



THE CORPORATION OF THE TOWN OF COBOURG

BY-LAW NUMBER 035-2018

A BY-LAW TO ESTABLISH A JOINT MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE FOR THE TOWN OF COBOURG AND NORTHUMBERLAND COUNTY PARTNER MUNICIPALITIES.

WHEREAS Section 88.37(2) of the *Municipal Elections Act, 1996*, as amended, requires a Council or a local board to establish a compliance audit committee before October 1, 2018 of an election year for the purposes of Section 88.33 to Section 88.37 of the Act; and

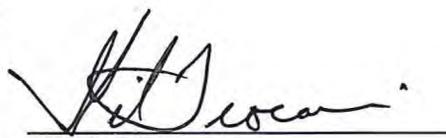
WHEREAS the corporation of the Town of Cobourg is committed to ensuring a consistent, open and transparent process for receiving and processing compliance audit applications; and

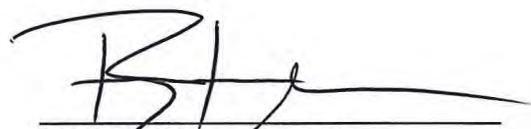
WHEREAS the Council of the Corporation of the Town of Cobourg deems necessary to pass a By-law to establish an Election Compliance Audit Committee regarding campaign finances;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF COBOURG ENACTS AS A BY-LAW AS FOLLOWS:

1. THAT the Joint Municipal Election Compliance Audit Committee be established, as per the Terms of Reference attached hereto as Schedule "A" and forming part of this By-Law.
2. THAT this By-law shall come into force and take effect on the date of its passing; and
3. THAT By-law No. 016-2014 shall expire and be considered repealed as of November 30, 2018 at the end term of Council.

READ and passed in Open Council this 23rd day of July, 2018.


MAYOR


MUNICIPAL CLERK

SCHEDULE "A"

BY-LAW NO. 035-2018

Terms of Reference for the Joint Municipal Election Compliance Audit Committee

Terms of Reference

1. Name

The name of the Committee is the "Joint Municipal Election Compliance Audit Committee."

2. Duration

The Committee shall be established before October 1, 2018 of an election year and the term of office shall be at the discretion of the Clerk. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received and required disposition.

3. Mandate

The powers and functions of the Committee are set out in *Municipal Elections Act, 1996* as follows:

- a) Review any applications of a compliance audit of any candidate who ran for election, if the application was received in accordance with the legislative requirement, even if the candidate has not filed a financial statement under Section 88.25 of the Municipal Elections Act.
- b) Review any applications of a compliance audit of a Registered Third Party for an election.
- c) Within 30 days of receipt of an application requesting a compliance audit, the Committee shall consider the compliance audit application and decide whether it should be granted or rejected.
- d) If the application is granted, the Committee shall appoint an auditor licensed under the Public Accounting Act, 2004, or other prescribed person, to conduct a compliance audit of the candidate's/Registered Third Party's election campaign finances.
- e) The Committee will review the auditor's report within 30 days and may, if the report concludes that the candidate/registered third party appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention.
- f) Review any Clerk's Report of over Contribution under Section 88.34 or 88.36 to decide whether to commence a legal proceeding against a contributor for an apparent contravention.

4. Membership

The Committee will be composed of five (5) members, with membership drawn from the following stakeholder groups appointed to represent each of the seven Northumberland county municipalities:

- 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*.

Composition shall not include:

- a) employees or officers of the municipality or local board;
- b) members of the council or local board; or
- c) any person who are candidates in the election for which the committee is established pursuant to clause 88.37 of the *Municipal Elections Act, 1996*.
- d) Any persons who are registered third parties in their participating Municipality in the election for which the Committee is established.

5. Membership Selection

Municipal Clerks from each of the seven participating Northumberland County Municipalities will solicit interest by general advertisement from the general public residing within the County of Northumberland geographical area. Information will also be placed on municipal web sites.

All applicants will be required to provide a letter of interest and a current resume outlining their qualifications, experience and work history. Selected candidates will be submitted to each of the joint council's individually for final approval for appointment by resolution of Council.

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

- a) demonstrated knowledge and understanding of municipal election campaign financing rules;
- b) proven analytical and decision-making skills;
- c) experience working on a committee, 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

To avoid possible conflicts of interest, any accountants appointed to the compliance audit committee are not permitted to audit or prepare the financial statement of any candidate running for office on Municipal Council; and any auditor or accountant appointed to the committee must agree in writing to not undertake the audits or preparation of the financial statements of any candidates seeking election to Council. *Failure to adhere to this requirement will result in the individual being removed from the committee.*

6. Chair

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

7. Staffing and Funding

Staff from the Clerk's Office of the host municipality requiring the compliance audit review will provide administrative support to the Committee.

Remuneration for the Committee members will be a \$400.00 retainer fee to be shared equally between the seven (7) participating Northumberland county municipalities (which includes compensation for review of any background materials) and \$75.00 per meeting plus mileage to be paid by the municipality requiring the services of the Compliance Audit Committee.

