



REPORT ADM-2018-020

TO: Mayor and Members of Council

FROM: Nina Lecic, Deputy Clerk

DATE: May 16, 2018

SUBJECT: Joint Compliance Audit Committee

FILE No.: C12-ELE

RECOMMENDATIONS

THAT Council approves the Terms of Reference for a Joint Audit Committee with the Wellington County municipalities, attached as Schedule 1, for the 2018-2022 Term of Council;

AND THAT Council passes a by-law establishing a Joint Compliance Audit Committee for the 2018-2022 Term of Council.

DISCUSSION

Purpose

The purpose of this report is to establish a Joint Compliance Audit Committee for the 2018-2022 Term of Council. Section 88.37 of the Municipal Elections Act (the Act) requires Municipalities to establish a Compliance Audit Committee (the Committee) prior to October 1st of an election year. An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

For the 2014- 2018 Term of Council, the Township followed a similar process and established a Joint Committee with the Wellington County Municipalities which consisted of three members. No applications for a compliance audit were received by the Committee during this term. In accordance with the terms of reference, the term of the Committee is until November 30, 2018. All of the Wellington County Municipalities have agreed to follow a similar approach for the new Term of Council. A Joint Committee offers the greatest potential to reach the broadest spectrum of interested applicants across the County, in a cost efficient manner.

Background

The Act lays out the requirements for the establishment of the Committee, along with the process for conducting a compliance audit. The following is an overview of the application process for an audit:

- An application for an audit must be made to the Clerk of the Municipality within 90 days after the financial filing date (March 29, 2019).
- The Clerk of the Municipality shall forward the application to the Committee within 10 days of receipt.
- Within 30 days after the Committee has received the application, the committee shall consider the application and decide whether there are reasonable grounds to request an audit.
- If the committee decides to grant the application, an auditor shall be appointed to conduct a compliance audit of the candidate's election campaign finances.
- The auditor shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of the Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate. That report is submitted to the candidate, Council, and the Clerk of the municipality who has 10 days to forward it to the Committee.
- The committee shall consider the report within 30 days after receiving it 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. If the report concludes that the candidate did not contravene the MEA, the committee must make a finding as to whether there was reasonable grounds for the request for the audit. If the committee determines that there were no reasonable grounds, then the Council is entitled to recover the auditor's costs from the applicant.

Each Municipality is responsible for paying the compensation for the Committee Members, as well as the auditor's cost of performing the audit.

Discussion

New financial reporting requirements for the Clerk

Legislative changes to the Act since the 2014 Municipal Election have established new statutory requirements for the Clerk to report on any contributor to a candidate or registered third party which has exceeded any of the contribution limits set out in the Act. The Clerk shall review all financial statements submitted by candidates and registered third parties within 30 days of the filing date or supplementary filing date, and prepare a report identifying such contributors who appear to have exceeded any contribution limits under the Act. The Clerk shall prepare a separate report for each contributor whose contributions to a candidate (or candidates), or a registered third party (or registered third parties) appear to have contravened any of the contribution limits. Once completed, any report prepared by the Clerk shall be forwarded to the Committee who upon receiving the

report(s), will have 30 days to consider it and decide whether to commence legal proceedings against any contributor for an apparent contravention.

Overview of Terms of Reference

To facilitate the creation of the joint Election Compliance Audit Committee, staff is proposing that Council approves the Terms of Reference attached as Schedule A to this report, which was prepared and agreed upon by all the Wellington County Municipal Clerks. These Terms of Reference will be brought to each Municipal Council for approval. Upon approval, recruitment for the Committee will commence.

The Act specifies that the Committee be composed of between three and seven members. Staff is recommending that the Committee be composed of between three and five members. Committee membership will ideally include auditors, accountants, lawyers, academics, and other individuals with knowledge of the Act's campaign financing rules.

The Committee recruitment will be coordinated amongst the Wellington Municipalities. Current Committee Members will be contacted and an ad will be placed in the Wellington Advertiser. Pertinent information and an application form will be made available on the websites of each municipality. Any costs associated with advertising for the Committee will be divided by the participating municipalities.

The selection committee, composed of the Clerks of the designated participating municipalities, will meet to review the applications, and will appoint the Joint Compliance Audit Committee members. The Terms of Reference set out the criteria that will be considered when appointing the Joint Compliance Audit Committee members.

