



REPORT

CAO

TO: Mayor & Members of Council
FROM: Paul Shipway, CAO|Clerk
DATE: April 5, 2018
REPORT: CAO-32/18

SUBJECT: COMPLIANCE AUDIT COMMITTEE 2018-2022

BACKGROUND:

The Municipal Elections Act, 1996 (MEA), as amended, requires that every municipality appoint a Compliance Audit Committee prior to October 1st in the year of a Municipal Election.

DISCUSSION

The following summarizes the requirements for a Compliance Audit Committee as set out in sections 81 and 81.1 of the MEA:

- mandatory appointment by all municipalities
- minimum of three, maximum of seven members
- the committee shall not include the following: members of Council, employees or officers of the municipality, any persons who are candidates or registered third party in the election for which the committee is established
- appointed by October 1st of election year
- serve for a term concurrent with the term of office of the Council that takes office following the next regular election
- Clerk has specific responsibility for the committee.

Nothing in the legislation precludes municipalities from sharing a Compliance Audit Committee. Elgin municipalities did share a Committee for the 2010 and 2014 Municipal Elections. Requests for Compliance Audits are usually not significant in number. There was only one request (Malahide) received in the County related to the 2010 Municipal Election. As a result, a shared Committee will be able to continue to handle the potential workload. Elgin Clerks have discussed the benefits and agreed to recommend the establishment of a Joint Compliance Audit Committee again for the 2018 Municipal Election.

The powers and functions of a Compliance Audit Committee are as follows:

- consider a compliance audit application received by an elector and decide whether it should be granted or rejected

- if the application is granted, appoint an auditor to conduct a compliance audit
- receive the auditor's report
- consider the auditor's report and if the report concludes that the candidate appears to have contravened a provision of the MEA relating to election campaign finances, the committee may commence legal proceedings against the candidate for the apparent contravention
- if the report indicates that there was no apparent contravention and the committee finds that there were no reasonable grounds for the application, the council is entitled to recover the auditor's costs from the applicant
- consider reports of the Clerk identifying each contributor to a candidate for office on a Council or a registered third party who appears to have contravened any of the contribution limits under the MEA, the committee may commence legal proceedings against the candidate for the apparent contravention.

The Process

All election candidates are required to file provincially-prescribed financial statements with the Clerk detailing their campaign financing activities. An eligible elector who believes, on reasonable grounds, that a candidate has contravened the MEA, relating to campaign finances, may apply for a compliance audit of the candidate's election campaign finances.

The application must be made in writing to the Clerk, including the reasons for the elector's belief that the candidate has contravened the MEA and must be made within 90 days after the latest of:

- a. the filing date;
- b. the candidate's supplementary filing date, if any;
- c. the filing date for the final financial statement; or
- d. the date on which the candidate's extension, if any, expires.

The Committee

The proposed terms of reference for the Committee are attached hereto as Appendix 'A' and provides for an Election Joint Compliance Audit Committee composed of at least three (3) and no more than seven (7) members of the public.

It is important that the Election Joint Compliance Audit Committee members possess an in-depth knowledge of the campaign finance rules of the MEA so that they can make independent decisions on the merits of the applications. As the Committee will operate as a quasi-judicial committee, prior experience on a committee, task force or tribunal would be an asset. A Committee composed of professionals such as auditors, accountants, lawyers, academics and other individuals having a familiarity with municipal election campaign financing rules is recommended.

The municipality is responsible for any costs resulting from the review of applications submitted to the Election Joint Compliance Audit Committee. These costs include:

- Committee members' honorarium, which is being recommended to be \$100.00 per member, per meeting, plus mileage costs
- auditor's costs to perform an audit
- costs related to the Committee's operations and activities
- legal costs related to an appeal to the Ontario Court of Justice with respect to a

decision of the Committee

- legal costs to undertake legal action against the candidate for violations of the elections finance provisions of the MEA.