8. Meetings/Procedures

Meetings of the Committee shall be open to the public, but the committee may deliberate in private pursuant to section 88.33 (5.1). Each participating municipality will use their websites to communicate the meeting notices, agendas and minutes. Reasonable notice for meetings, as determined by the Municipal Clerk, will be given.

8.1 *Procedures and Applicable Time Frames*

8.1.1 Requirements

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.

8.1.2 Deadline

Pursuant to Section 88.33 (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.

8.1.3 Application to be forwarded to committee

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 and provide a copy of the application to the council or local board.

8.1.4 Decision

Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected.

8.1.5 Appeal

The decision of the 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.

8.1.6 Appointment of auditor (88.33 (10) (11)

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.

Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (11)

8.1.7 Duty of auditor

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 the Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate.

8.1.8 Who receives report

The auditor shall submit the report to:

- a) the candidate;
- b) the Clerk with whom the candidate filed his or her nomination;
- c) the secretary of the local board, if applicable;
- d) the applicant; and
- e) the Joint Municipal Election Compliance Audit Committee.

8.1.9 Report to be forwarded to committee

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 Joint Municipal Election Compliance Audit Committee.

8.1.10 Powers of auditor

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.

8.1.11 Costs

The municipality or local board shall pay the auditor's costs of performing the audit.

8.1.12 Power of committee

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 the Act relating to election campaign finances, Committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention;
- b) the decision of the Committee 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.

8.1.13 Immunity

No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (vi) 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.

8.1.14 Saving provision

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.

8.1.15 Role of Clerk or secretary

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

8.2 Registered Third Party

8.2.1 Review of contributions to registered third parties

The clerk shall review the contributions reported on the financial statements submitted by a registered third party under section 88.29 to determine whether any contributor appears to have exceeded any of the contribution limits under section 88.13.

8.2.2 Report by the clerk - requirements

As soon as possible following the day that is 30 days after the filing date or supplementary filing date, as the case may be, under section 88.30 for a registered third party, the clerk shall prepare a report identifying each contributor to the registered third party who appears to have contravened any of the contribution limits under section 88.13 and,

- (a) if the contributor's total contributions to a registered third party that is registered in the municipality appear to exceed the limit under section 88.13, the report shall set out the contributions made by that contributor to the registered third party in relation to third party advertisements; and
- (b) if the contributor's total contributions to two or more registered third parties that are registered in the municipality appear to exceed the limit under section 88.13, the report shall set out the contributions made by that contributor to all registered third parties in the municipality in relation to third party advertisements.

8.2.3 Clerks Report

The clerk shall prepare a separate report under subsection (2) in respect of each contributor who appears to have contravened any of the contribution limits under section 88.13.

8.2.4 Clerks Report to Compliance Audit Committee

The clerk shall forward each report prepared under subsection (2) to the compliance audit committee.

8.2.5 Decision of Compliance Audit Committee

Within 30 days after receiving a Clerk's report, the Joint Election Compliance Audit Committee shall consider it and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

8.2.6 Notice of meetings

Reasonable notice of the meetings of the committee under subsection (5) shall be given to the contributor, the registered third party and the public.

8.2.7 Meetings

The meetings of the committee under subsection (5) shall be open to the public, but the committee may deliberate in private.

8.2.8 Notice of decision, reasons

The decision of the committee and brief written reasons for the decision, shall be given to the contributor and to the clerk of the municipality.

8.2.9 Saving provision

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 contribution limits.

9. Expulsion of a Member

The Committee and/or the Clerk may recommend to Council the expulsion of a member for reasons as listed, but not limited to:

- a) the member being in contravention of the Municipal Act, the Municipal Freedom of Information and Protection of Privacy Act, the Municipal Council of Interest Act and the Municipal Elections Act;
- b) disruption of the work of the Committee or other legal issues that may arise.

10. Administration

Any responsibilities not clearly identified within the Terms of Reference shall be in accordance with Section 88.33, 88.34, 88.35, 88.36, and 88.37 of the MEA.

The Clerk has delegated authority to make administrative changes to these Terms of Reference that may be required from time to time due to legislative changes, or if, in the opinion of the Clerk, the amendments do not change the intent of the Terms of Reference.

11. Reports

The Committee will conduct the compliance audit in accordance with the provisions of the *Municipal Elections Act* (MEA) and the Clerk will act as the main contact between the Committee and Council and will report on Committee activity as required to the appropriate individuals and Council as prescribed by the MEA.

12. Conflict of Interest

Members shall be governed by the Municipal Conflict of Interest Act and shall disclose the pecuniary interest to the Clerk and remove themselves from the meetings for the duration of the discussion and voting with respect to that matter.

13. Errors or Omissions

The accidental omission to give notice of any meeting of the Committee to its members, or the non-receipt of any notice by any member, or any error in any notice that does not affect its substance, does not invalidate any resolution passed or any proceedings taken at the meeting.

14. Term of Office

Pursuant to section 88.37 (5) 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.