When a participating municipality receives an application for a compliance audit, the Clerk of that municipality will call a meeting of the Committee; will prepare the necessary notices, agendas, minutes, etc. Any costs associated with the holding of meetings, or the decisions of the Committee, will be the responsibility of the municipality requesting the services of the Committee. The Terms of Reference suggest the compensation of \$125 for attendance at each meeting, per Committee Member.

Financial Implications

The Township portion of advertising costs are estimated at \$300 based on two advertisements placed in the Wellington Advertiser and shared equally amongst the seven lower tier municipalities.

The Committee meeting costs, should a complaint arise are estimated at \$1,250 based on 5 committee members at \$125 per person per meeting. Two meetings have been assumed should a complaint arise.

Council is entitled to recover the auditor's costs from the applicant if an auditor's report indicates that there was no apparent contravention of the Act, and the Committee finds

that there were no reasonable grounds for the application. Recovery of costs will be considered on a case-by-case basis.

Applicable Legislation and Requirements

Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.

Attachments

Schedule A- Draft By-law

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 2018-xxx

Being a by-law to establish a Joint Municipal Election Compliance
Audit Committee.

WHEREAS subsection 88.37 of the Municipal Elections Act, 1996, as amended requires Council to establish a Compliance Audit Committee;

AND WHEREAS the County of Wellington member Municipalities deem it expedient to establish a Joint Municipal Election Compliance Audit Committee for all municipalities in the County of Wellington;

NOW THEREFORE the Council of the Corporation of the Township of Puslinch hereby enacts as follows:

- 1) THAT the Township of Puslinch establishes a Joint Municipal Election Compliance Audit Committee with the County of Wellington member Municipalities in accordance with the terms of reference, attached as Schedule "A".

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 6th DAY OF June, 2018.

Dennis Lever, Mayor

Karen Landry, C.A.O./Clerk

Joint Compliance Audit Committee
Terms of Reference

The Participating Municipalities will select Committee members jointly. In the event a Participating Municipality receives an application for a compliance audit, that municipality will be solely responsible for meeting administration and covering all costs associated with the Committee, including audits, if required.

1. Definitions

“Act” means the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended from time to time.

“Applicant” means the individual who submitted the application requesting a Compliance Audit.

“Auditor” means a person appointed by the Committee, licensed under the *Public Accounting Act, 2004*, to conduct a Compliance Audit of a Candidate's election campaign finances pursuant to Section 88.33(10) of the Act.

“Auditor's Report” means a report prepared by an auditor for the Committee pursuant to Section 88.33(12) of the Act.

“Candidate” means the candidate whose election campaign finances are the subject of an application for a Compliance Audit.

“Clerk” means, as the context provides, the Clerk of any of the Participating Municipalities, or his or her designate.

“Committee” means the Joint Compliance Audit Committee established pursuant to Section 88.37(1) of the Act.

“Compliance Audit” means an audit of a Candidate's election campaign finances conducted by an Auditor appointed by the Committee.

“Council” means, as the context provides, the Council of any of the Participating Municipalities.

“Family Member” means a parent, spouse, or child of a Committee member, as defined in the Municipal Conflict of Interest Act, and shall also include a grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood, marriage or adoption.

“Meeting” means a meeting of the Committee.

“Municipal Conflict of Interest Act” means the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended from time to time.

“Participating Municipalities” means all or some of the following municipalities participating in the joint compliance audit committee process: The County of Wellington, The Town of Minto, The Township of Mapleton, The Township of Wellington-North, The Township of Guelph-Eramosa, The Town of Erin and the Township of Puslinch.

“Pecuniary Interest” means a direct or indirect interest within the meaning of the Municipal Conflict of Interest Act.

“Selection Committee” means the committee, composed of the Clerks of the Participating Municipalities that will choose the members of the Committee.

“Registered Third Party” means an individual resident in Ontario, a corporation carrying on business in Ontario or trade union who has filed with the Clerk of the municipality responsible for conducting an election a notice of registration to be a registered third party for the election pursuant to Section 88.6 of the Act.

“Trade Union” means a trade union as defined in the *Labour Relations Act, 1995* or the *Canada Labour Code* (Canada) and includes a central, regional or district labour council in Ontario.

2. **Enabling Legislation**

Section 88.37(1) of the Act requires that before October 1st in an election year, Council establish a compliance audit committee for the purposes of Section 88.33 of the Act relative to a possible contravention of the Act’s election campaign finance provisions.

3. **Mandate**

The mandate of the Committee is to carry out the functions of a Compliance Audit Committee as set out in the Act.

