

Terms of Reference for Niagara Compliance Audit Committee

1. Authority

1. Sections 88.33 and 88.35 of the *Municipal Elections Act, 1996 (Act)* provides that an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate or a registered third party has contravened a provision of the Act relating to election campaign finances may apply for a compliance audit of the candidate's or registered third party's campaign finances, even if the candidate has not filed a financial statement.
2. Sections 88.34 and 88.36 of the *Act* requires the clerk to review the contributions reported on the financial statements submitted by a candidate or registered third party and report any contraventions of any of the contribution limits to the compliance audit committee.
3. Section 88.37 of the *Act* requires the council or local board, to establish a compliance audit committee before October 1st in an election year for the purposes of Sections 88.33 to 88.36 of the *Act* relative to a possible contravention of the election campaign finance rules.

2. Establishment of Committee

1. A Joint Compliance Audit Committee is established with the potential participants as set out below, and shall be named the "Niagara Compliance Audit Committee" ("Committee"):

Local Area Municipalities": Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara on the Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland and Township of West Lincoln

"Region": Regional Municipality of Niagara

"School Boards": District School Board of Niagara and Niagara Catholic District School Board.

2. The potential participants as set out in Section 1 above, shall each determine its participation in the Committee, the results of which shall form the "Joint Participants."
3. The Committee is a statutory committee.

3. References

1. The following municipal terms shall have a corresponding meaning for School Boards: municipality/board, Council/Board, Clerk/Secretary, responding municipality/responding board. Reference to Councils/Boards and Clerks shall be deemed to include those of the Joint Participants.

2. Responding municipality means the municipality/board responsible for the office, with the Region responsible for the offices of Regional Chair and Regional Councillors, municipalities responsible for the office of Mayor and Councillors/Aldermen and School Boards responsible for the office of trustees.
3. The local area municipalities shall receive the compliance audit applications on behalf of the Region and School Boards who will then immediately provide same to the Region or School Board to commence the compliance audit proceedings.

4. Term

1. The term of the Committee shall be concurrent with the term of Council. The term of appointment of the Committee members shall be December 1 of the regular election year to November 14 of the next regular election year, including any by-elections, or until such time as the applicable Committee has disposed of any remaining matters in accordance with the *Act*.

5. Duration

1. The Committee shall be established before October 1st in an election year.
2. The establishment of the Committee and terms of reference shall continue as set out herein from Council term to Council term unless determined otherwise by Council. However, the appointment of the members to the Committee shall be approved by each Council or delegated authority prior to October 1st in each election year.

6. Mandate

1. The mandate of the Committee is to hear and determine all applications filed in accordance with Sections 88.33 to 88.36 of the *Act* pursuant to the procedures established by the Clerks under the *Act*.
2. The powers and functions of the Committee as set out in Sections 88.33 to 88.36 of the *Act* include:
 - (a) within 30 days of receipt of a compliance audit application from an elector, review and decide whether it should be granted or rejected;
 - (b) if the application is granted, appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the election campaign finances;
 - (c) receive the auditor's report;
 - (d) within 30 days of receipt of the auditor's report, consider the report and if the report concludes the candidate or registered third party appears to have contravened a provision of the *Act* relating to election campaign finances, decide whether legal proceedings against the candidate or

registered third party for the apparent contravention shall be commenced, and

- (e) within 30 days after receipt of a report from any participating municipality's Clerk of any apparent over-contributions to candidates or registered third parties, the Committee shall consider the Clerk's report and decide whether legal proceedings against the contributor should be commenced.

