



THE MUNICIPALITY OF CENTRAL ELGIN

REPORT TO COUNCIL

REPORT NO. CAO.20.22
TO Mayor & Members of Council
FROM Paul Shipway, CAO|Clerk
SUBJECT Joint Compliance Audit Committee
DATE June 13, 2022

RECOMMENDATION

THAT Report CAO.20.22 re Joint Compliance Audit Committee be received for information;

AND THAT staff be directed to bring forward a Joint Compliance Audit Committee By-law for the 2022 Municipal Election, in accordance with the Municipal Elections Act, 1996, as amended, for Council consideration.

REPORT

Section 88.37 of the Municipal Elections Act, 1996, as amended requires each municipal Council to establish a Compliance Audit Committee before October 1st in an election year to deal with matters regarding election campaign finances and contributions.

Historically, municipalities within Elgin County have established an Elgin Election Joint Compliance Audit Committee to deal with matters provided for in Sections 88.33, 88.34, 88.35 and 88.36 of the Municipal Elections Act, 1996.

Establishment of a joint committee offers numerous efficiencies in terms of committee member recruitment, review of the committee terms of reference and notice obligations, while remaining compliant with relevant provisions of the Municipal Elections Act, 1996.

The draft Elgin Election Joint Compliance Audit Committee Terms of Reference, attached hereto as Appendix 'A', provides for the Committee Term, Meeting Overview, Mandate, Composition, Appointment Process, Compensation, Role of Staff, Application Process, Roles and Responsibilities and Appeal overview.

A handwritten signature in black ink, appearing to read "P. Shipway", is positioned above a horizontal line.

Paul Shipway
CAO|Clerk

BY-LAW NO. XXXX

BEING A BY-LAW TO ESTABLISH AN ELECTION JOINT COMPLIANCE AUDIT COMMITTEE FOR THE 2022 MUNICIPAL ELECTION IN ACCORDANCE WITH THE MUNICIPAL ELECTIONS ACT, 1996, AS AMENDED.

WHEREAS subsection 5(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 88.37 of the Municipal Elections Act, 1996, as amended requires the Council to establish a Compliance Audit Committee before October 1st in an election year to deal with matters regarding election campaign finances and contributions;

AND WHEREAS the Council of the Corporation of the Municipality of Central Elgin wishes to establish a Compliance Audit Committee to deal with matters regarding election campaign finances and contributions;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN ENACTS AS FOLLOWS:

1. **THAT** a committee, to be known as the Elgin Election Joint Compliance Audit Committee, is hereby established to deal with the matters provided for in Sections 88.33, 88.34, 88.35 and 88.36 of the Municipal Elections Act, 1996, as amended.
2. **THAT** the business of the Elgin Election Joint Compliance Audit Committee for the 2022 Municipal Election be conducted in accordance with the Terms of Reference set out in Appendix "A" attached hereto and forming a part of this By-law.
3. **THAT** this By-law shall come into force and take effect on the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME and finally passed this **XX** day of June, 2022.

Sally Martyn
Mayor

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 member municipality in Elgin County, or their 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 member 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 member 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 November 15, 2022 to November 14, 2026, 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. Meetings will be held at the location determined by the Clerk of the host municipality.

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.

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 2022 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 member 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 \$125.00 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;
 - 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; 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 prescribed 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;
- 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; 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; and
- v. give notice of the committee's decision, 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.

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; and
- 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' 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;
- iii. 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;
- iv. 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;
- v. 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; and

- vi. give notice of the committee's decision, 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.

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; and
- 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.