so long as the public has access.

The Compliance Audit Committee is not a Local Board

Section 88.33 of the Act was a recent addition to the *Municipal Elections Act* and as such has only been litigated in only one reported case. In *City of Hamilton v Ombudsman of Ontario* (2017 ONSC 4865) the Divisional Court considered the question of whether the open meeting requirements of the *Municipal Act, 2001*, extended to an Election Compliance Committee and whether the Ombudsman had jurisdiction to investigate such meetings. The Court found that the Election Compliance Audit Committee was *not* a “local board” and therefore was not required to comply with section 239.1 of the *Municipal Act, 2001* and further, was not under the jurisdiction of the Ombudsman.

In 2017, section 238 of the *Municipal Act, 2001*, was amended to allow for electronic participation in meetings of council, local boards or committees. Since the compliance audit committee is neither a local board, nor a committee made up of council members or members of local boards the compliance audit committee is not bound to follow a municipalities procedure by-law with regards to electronic participation. The addition of section 238 which allows for electronic participation does, however, suggest an openness of the legislature toward electronic meetings in municipal matters.

Section 88.33(6) of the *Municipal Elections Act*

Section 88.33(6) of the *Municipal Elections Act* provides:

Same

(6) Subsection (5.1) applies despite sections 207 and 208.1 of the *Education Act, 2017*, c. 20, Sched. 10, s. 1.

We have reviewed both sections 207 and 208.1 of the *Education Act*. Under section 208.1, entitled “Regulations: electronic meetings”, the Lieutenant Governor in Council may make regulations respecting the use of electronic means for the holding of meetings of a board and meetings of a committee of a board, including a committee of the whole board. The Lieutenant Governor has enacted O. Reg 463/97 Electronic Meetings which sets out policy requirements for electronic meetings. After reviewing section 88.33(6) of the *Municipal Elections Act* and section 208.1 of the *Education Act* together, it is our opinion that subsection 88.33(6) of the *Municipal Elections Act* exempts the compliance audit committee from being bound by the strict electronic meetings requirements imposed by O. Reg 463/97. It does not prohibit electronic meetings.

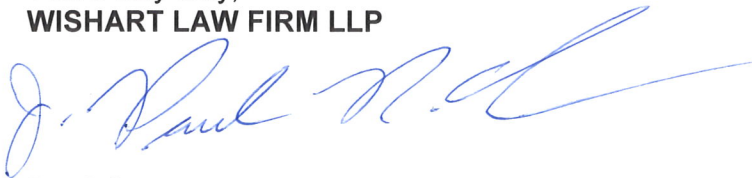
Administrative Procedures for Electronic Meetings

As stated above, we have not found any Act or cases which prevents compliance audit committees from holding its meetings electronically so long as the meeting is open to the public. Under subsection 88.37 (5) the

clerk or secretary of a municipality or local board is required to establish administrative practices and procedures for the Compliance Audit Committee. It is our suggestion, therefore, that the clerk or secretary ensure that their respective municipality's administrative practices and procedures allow for electronic meetings for the Compliance Audit Committee and provide a means by which the public may obtain access to the meeting.

If you have any questions, please do not hesitate to contact us.

Yours very truly,
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