Factors involved in determining Election Joint Compliance Audit Committee costs include the number of compliance audit applications that are received, the number of meetings that are required to be held, and the complexity of the audits that need to be conducted. It is therefore difficult to pre-determine the costs that will result from the establishment of the Election Joint Compliance Audit Committee process, as the number of applications to be submitted are unknown in advance.

RECOMMENDATION

1. **THAT** Report CAO-32/18 re Compliance Audit Committee - 2018-2022 be received for information;
2. **AND THAT** Council direct staff to bring forward a by-law to adopt Egin Election Joint Compliance Audit Committee Terms of Reference for the 2018 Municipal Election for Council consideration.

Respectfully Submitted by:



Paul Shipway
CAO|Clerk

**TERMS OF REFERENCE
FOR THE
ELGIN ELECTION JOINT COMPLIANCE AUDIT COMMITTEE**

1. DEFINITIONS

- a. Act - means the Municipal Elections Act, 1996, S.O. 1996, c. 32, as amended from time to time.
- b. Applicant – means an elector as defined under Section 88.33(1) or 88.35(1) of the Act who applies for a compliance audit of a candidate's or third party advertiser's election campaign finances.
- c. Application – means an application for a compliance audit accepted by the Clerk pursuant to Section 88.33(2) of the Act.
- d. Auditor - means a person appointed by the Elgin Election Joint Compliance Audit Committee to conduct a compliance audit of the election campaign finances of candidates and registered third parties pursuant to Section 88.33 of the Act.
- e. Auditor's Report - means a report prepared by an auditor regarding the findings of an audit into the election campaign finances of a candidate or registered third party advertiser.
- f. Candidate - means the candidate whose election campaign finances are the subject of an application for a compliance audit.
- g. Clerk – means the Clerk of a lower tier municipality in Elgin County, or his or her designate.
- h. Committee - means the Elgin Election Joint Compliance Audit Committee established pursuant to Section 88.37 of the Act.
- i. Compliance Audit - means an audit conducted by an auditor, appointed by the Elgin Election Joint Compliance Audit Committee, of a candidate's election campaign finances; contributions to candidates; registered third parties campaign finances, and contributions to registered third parties.
- j. Council – means the Council of a lower tier municipality in Elgin County, including the Council of the Town of Aylmer, Municipality of Bayham, Municipality of Central Elgin, Municipality of Dutton Dunwich, Township of Malahide, Township of Southwold, and Municipality of West Elgin.
- k. Municipality – means a lower tier municipality in the County of Elgin, including The Corporation of the Town of Aylmer, The Corporation of the Municipality of Bayham, The Corporation of the Municipality of Central

Elgin, The Corporation of the Municipality of Dutton Dunwich, The Corporation of the Township of Malahide, The Corporation of the Township of Southwold, and The Corporation of the Municipality of West Elgin.

- I. Registered Third Party - means the individual, corporation or trade union whose notice of registration has been certified by the Clerk and whose campaign finances are the subject of an application for a compliance audit.

2. **ENABLING LEGISLATION**

Section 88.37 of the Act requires that before October 1st in an election year, Council establish a Compliance Audit Committee for the purposes of Sections 88.33, 88.34, 88.35 and 88.36 of the said Act relative to a possible contravention of the Act's election campaign finance provisions.

3. **TERM**

The term of office of the Committee is the same as the term of office of Council, being December 1, 2018 to November 14, 2022, and shall serve in the instance of any by-election that may take place during that time.

4. **MEETINGS**

The Committee will meet as needed, with meetings to be scheduled by the Clerk of the municipality where a compliance audit application is received, in accordance with the MEA requirements. The Clerk of the host municipality shall ensure and verify the validity of the meeting. The Clerk will contact all members to ensure that a quorum of members is able to attend the said meeting. The Committee members will select a Chair from amongst its members at its first meeting.

In accordance with the Act, the meetings of the Committee shall be open to the public, but the Committee may deliberate in private.

