

Terms of Reference for the Compliance Audit Committee

Name:

The committee shall be known as the Compliance Audit Committee (the “Committee”).

Purpose:

The purpose of the Committee is to review applications from electors for compliance audits and decide whether or not to proceed with the process, based on the requirements of the *Municipal Elections Act, 1996*.

Mandate:

The powers and functions of the Committee are set out in subsections 81(3), (4), (7) (10) and (11) of the *Municipal Elections Act, 1996*. The Committee will be required to:

- (a) consider a compliance audit application received by and elector and decide whether it should be granted or rejected;
- (b) if the application is granted, appoint an auditor;
- (c) receive the auditor’s report;
- (d) consider the auditor’s report and decide whether legal proceedings should be commenced; and
- (e) recover the costs of conducting the compliance audit from the applicant if there were no apparent contraventions and if there appears to be no reasonable grounds for having made the application.

Delegated Authority:

The Committee’s authority arises from the provisions of the *Municipal Elections Act, 1996*. It has no additional delegated authority.

Committee Composition:

The membership of the Committee will be comprised of five individuals appointed by Council, one to represent each of the five wards within the Municipality.

Preferred candidates will have strong knowledge of accounting or auditing and with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Members of Council, individuals nominated for office in the 2010 municipal election, and members of the Municipality’s staff are not eligible for appointment to the Committee.

Appointment:

All members of the Committee will be appointed by Council.

Members shall abide by the rules outlined within the *Municipal Conflict of Interest Act* and shall disclose the pecuniary interest to the Chief Administrative Officer/Clerk and absent himself or herself from meetings for the duration of the discussion and voting (if any) with respect to the matter.

To avoid a conflict of interest, any auditor or accountant appointed to the Committee must not have undertaken an audit or prepared the financial statements for any of the candidates involved in the 2006 municipal election or 2007 by-election for the Municipality of Arran-Elderslie. Further, any such person will refrain from undertaking an audit or preparing the financial statements for any of the candidates involved in the 2010 municipal elections for the Municipality of Arran-Elderslie.

Term of Office:

The Committee must be established prior to October 1, 2010 and will complete its work after dealing with all compliance audit applications received from the 2010 general municipal election, however it will remain appointed for the term of Council.

Administration of the Committee:

The Committee will select a Chair from amongst its members at its first meeting.

The Committee will conduct its meetings in public, subject to the need to meet in closed session for a purpose authorized by section 239 of the *Municipal Act, 2001*. Minutes from the meetings of the Committee will be provided to the Committee and forwarded to Council for its information.

Meetings of the Committee shall be governed by the provisions of Council's procedural by-law so far as they are applicable.

Members of the Committee will be paid a *per diem* of \$40.00 per day or part thereof that the Committee is in session, to be funded from the Election Reserve. The Committee will make every effort to be expedient in its deliberations.

Quorum:

Quorum shall be a majority of the members of the Committee.

Meeting Schedule:

The first meeting of the Committee will be called by the Chief Administrative Officer/Clerk upon receipt of an application to conduct a compliance audit. The date and time of the meeting will be determined by the Chief Administrative Officer/Clerk and communicated directly to the Committee members.

The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received. The Committee may also meet as necessary to plan and organize its work.

Committee members are expected to attend all scheduled meetings.

Staff Resources:

The Chief Administrative Officer/Clerk (or her designate) will provide administrative support to the Committee.

Legal advice provided by staff through the Municipal Solicitor will be confined to generic issues necessary to support the workings of the Committee. The Committee may appoint outside counsel for the purpose of advice, as necessary, on individual applications or prosecutions.

Miscellaneous:

These Terms of Reference for the Compliance Audit Committee are established by Council under the auspices of the *Municipal Elections Act, 1996*, and may only be amended by Council.

Appendix A – Extract from Municipal Elections Act, 1996

Compliance audit

Application

81. (1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Requirements

(2) An application for a compliance audit shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office; and it shall be in writing and shall set out the reasons for the elector's belief. 2009, c. 33, Sched. 21, s. 8 (44).

