

Date: 2022-03-16

Subject: **Establishing the 2022-2026 Compliance Audit Committee,**

Contact: **Shawnica Hans, Program Manager, Elections, City Clerk's Office**

Report Number: Legislative Services-2022-311

Recommendations:

1. That the report titled: **Establishing the 2022-2026 Compliance Audit Committee**, to the Committee of Council Meeting of April 13, 2022, be received; and
2. That a by-law be passed to establish a Compliance Audit Committee for the 2022-2026 term of Council, comprised of a minimum of three and up to seven citizens to be appointed by Council; and
3. That a Selection Committee, to include the City Treasurer, the Director of Internal Audit and the City Clerk, or their delegates, be established to review applications, conduct the interviews and recommend membership to Council for appointment; and
4. That the Terms of Reference for the Compliance Audit Committee as detailed in Appendix A to this report, be approved.

Overview:

- **An eligible elector in a municipal election may apply for a compliance audit if the elector believes, on reasonable grounds, that a candidate or third party advertiser is in contravention of the *Municipal Elections Act (MEA)* relating to campaign finances.**
- **Municipalities are required, prior to October 1 in a regular election year, to establish a Compliance Audit Committee to consider requests for compliance audits. A similar committee was established in 2018 for the current term of Council.**
- **This report recommends the establishment of this Committee, to comply with the legislation for the 2022-2026 term of Council.**

Background:

Section 88.33 (1) of the Municipal Elections Act, 1996, as amended (MEA), provides that:

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.

Section 88.35 (1) of the MEA provides that:

An elector who is entitled to vote in an election in a municipality and 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 this 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 MEA requires municipalities to establish a Compliance Audit Committee prior to October 1 in the year of a regular election.

The MEA provides that the Committee be composed of a minimum of three to a maximum of seven members, and prohibits the appointment of employees or officers of the municipality or school boards, registered third parties in the municipality or candidates for the election for which the Committee is established.

The term of office for the Committee is concurrent with that of the term of Council (i.e. November 15, 2022 to November 14, 2026).

In 2018, a similar Committee was established by Council resolution and by-law, as required by legislation, but no requests were received for compliance audits of candidate campaign financial statements.

As of the 2018 election, the Clerk is now required to review candidate and third party advertiser financial statements and report any over-contributions to the Compliance Audit Committee. During the current term of Council, the Committee did consider various contributor over-contributions to candidate campaigns.

Current Situation:

The following recommends the Committee mandate, member qualifications and appointment process, and discusses possible School Board use of the City of Brampton Committee.

Committee Mandate

The Compliance Audit Committee mandate is established by the MEA (Sections 88.33 to 88.36), as follows:

For a compliance audit request by an elector:

- a) The Members shall consider applications for compliance audits of candidates' or registered third parties' campaign finances and determine whether or not audits are required. The decision of the Committee, as well as brief written reasons for the decision shall be provided to the candidate or third party advertiser, the Clerk, the secretary of the school board (if applicable), the applicant and the public.

If the Committee determines an audit is required it shall appoint an Auditor licensed under the Public Accounting Act, 2004 to conduct the audit.

- b) If the Auditor concludes a candidate or registered third party appears to be in contravention of the MEA, the Committee may decide whether or not to initiate legal proceedings against the candidate or registered third party.

It is recommended that external legal counsel be provided to the Committee, similar to the model used for the Brampton Appeal Tribunal. The legal counsel will be responsible for providing advice and support to the Committee.

- c) If the Auditor concludes that the candidate or registered third party does not appear to be in contravention of the Act relating to election campaign finances, the Committee may make a decision whether there were reasonable grounds for the application.
- d) If the Committee determines there were no reasonable grounds for the application based on the Auditor's report, the Council or School Board, as the case may be, has the opportunity to recover the Auditor's costs from the applicant.

In relation to the Clerk's report on over-contributions:

- a) The Members shall consider the report and decide whether to commence a legal proceeding against a contributor for an apparent contravention.
- b) The decision of the Committee and brief written reasons for the decision shall be provided to the contributor and the Clerk.

The recommended Terms of Reference for the Committee (attached as Appendix A) incorporate the mandate as established by the MEA.

The MEA requires that the City Clerk shall establish practices and procedures for the Committee. Draft procedures are attached for information (Appendix B) and will be confirmed by the Clerk once the Committee is established. The Committee will have the ability to amend the procedures as it sees fit.

Committee Member Qualifications

In addition to the normal application requirements for citizen applicants to Council Committees, the application process will seek applicants with a background and experience in accounting, auditing, academia and/or law, and/or have knowledge of campaign financing rules of the MEA.