4. **Roles and Responsibilities**

The Committee shall:

	Timeline/Section of the Act
Consider Compliance Audit applications for Candidates and/or Registered Third Parties and decide whether they should be granted or rejected.	Within 30 days after receipt of the application - s. 88.33(7)
Provide written reasons for the decision to grant or reject the applications.	s. 88.33(8)
If an application is granted, appoint an Auditor to conduct a Compliance Audit of the Candidate’s election campaign finances.	s. 88.33(10) and (11)
Receive the Auditor’s Report.	s. 88.33(14)
Once the Auditor’s Report is received, consider the Auditor’s Report if it contains a conclusion of apparent contravention of the Act, and decide whether to commence a legal proceeding against the candidate for the apparent contravention	Within 30 days of receipt of the Auditor’s Report - s. 88.33(17)
Receive a Clerk’s Report identifying any contributor to a Candidate or Registered Third Party who appears to have contravened established contribution limits.	s. 88.34(4) s. 88.36(4)
Once the Clerk’s Report is received, consider the Clerk’s Report and decide whether to commence a legal proceeding against the Contributor for the apparent contravention.	Within 30 days of receipt of the Clerk’s Report - s. 88.34(8), s. 88.36(5)
In addition, the Committee shall:	

- Participate through the Chair in the selection of an Auditor in response to the request for proposal prepared by staff from the Participating Municipalities;
- Provide instructions to the selected Auditor about the scope of each Compliance Audit, as needed;
- Determine a timeline for the Auditor to complete each Compliance Audit.

5. Term

The term of the appointment is concurrent with the term of Council that takes office following the next regular election. Upon the term's expiry, Committee members may reapply to the Selection Committee to serve additional terms.

6. Composition

The Committee shall be composed of not fewer than three (3) and not more than five (5) members and shall not include:

- (a) employees or officers of the Participating Municipalities;
- (b) members of Council of the Participating Municipalities;
- (c) any persons who are Candidates in the election for which the Committee is established, or Family Members of same, or any person connected to a candidate through an employment, contractual, business or partnership relationship;
- (d) any persons who have participated as a Candidate for an office or Registered Third Party in the Participating Municipalities in the past two regular elections, or who have conducted audits or provided financial or legal advice in respect of such campaigns;
- (e) any persons who do or intend to assist any Candidate or Registered Third Party, as a volunteer or for compensation, in the election for which the Committee is established.

7. Selection of Members

Information pertaining to the Committee, including the terms of reference and an application for appointment to the Committee will be posted on the websites of the Participating Municipalities.

Committee membership will be drawn from the following groups:

- accounting and audit – accountants or auditors, preferably with experience in preparing or auditing the financial statements of municipal candidates;
- academic – college or university professors with expertise in political science or local government administration;
- legal; and
- other individuals with knowledge of the campaign financing provisions of the Act.

The following criteria may be considered in the selection of members:

- demonstrated knowledge and understanding of the Act's municipal election campaign financing provisions;
- experience in administrative law;
- proven analytical and decision-making skills;
- experience working on a committee, task force or in a similar setting;
- availability and willingness to attend meetings;
- demonstrated oral and written communication skills; and
- any other criteria as may be prescribed under the Act.

A Participating Municipality Clerk will be responsible for the recruitment of applicants. All applicants will be required to submit an application form outlining their qualifications and experience to the designated Participating Municipality Clerk by a specified deadline. After the deadline has passed, the Selection Committee will meet to review the applications, and appoint Committee members.

To avoid possible conflicts of interest, any auditor or accountant appointed to the Committee must agree in writing that they have not undertaken and shall not undertake the audits or preparation of financial statements of any Candidates seeking election to Councils or Registered Third Parties in the Participating Municipalities during the term of the Committee. In addition, any lawyer or other legal professional appointed to the Committee must agree in writing that they have not provided and will not provide legal advice to any Candidates seeking election to Councils or to any Registered Third Parties or Contributors to Candidates and Registered Third Parties in the election in the Participating Municipalities during the term of the Committee.

8. Notice

Posting of the Committee meeting agenda on the website of the Participating Municipality requiring the services of the Committee shall constitute notice of a Committee meeting.

The Clerk shall give notice of a Committee meeting to the Committee by email, telephone or by regular mail.

Where an application will be considered at the meeting, the Clerk shall give reasonable notice by email, telephone or by regular mail to the Applicant and Candidate or Registered Third Party, as applicable, of the time, place and purpose of the Committee meeting, and of the fact that if either party fails to attend the meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice concerning the meeting.