Deadline

- (3)** The application must be made within 90 days after the latest of,
- (a) the filing date under section 78;
 - (b) the candidate's supplementary filing date, if any, under section 78;
 - (c) the filing date for the final financial statement under section 79.1; or
 - (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires. 2009, c. 33, Sched. 21, s. 8 (44).

Application to be forwarded to committee

(4) Within 10 days after receiving the application, the clerk of the municipality or the secretary of the local board, as the case may be, shall forward the application to the compliance audit committee established under section 81.1 and provide a copy of the application to the council or local board. 2009, c. 33, Sched. 21, s. 8 (44).

Decision

(5) Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected. 2009, c. 33, Sched. 21, s. 8 (44).

Appeal

(6) The decision of the committee may be appealed to the Ontario Court of Justice within 15 days after the decision is made and the court may make any decision the committee could have made. 2009, c. 33, Sched. 21, s. 8 (44).

Appointment of auditor

(7) If the committee decides under subsection (5) to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Same

(8) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (7). 2009, c. 33, Sched. 21, s. 8 (44).

Duty of auditor

(9) 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 this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate. 2009, c. 33, Sched. 21, s. 8 (44).

Who receives report

(10) The auditor shall submit the report to,

- (a) the candidate;
- (b) the council or local board, as the case may be;
- (c) the clerk with whom the candidate filed his or her nomination;
- (d) the secretary of the local board, if applicable; and
- (e) the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Report to be forwarded to committee

(11) Within 10 days after receiving the report, the clerk of the municipality or the secretary of the local board shall forward the report to the compliance audit committee. 2009, c. 33, Sched. 21, s. 8 (44).

Powers of auditor

(12) For the purpose of the audit, the auditor,

- (a) is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and
- (b) has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the audit as if it were an inquiry under that Act. 2009, c. 33, Sched. 21, s. 8 (44).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

(b) has the powers set out in section 34 of the *Public Inquiries Act, 2009* and section 34 applies to the audit.

See: 2009, c. 33, Sched. 21, ss. 8 (45), 13 (2).

Costs

(13) The municipality or local board shall pay the auditor's costs of performing the audit. 2009, c. 33, Sched. 21, s. 8 (44).

Power of committee

(14) The committee shall consider the report within 30 days after receiving it and may,

- (a) if the report concludes that the candidate appears to have contravened a provision of this Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention;
- (b) if the report concludes that the candidate does not appear to have contravened a provision of this Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application. 2009, c. 33, Sched. 21, s. 8 (44).

Recovery of costs

(15) 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 or local board is entitled to recover the auditor's costs from the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Immunity

(16) No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (7) for any act done in good faith in the execution or intended execution of the audit or for any alleged neglect or default in its execution in good faith. 2009, c. 33, Sched. 21, s. 8 (44).

Saving provision

(17) This section does not prevent a person from laying a charge or taking any other legal action, at any time, with respect to an alleged contravention of a provision of this Act relating to election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Compliance audit committee

81.1 (1) A council or local board shall, before October 1 of an election year, establish a committee for the purposes of section 81. 2009, c. 33, Sched. 21, s. 8 (44).

Composition

(2) The committee shall be composed of not fewer than three and not more than seven members and shall not include,

- (a) employees or officers of the municipality or local board;
- (b) members of the council or local board; or
- (c) any persons who are candidates in the election for which the committee is established. 2009, c. 33, Sched. 21, s. 8 (44).

Term of office

(3) The term of office of the committee is the same as the term of office of the council or local board that takes office following the next regular election, and the term of office of the members of the committee is the same as the term of the committee to which they have been appointed. 2009, c. 33, Sched. 21, s. 8 (44).

Role of clerk or secretary

(4) The clerk of the municipality or the secretary of the local board, as the case may be, 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. 2009, c. 33, Sched. 21, s. 8 (44).

Costs

(5) The council or local board, as the case may be, shall pay all costs in relation to the committee's operation and activities. 2009, c. 33, Sched. 21, s. 8 (44).