It is recommended that the appointed Committee members be paid a honorarium of \$200 per meeting.

Interview and Appointment Process

It is recommended that a Selection Committee comprised of the City Treasurer, Director, Internal Audit, and City Clerk, or their delegates, review applications, conduct the interviews and recommend appointments for the Compliance Audit Committee. The interview process will mirror that of the Citizen Appointments Procedure. The Selection Committee recommendations will be forwarded to Council for appointment.

Compliance Audit Committee – School Boards

The MEA also requires School Boards to establish Compliance Audit Committees.

The Peel District School Board, by Resolution adopted at its March 30, 2022 meeting, requested the City of Brampton Compliance Audit Committee, once established, to serve as the Board's Committee within the Board's jurisdiction in the City of Brampton:

That, the Peel District School Board appoint the same members as the Compliance Audit Committees established by the municipalities within the Peel District School Board's jurisdiction;

And, that the Peel District School Board shall be responsible to pay the expenses of the Compliance Audit Committee for any compliance audit required relating to a school board trustee candidate campaign expenses;

And, that this decision be communicated to the Clerks for the City of Brampton, the Town of Caledon, and the City of Mississauga.

The Dufferin-Peel Catholic District School Board has similarly requested the City's Committee membership be appointed for the purpose of the Board's committee.

The Committee terms of reference accommodate the use of the City's Committee members for the respective Board's purposes, and the membership recruitment process will confirm appointments can also serve as members for the Board committees.

Corporate Implications:

Financial Implications:

The costs to operate and support the Compliance Audit Committee depend on the number of audit requests received and followed through. Committee expenses may include:

- administrative or operational costs,
- the cost of the audit (i.e. the services of an Auditor),
- the costs for external legal counsel to the Committee,
- the costs of commencing a legal proceeding if the Committee decides it is appropriate to do so, and
- legal costs associated with an appeal of a decision.

Since Brampton has not had any requests for Compliance Audits for at least the last three elections, there is no history to determine budget implications, and a budget has not been allocated for this function. For this term, funding will be provided from the Election Reserve or the respective School Board for any Trustee candidate compliance audits. Similarly, should Council determine that costs should be recovered for audits where no reasonable grounds exist (as determined by the audit and the decision of the Committee), any recovered costs should be deposited into the Election Reserve. For this new Committee, it is estimated that 2022/2023 meeting support costs for member orientation, and probably two meetings, would approximate \$4,200.

During the current term, costs have been incurred for external legal counsel to support a Committee decision to commence a legal proceeding against a contributor for a contravention from an over-contribution to a campaign. To-date, this term of Council, expenditures to provide external counsel support to the Compliance Audit Committee and undertake a legal proceeding total approximately \$24,000.

Any additional costs, and future external counsel expenses, for the new Compliance Audit Committee, will be assumed from within the City Clerk's Office budget and/or election reserve account.

Other Implications: *nil*

Term of Council Priorities:

This report achieves the priority of a Well-Run City by facilitating a citizen-based oversight committee to enable elector requests for compliance audits of election candidate and third party advertiser financial statements and activities in compliance with prevailing legislation.

Conclusion:

The MEA requires that a Compliance Audit Committee be established by October 1 in an election year. The Committee selection process will commence immediately. The Selection Committee recommendations for appointment will be presented to Council as soon as possible.

Authored by:

Reviewed by:

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Approved by:

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Attachments:

Appendix A Compliance Audit Committee – Terms of Reference
Appendix B Compliance Audit Committee – Procedures

Appendix A

Compliance Audit Committee – Terms of Reference

A. Background

Section 88.33 of the *Municipal Elections Act, 1996*, as amended, states:

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.

Section 88.35 of the *Act* states:

An elector who is entitled to vote in an election in a municipality and 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 this 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.

Sections 88.34 and 88.36 of the *Act* require the Clerk to review the contributions reported on the financial statements of candidates and registered third party advertisers to determine whether any contributor appears to have exceeded any of the contribution limits.

As soon as possible, 30 days after the filing date, the Clerk is required to prepare a report of any apparent contraventions to the contribution limits and forward the report to the Compliance Audit Committee.

Under the *Act*, municipalities are required to establish a Compliance Audit Committee prior to October 1 in the year of a regular election.