Where a Clerk's Report regarding contribution limit exceedances will be considered at the meeting, the Clerk shall give reasonable notice by email, telephone or by regular mail to the Contributor and Candidate or Registered Third Party as applicable, of the time, place and purpose of the Committee meeting, and of the fact that if either party fails to attend the meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice concerning the meeting.

9. Meetings

The Clerk shall call a meeting of the Committee when he or she receives an application for a Compliance Audit and where he or she prepared a report under Section 88.34. The Applicant and the Candidate or their representative will be provided with an opportunity to address the Committee and provide written submissions.

Meeting dates, start times and locations shall be set by the Clerk.

Committee meetings will be open to the public but the Committee may deliberate in private, as noted in Section 88.33(5.1). No votes may be taken in private session.

10. Quorum

A quorum shall be a majority of Committee members.

If a quorum is not present within fifteen (15) minutes of the time fixed for the commencement of the meeting, the Committee meeting will be rescheduled to a future date.

11. Selection of the Chair

The Chair shall be selected from among the Committee members at the first meeting of the Committee. If there is no consensus on a Chair, selection will be carried out by way of nomination and vote of the Committee members present.

12. Duties of the Chair

The Chair shall:

- (i) call Committee meetings to order when there is a Quorum, preside over Committee discussions, facilitate Committee business, follow meeting procedures, identify the order of proceedings and speakers and rule on points of order.
- (i) participate as an active member.
- (ii) encourage participation by all members.

If the Chair is not present within the first ten minutes of a Committee meeting or is absent through illness or otherwise, the Committee shall select another member as Acting Chair. While presiding, the Acting Chair shall have all the powers of the Chair.

13. Duties of Committee Members

The duties of Committee members are as follows:

- (i) carry out all statutory obligations of the Committee in accordance with the Act.
- (ii) attend all Committee meetings, sending regrets otherwise.
- (iii) understand their role, the Committee's mandate and meeting procedures.
- (iv) declare any pecuniary interest in any matter prior to consideration by the Committee and refrain from discussion and voting on the matter. If the declaration relates to a matter being discussed during a closed portion of the meeting, the member must leave the meeting during all discussion on the matter.
- (v) where the pecuniary interest of a member has not been disclosed by reason of the member's absence from the meeting, the member shall disclose the pecuniary interest and otherwise comply with subsection (iv) at the first meeting of the Committee attended by the member after the meeting referred to in subsection (iv).
- (vi) participate as an active and voting member, asking questions, and seeking clarification through the Chair.
- (vii) assist in drafting the reasons for a decision, as applicable.
- (viii) develop and maintain a climate of mutual support, trust, courtesy and respect.
- (ix) work together to utilize the knowledge, expertise and talents of all members.
- (x) respect the decisions of the Committee and that such decisions reflect the majority view.

14. Selection of an Auditor

Committee members will participate in the selection of an Auditor in response to a request for proposal prepared by staff. The Auditor as required by the legislation will be appointed by the Committee. The engagement letter will indicate that the Auditor has been engaged by the Committee and will be prepared and executed by the Clerk of each Participating Municipality, or other officer of each of the Participating Municipality as may be designated, on behalf of the Participating Municipality.

15. Resources

The Clerk will provide administrative support to the Committee, including the taking of minutes, the distribution of minutes and agendas, and the coordination of meetings.

16. Committee Records

The Clerk will co-ordinate and retain Committee records including agendas and minutes.

17. Declaration of Interest

Legislated requirements as set out in the *Municipal Conflict of Interest Act* shall apply to all Committee members. It is the responsibility of each member to disclose any pecuniary interest prior to discussion of a particular matter. Members are encouraged to seek independent legal advice if they are unsure of whether or not they have a pecuniary interest in a matter. Staff from the Participating Municipalities will not provide advice or interpretation related to declarations.

18. Compensation

\$125 per meeting

19. Practices and Procedures

The Clerks of the Participating Municipalities shall establish any additional administrative practices and procedures for the Committee in accordance with Section 88.37(6) of the Act and shall carry out any other duties required under the Act to implement the Committee's decisions.

The Clerks of the Participating Municipalities are delegated the authority to make administrative changes to these Terms of Reference that may be required from time to time due to legislative changes, or if, in the opinion of the Clerks, the amendments do not change the intent of the Terms of Reference.