Meetings will be held at the location determined by the Clerk of the host municipality.

5. **MANDATE**

The Committee is required to act in accordance with the powers and obligations set out in the Municipal Elections Act, 1996, as amended (MEA). The Committee will be required to:

- a. consider a compliance audit application received from an elector that a candidate or a registered third party has contravened provisions of the MEA relating to election campaign finances and determine whether it should be granted or rejected;

- b. if the application is granted, the Committee shall appoint an auditor to conduct a compliance audit;
- c. receive the auditor's report;
- d. consider the auditor's report and if the report concludes that the candidate or registered third party appear to have contravened a provision of the MEA relating to election campaign finances, the Committee may commence legal proceedings against the candidate or registered third party for the apparent contravention; and
- e. consider the report(s) of the Clerk identifying each contributor to a candidate for office on a Council or a registered third party who appears to have contravened any of the contribution limits under section 88.9 or 88.13 of the MEA and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

6. **COMPOSITION**

The Committee will be composed of at least three (3) and no more than seven (7) members of the public.

Members must possess an in-depth knowledge of the campaign financing rules of the MEA and therefore membership drawn from the following stakeholder groups:

- a. accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- b. academic – college or university professors with expertise in political science or local government administration;
- c. legal profession with experience in municipal law, municipal election law or administrative law;
- d. 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
- e. other individuals with knowledge of the campaign financing rules of the Municipal Elections Act, 1996, as amended.

Pursuant to subsection 88.37(2) of the Act, the Committee shall not include:

- a. Members of Council or local board;
- b. Employees or officers of the Municipality or local board;

- c. Any persons who are candidates in the election for which the Committee is established; or
- d. Any persons who are registered third parties in the Municipality in the election for which the committee is established.

Further, an individual shall be deemed ineligible to be a member of the Committee if they prepare the financial statements of:

- a. any candidate running for office on Municipal Council or local board during the term for which the Committee has been established; or
- b. any registered third party.

In addition, a Committee Member may not be a contributor or provider of any election-related services to a registered candidate or third party advertiser in the 2018 Municipal Election or any subsequent by-election including but not limited to accounting, legal, auditing, marketing or campaign services.

7. APPOINTMENT PROCESS

All applicants will be required to submit a summary outlining their qualifications and experience.

A Nominating Committee consisting of the Clerks from each of the lower tier municipalities in Elgin County will review and consider all applicants/ applications, and will prepare a proposed Joint Committee membership list for consideration by each of the respective Municipal Councils.

Members will be selected on the basis of the following:

- a. demonstrated knowledge and understanding of municipal election campaign financing rules and knowledge of the MEA and related regulations;
- b. proven analytical and decision-making skills;
- c. experience working on a committee, administrative tribunal, task force or similar setting;
- d. Demonstrated knowledge of quasi-judicial proceedings;
- e. availability and willingness to attend meetings; and
- f. excellent oral and written communication skills;

The Members will be appointed by each of the respective Municipal Councils.

8. COMPENSATION

Members of the Committee shall be paid an honorarium of \$100 per meeting, plus mileage at the current mileage rate established by the host municipality. The host municipality shall pay all costs relative to the respective application.

9. STAFF SUPPORT

The Clerk or designate of the host municipality shall act as the Secretary to the Committee and provide support where required.

The Clerk shall establish administrative practices and procedures for the Committee and shall carry out any other duties required under this Act to implement the Committee's decisions.

10. APPLICATION BY ELECTOR

a. Financial Statements of Candidates

All candidates are required to file provincially prescribed financial statements with the Clerk detailing their election campaign financing activities.

An eligible elector who believes on reasonable grounds that a candidate has contravened a provision of the Act, as amended, relating to election campaign finances, may apply for a compliance audit of the candidate's election campaign finances, even if the candidate has not filed a financial statement.