7. Composition

1. The Committee shall be composed of a minimum of three (3) and a maximum of seven (7) members with membership drawn from the following stakeholder groups:
 - (a) accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
 - (b) 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 finance rules of the Act.
2. The Committee shall not include,
 - (a) employees or officers of the Joint Participants;
 - (b) members of the Council or Board of the Joint Participants;
 - (c) any persons who are candidates in the election for which the Committee is established;
 - (d) any person who is or intends to volunteer or seek employment to assist any candidate or registered third party in the election for which the Committee is established, or
 - (e) any person who is a registered third party in any local area municipality.
3. When an application has been filed under Section 88.33 of the *Act*, only three (3) of the seven (7) members of the Committee shall comprise the Committee for the purposes of reviewing and considering the application.
4. The Clerk of the responding municipality shall determine the selection of the three (3) sitting members of the Committee from the pool of members based on availability.

8. Member Selection and Appointment

1. At a minimum, the recruitment of committee members shall be advertised in a local newspaper having general circulation and on the websites of the Joint Participants. Other recruitment measures may be initiated by the Clerks.

2. All persons interested in serving on the Committee shall complete an application form prescribed by the Clerks setting out their qualifications and experience.
3. A Nomination Committee consisting of a majority of the Clerks or designates, shall review the applications and submit a joint short list of candidates to the Councils/Boards, or Clerk as the delegated authority, for appointment approval.
4. In the event a vacancy occurs during the term, the municipality may rely on the remaining members to compose a Committee of three (3) members.

9. Selection Criteria

1. Without limiting the foregoing, members shall be selected on the basis of the following:
 - (a) demonstrated knowledge and understanding of municipal election campaign finance rules;
 - (b) proven analytical and decision-making skills;
 - (c) experience working on a committee, administrative tribunal, task force or similar setting;
 - (d) availability and willingness to attend meetings;
 - (e) excellent oral and written communication skills.

10. Chair of Committee

1. The Committee members shall select a Chair from amongst its three (3) sitting members at its first meeting.

11. Secretary to Committee

1. The Clerk of the responding municipality shall act as Secretary to the Committee.

12. Compensation

1. Members of the Committee shall receive a retention honorarium of \$300.00 including mileage, for attendance at a training session the costs of which shall be shared equally amongst the Joint Participants.
2. Members shall receive an honorarium of \$200.00 per meeting, plus mileage, at the rate of the responding municipality.

13. Costs and Funding

1. The responding municipality shall fund and pay all costs associated with the Committee, including the retention of an auditor and any costs incurred as a result of a decision of the Committee being challenged to the Ontario Superior Court of Justice.

2. The Joint Participants shall equally share in the costs associated with advertising and training.

14. Auditor

1. The Area Clerks shall issue a joint RFP for auditor services and the Committee shall appoint an auditor.

15. Meetings

1. The Committee shall conduct its meetings in public but may deliberate in private.
2. The responding municipality's website shall be used to communicate meeting notices, agendas, minutes and decisions.
3. The Committee shall conduct its meetings in accordance with the responding municipality's Council Rules of Procedure By-law and the *Statutory Powers Procedures Act*, with modifications as deemed necessary.

16. Conflicts

1. Committee members shall comply with the *Municipal Conflict of Interest Act* and shall disclose a pecuniary interest to the Secretary in advance of any meeting, where possible or absent him/herself from meetings for the duration of the consideration of the application, discussion and voting with respect to the matter.
2. In the event a member discloses a pecuniary interest to the application in advance of the meeting, the Clerk of the responding municipality shall select another member to replace him/her on the Committee.
3. To avoid possible conflict of interest, an auditor or accountant appointed to the Committee must agree, in writing, not to undertake the audits or preparation of the financial statements of any candidate or registered third party seeking election to the Councils/Boards. Failure to adhere to this requirement shall result in the individual being removed from the Committee.
4. All Committee members shall agree, in writing, they will not work or volunteer for, or contribute to, any candidate or registered third party in any capacity in an election to the Councils/Boards. If upon being made aware that a member has participated or contributed to a campaign or registered third party, the Clerks or designates, by majority vote, shall remove the member from the roster or recommend to the Councils/Boards, or the delegated authority, to rescind the appointment to the Committee.

17. Practices and Procedures

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