B. Definitions

Act	<i>Municipal Elections Act, 1996, as amended</i>
Auditor	A person licensed under the <i>Public Accounting Act, 2004</i>
Committee	Compliance Audit Committee
School Board	A publicly-funded school board operating within the City of Brampton

C. Composition

The Committee shall be comprised of minimum of three and up to seven members of the public. A quorum of a majority of the Members will be required to proceed with any meeting.

The following are not eligible for appointment to the Committee:

- Employees of the City of Brampton
- Employees of the Region of Peel
- Employees of the School Boards
- Members of Brampton City Council
- School Board Trustees
- Candidates and registered third party advertisers for the municipal election campaign for which the compliance audit application is filed

Preference shall be given to applicants with a background in accounting, auditing, academia and/or law and/or who have knowledge of campaign financing rules of the *Act*.

D. Term

The Term of the appointment for Committee members is concurrent with the Term of Council.

E. Mandate

1. The Committee shall operate in accordance with the *Act*, *Municipal Freedom of Information and Protection of Privacy Act* and the City of Brampton Procedure Bylaw.
2. The Committee shall review the Clerk's report on apparent contraventions to the contribution limits and decide on whether to commence a legal proceeding.
3. The Committee shall review applications submitted by eligible electors for a compliance audit of a candidate's or registered third party's campaign finances and determine whether or not an audit is warranted.
4. If the Committee determines an audit is necessary it shall appoint an Auditor licensed under the *Public Accounting Act, 2004* to conduct the audit (See Section F – Appointment of an Auditor)
5. If the Auditor concludes a candidate or registered third party appears to be in contravention of the *Act*, the Committee shall decide whether or not to initiate legal proceedings against the candidate or registered third party.
6. If the Auditor concludes that the candidate or registered third party does not appear to be in contravention of the *Act* relating to election campaign finances, the Committee shall make a decision on whether there were reasonable grounds for the application.
7. If the Committee determines there are no reasonable grounds, City Council or the School Board, as the case may be, is entitled to recover the Auditor's costs from the applicant.

F. Appointment of an Auditor

If Committee decides an audit is required, it will select from a roster of auditors to be provided to the Committee by the City Clerk. The City Clerk, in consultation with the Corporate Services Department and Director, Internal Audit, will establish criteria for the appointment of an Auditor.

G. Duties and Power of the Auditor

1. The Auditor shall promptly conduct an audit of the candidate's or registered third party's election campaign finances to determine whether he or she has complied with the provisions of the *Act* relating to election campaign finances.
2. The Auditor shall prepare a report outlining his/her findings (i.e. any apparent contravention of the *Act* by the candidate or registered third party).
3. For the purpose of the audit, the Auditor:
 - a) will be provided 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 the *Act*.

H. Meeting Support

The City Clerk's Office will provide administrative support to the Committee.

The City Clerk's Office will organize and deliver an orientation for the Committee, or any new member, prior to hearing any application for a compliance audit.

I. Committee Remuneration

Each member who participates in a meeting to consider applications for compliance audit shall be paid an honorarium of \$200 per meeting.

J. Meeting Costs

The City of Brampton or School Board, as the case may be, is responsible for the following costs, or proportionate share of costs:

- a) The Committee's operation and activities
- b) The cost of the Auditor for an audit
- c) The cost of external legal counsel for the Committee

Appendix B

Compliance Audit Committee – Procedures

A. Meeting Procedures

The Compliance Audit Committee will generally follow procedures in accordance with the *Municipal Elections Act, 1996*, as amended, (*the "Act"*) and the City of Brampton Procedure By-law but may vary these procedures or may establish other procedures as required.

The meetings of the Committee shall be open to the public, but the Committee may deliberate in private, in accordance the Act.

B. Clerk's Report on Apparent Contraventions to the Contribution Limits

1. As soon as possible, 30 days after the filing date for financial statements, the Clerk is required to prepare a report of any apparent contraventions to the contribution limits and forward the report to the Compliance Audit Committee.
2. The Clerk will schedule a meeting of the Committee to take place within 30 days of the Committee receiving the report. The procedures set out in Section E shall apply, with necessary modifications, regarding the consideration of the Clerk's report and representations by the Contributor, Candidate and/or Third Party Advertiser, as the case may be.
3. At the meeting, the Committee will decide whether to commence a legal proceeding against a contributor for an apparent contravention.
4. The decision of the Committee, along with brief written reasons for the decision will be given to the:
 - a) Contributor;
 - b) Clerk; and
 - c) Secretary of the local board, if applicable.