The application must be made in writing to the Clerk and include the reasons for the elector's belief that the candidate has contravened the Act. The application must be made within 90 days after the latest of the following dates:

- i. The filing date (last Friday in March following the election);
- ii. The date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date;
- iii. The candidate's supplementary filing date, if any, (last Friday in September in the year following the election); or
- iv. The date on which the candidate's extension, if any, expires.

b. Registered Third Parties Financial Statements

All registered third parties are required to file provincially prescribe financial

statements with the Clerk reflecting the registered third party's campaign finances in relation to third party advertisements.

An eligible elector who believes on reasonable grounds that a registered third party who is registered in relation to the election in the Municipality has contravened a provision of the Act, relating to campaign finances, may apply for a compliance audit of the campaign finances of the registered third party in relation to third party advertisements, even if the registered third party has not filed a financial statement.

The application must be made in writing to the Clerk and include the reasons for the elector's belief that the registered third party has contravened the Act. The application must be made within 90 days after the latest of the following dates:

- i. The filing date (last Friday in March following the election);
- ii. The date the registered third party filed a financial statement, if the statement was filed within thirty (30) days after the applicable filing date;
- iii. The supplementary filing date, if any, for the registered third party (last Friday in September in the year following the election); or
- iv. The date on which the registered third party's extension, if any, expires.

11. **ROLES AND RESPONSIBILITIES**

Sections 88.33, 88.34, 88.35 and 88.36 of the Municipal Elections Act outlines the process for Compliance Audits.

a. Compliance Audit of Candidates' Election Campaign Finances

The Compliance Audit Committee will be required to:

- i. within thirty (30) days after the committee has received a compliance audit application, consider the application submitted by an elector and received by the Clerk and decide whether it should be granted or rejected;
- ii. give notice of its decision to grant or reject the application, and brief written reasons for the decision, to the candidate, the clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant;

- iii. Appoint an auditor, if the compliance audit application is granted, to conduct a compliance audit of the candidate's election campaign finances;
- iv. within thirty (30) days after receiving the Auditor's Report, consider the report and, if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, the committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention.

b. Compliance Audit of Contributions to Candidates

The Compliance Audit Committee will be required to:

- i. within thirty (30) days after receiving the Clerk's Report that identifies each contributor to a candidate for office on Council who appears to have contravened contribution limits, consider the report and decide whether to commence a legal proceeding against the candidate for the apparent contravention;
- ii. give notice of the committee's decision, and give brief written reasons for the decision, to the contributor and to the Clerk of the Municipality or secretary of the local board as the case may be.

c. Compliance Audit of Registered Third Parties' Election Campaign Finances

The Compliance Audit Committee will be required to:

- i. within thirty (30) days after the committee has received a compliance audit application, consider the application submitted by an elector and received by the Clerk and decide whether it should be granted or rejected;
- ii. give notice of its decision to grant or reject the application, and brief written reasons for the decision, to the registered third party, the clerk with whom the registered third party is registered, the secretary of the local board, if applicable, and the applicant;
- iii. Appoint an auditor, if the compliance audit application is granted, to conduct a compliance audit of the campaign finances of the registered third party in relation to third party advertisements that appear during an election in the Municipality;
- iv. within thirty (30) days after receiving the Auditor's Report, consider the report and, if the report concludes that the registered third party appears to have contravened a provision of the Act relating to

campaign finances of the registered third party in relation to third party advertisements that appear during an election in the municipality, the committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention;

d. Compliance Audit of Contributions to Registered Third Parties

The Compliance Audit Committee will be required to:

- i. within 30 days after receiving the Clerk's Report that identifies each contributor to the registered third party who appears to have contravened contributions limits, consider the report and decide whether to commence a legal proceeding against a contributor for an apparent contravention.
- ii. give notice of the committee's decision, and brief written reasons for the decision, to the contributor and to the Clerk of the Municipality.

12. **APPEAL**

The decision of the Compliance Audit Committee may be appealed to the Superior Court of Justice within 15 days after the decision is made and the Court may make any decision the Committee could have made.