

Compliance Audit Committee Terms of Reference

1. Mandate of Committee

The name of the committee will be the Chatham-Kent Election Compliance Audit Committee.

The powers and functions of the Committee are set out in subsection 88 of the *Municipal Elections Act, 1996*. The Committee will be required to:

- a) Grant or reject a compliance audit application received from an elector;
- b) Appoint an auditor to conduct the audit where the application is granted and receive the results;
- c) Commence legal proceedings against the candidate for any apparent contravention within 30 days of receiving the auditor's report;
- d) Commence legal proceedings against a registered third party for any apparent contravention of contributions;

With the passing of Bill 181, there have been a significant number of changes to the Compliance Audit provisions of the MEA. Some of the key changes include:

- Increased responsibility for the Clerk to review financial statements and report contraventions to the Compliance Audit Committee.
- Increased responsibility for the Compliance Audit Committee to review reports from the clerk with respect to registered third party contraventions;
- Notification to Council or local board has been removed.

2. Establishment of Compliance Audit Committee

All municipal councils and local boards must appoint a compliance audit committee. This committee must be appointed before October 1 of an election year and be composed of three (3) to seven (7) members, with 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; and
- d) Other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*

Under the MEA, the following individuals are ineligible for application to the Committee.

- a) Employees or officers of the municipality or local board
- b) Members of the council or local board
- c) Any candidates/registered third party in the election

3. Term of Membership

The term of office for the committee is the same as the term of office of the council. The committee will be in place for any by-elections that occur during the term.

4. Role of Compliance Audit Committee

The role of the Compliance Audit Committee is to receive and make decisions on applications for compliance audits of candidates' and registered third party election campaign finances during a Council's term.

The Committee is responsible for reviewing reports submitted by the Clerk with respect to any contributor who appears to have contravened any of the contribution limits to a candidates' election campaign or to a registered third party election campaign. The powers and functions are in accordance of the MEA,

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 MEA relating to election campaign finances, may apply for a compliance audit of the candidate's/registered third party campaign finances.

An application for a compliance audit by an elector is submitted to the Clerk in writing, and outlining the reasons for the elector's belief. The CAC receives separate reports from the Clerk with respect to apparent contraventions of contribution limits to candidates' and registered third parties.

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

The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received.

All meetings held at the Civic Centre, 315 King St. W. Chatham. The Municipalities web site will be used to communicate the meeting notices and agendas.

5. Committee Selection

The selection process will be based upon clearly understood and equitable criteria and members will be selected on the basis of the following:

- Demonstrated knowledge and understanding of municipal election campaign financial rules
- Proven analytical and decision-making skills
- Experience working on a committee, task force or similar setting
- Availability and willingness to attend meetings
- Excellent oral and written communication skills

6. Staff Support

Staff from the Clerk's office will provide administrative practices and procedures including:

- 1) a process to distribute any applications to the committee members;
- 2) form and process to distribute reports from the Clerk to the committee members;
- 3) establishment of dates and times for the meetings of the committee;
- 4) provision of notice to the parties and the public of the meetings;
- 5) administrative support to the committee;
- 6) circulate the decisions of the committee for signature;
- 7) distribution process of the committee decisions and;
- 8) process for the appointment of an auditor.

It is advisable to have a process in place with respect to the appointment of an auditor for the Compliance Audit Committee. Consideration should be given to contracting with an auditor who:

- Is licensed under the *Public Accounting Act, 2004*
- Has experience in municipal election finances and/or compliance audits;
- Has the ability (time and skills resources) to complete the audit;
- Would be willing to provide a Letter of Independence to confirm there would be no conflict with the undertaking.

7. Application for Audit by an Elector

A compliance audit can be requested by an elector who:

- a) Is entitled to vote in an election; and
- b) Believes on reasonable grounds that a candidate has contravened the MEA relating to election campaign finances;

By filing a written application with the Clerk of the municipality or the secretary of the local board, as applicable, setting out the reasons for the elector's belief.

The application must be made within 90 days after the latest of the following:

- The file date under s.88.30
- The date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date under s.88.30
- The candidate's supplementary filing date, if any;
- The date on which the candidate's extension, if any.

Within 10 days of receiving the application, the Clerk of the municipality or secretary of the local board shall forward the application to the Compliance Audit Committee. There is no requirement with the MEA to provide a copy to the council or local board.

The CAC is to consider the application within 30 days of receipt and decide whether it is granted or rejected. The CAC meeting is to be open to the public and reasonable notice of the meeting given to the candidate, applicant and the public.

The decision to grant or reject and a brief written reason for the decision is to be given to the candidate, the Clerk where the candidate filed his or her nomination, the secretary of the local board and the applicant.

The decision of the CAC 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.

If the CAC decides to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

8. Reports to Council

When a function of the Compliance Audit is undertaken, an information report will be forwarded to Council.

Section 88.33 of the *Municipal Elections Act, 1996*

Compliance audit

- (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, even if the candidate has not filed a financial statement under section 88.25. 2016, c. 15, s. 63.

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. 2016, c. 15, s. 63.

Deadline for applications

- (3) The application must be made within 90 days after the latest of the following dates:
 1. The filing date under section 88.30.
 2. The date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30.
 3. The candidate's supplementary filing date, if any, under section 88.30.
 4. The date on which the candidate's extension, if any, under subsection 88.23 (6) expires. 2016, c. 15, s. 63.

Compliance Audit 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. 2016, c. 15, s. 63

Notice of meetings

- (5) Reasonable notice of the meetings of the committee under this section shall be given to the candidate, the applicant and the public. 2017, c. 20, Sched. 10, s. 1.

Open Meeting

- (5.1) The meetings of the committee under this section shall be open to the public, but the committee may deliberate in private. 2017, c. 20, Sched. 10, s. 1.
- (6) Subsection (5.1) applies despite sections 207 and 208.1 of the *Education Act*. 2017, c. 20, Sched. 10, s. 1.

Decision of Committee

- (7) Within 30 days after the committee has received the application, the committee shall consider the application and decide whether it should be granted or rejected. 2016, c. 15, s. 63.
- (8) The decision of the committee to grant or reject the application, and brief written reasons for the decision, shall be given 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. 2016, c. 15, s. 63.

Appeal

- (9) The decision of the committee under subsection (7) 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. 2016, c. 15, s. 63.

Appointment of Auditor

- (10) If the committee decides under subsection (7) to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. 2016, c. 15, s. 63.
- (11) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (10). 2016, c. 15, s. 63.

Duty of Auditor

- (12) 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. 2016, c. 15, s. 63.

Who receives report

- (13) The auditor shall submit the report 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. 2016, c. 15, s. 63.

Report to be forwarded to committee

- (14) 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. 2016, c. 15, s. 63.

Powers of auditor

- (15) 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 set out in section 33 of the *Public Inquiries Act, 2009* and section 33 applies to the audit. 2016, c. 15, s. 63.

Costs

- (16) The municipality or local board shall pay the auditor's costs of performing the audit. 2016, c. 15, s. 63.

Decision

- (17) 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. 2016, c. 15, s. 63.

Notice of decision, reasons

(18) The decision of the committee under subsection (17), and brief written reasons for the decision, shall be given 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. 2016, c. 15, s. 63.

Immunity

(19) No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (10) 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. 2016, c. 15, s. 63.

Saving provision

(20) 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. 2016, c. 15, s. 63.