C. Filing of an Application for Compliance Audit

1. An application for a compliance audit must be filed by an elector, in writing, including reasons and any supporting documentation to the City Clerk's Office or School Board (unless authority is delegated to the City of Brampton), if the elector believes on reasonable grounds that a

candidate or registered third party advertiser is in contravention of the *Act* as it relates to campaign finances.

2. In accordance with the *Act*, the application must be filed with the City Clerk within 90 days after the latest of:
 - a) The date the candidate or registered third party files his or her financial statement under Sections 88.25 (1) and 88.29(1); or
 - b) The date the candidate or registered third party files his or her supplemental financial statement under Section 88.25 (4) and 88.29 (3); or
 - c) The filing date for the final financial statement under section 88.32 (5) (return of surplus for subsequent expenses); or
 - d) The date on which the candidate's or registered third party's extension granted by the Ontario Court of Justice, if any, under subsection 88.23 (6) and 88.27 (3) expires.

D. Scheduling a Compliance Audit Committee Meeting for review of an Application for Compliance Audit

1. Within 10 days after receiving the application the City Clerk shall:
 - a) Set the time and place for the Committee meeting, ensuring that it is within 30 days of the Committee receiving the application.
 - b) Circulate a copy of the application and meeting agenda to the:
 - i) Committee;
 - ii) Secretary of the local board, if applicable;
 - iii) Candidate or registered third party named on the application; and
 - iv) Elector who filed the application.

E. Committee Meeting – Review of Application for Compliance Audit

1. A quorum of a majority of the Members is required to proceed with the meeting.
2. At the first meeting, the Committee will appoint a Chair.
3. External Counsel will be available to the Committee during the meeting and after to provide advice as required.
4. Committee Members are subject to *Municipal Conflict of Interest Act* in regard to hearing of an application.

5. The applicant and candidate or registered third party or their representative will be given the opportunity to address the Committee for a maximum of 5 minutes each, unless the Committee decides otherwise. The applicant will be given the opportunity to speak first.
6. The Committee Members will have the opportunity to then ask questions of the applicant and candidate or registered third party.
7. Once the Committee has determined that no further questions or discussion with the applicant and candidate or registered third party is required, the Committee will decide whether or not to grant the application. If the Committee decides to grant the application, it shall appoint an Auditor to conduct a compliance audit of the candidate's or registered third party's election campaign finances.
8. The decision of the Committee, along with brief written reasons for the decision will be given to the:
 - a) Clerk;
 - b) Secretary of the local board, if applicable;
 - c) Candidate or registered third party named on the application;
 - d) Elector who filed the application; and
 - e) External Legal Counsel for the Committee.

F. Appeal Compliance Audit Committee's Decision

The decision of the Committee to require a compliance audit 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.

G. Auditor's Report

If an Auditor's report is requested, the Auditor will be provided access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate or registered third party and of the municipality or School Board, as the case may be, to assist in the conduct of the audit.

H. Committee Meeting – Review of Auditor's Report

1. The Auditor shall submit a copy of the report to the:
 - a) Candidate or registered third party named on the application;
 - b) City Clerk;
 - c) Secretary of the local board, if applicable; and
 - d) Elector who filed the application.
2. Within 10 days after receiving the Auditor's report, the City Clerk's Office shall:

- a) Set the time and place of the meeting within 30 days of the Committee receiving the report;
 - b) Circulate a copy of the report and meeting agenda to the Compliance Audit Committee;
3. External Counsel will be available to the Committee during the meeting and after to provide advice as required.
 4. Committee Members are subject to *Municipal Conflict of Interest Act* in regard to hearing of an application.
 5. The applicant and candidate or registered third party, or their representative, will be given the opportunity to address the Committee and ask questions of the auditor for a maximum of 5 minutes each, unless the Committee decides otherwise. The applicant will be given the opportunity to speak first.
 6. The Committee Members will have the opportunity to then ask questions of the Auditor, applicant and candidate or registered third party.
 7. The Committee shall make a finding and decision to reflect the following:
 - a) If the report concludes that the candidate or registered third party appears to have contravened provisions of the *Act* relating to election campaign finances, the Committee may decide whether or not to commence a legal proceeding against the candidate or registered third party for the contravention;

or

 - b) If the report concludes that the candidate or registered third party does not appear to have contravened provisions of the *Act* relating to election campaign finances, the Committee may determine whether there were reasonable grounds for the application.
 8. The decision of the Committee, along with brief written reasons for the decision will be given to the:
 - a) Clerk;
 - b) Secretary of the local board, if applicable;
 - c) Candidate or registered third party named on the application; and
 - d) Elector who filed the application.