

JOINT 2022 ELECTION COMPLIANCE AUDIT COMMITTEE

TERMS OF REFERENCE

Township of Bonfield; Township of Chisholm; Municipality of Callander; Municipality of East Ferris; Municipality of Powassan and Township of Nipissing

February 2022



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The Municipal Elections Act, 1996 S.O. 1996, s. 88.37 states that municipalities in Ontario must appoint an Election Compliance Audit Committee for each municipal election.

Name of the Committee

Therefore, the Townships of Bonfield, Chisholm and Nipissing and the Municipalities of Callander, East Ferris and Powassan have formed a Joint Compliance Audit Committee.

Duration of the Committee

The term of office is from November 15, 2022 to November 14, 2026 to deal with applications from the 2022 election and any by-elections during Council's term.

Mandate

The powers and functions of the Committee are set out in Sections 88.33 to 88.37 of the *Municipal Elections Act, 1996* (Appendix "A"). The Committee will perform the functions relating to the compliance audit application process as outlined in the Act. These functions include:

- a. within 30 days receipt of a compliance audit application by an elector or a report submitted by the Clerk, consider the application and decide whether it should be granted or rejected;
- b. appoint a licensed auditor, if the application is granted;
- c. receive the auditor's report;
- d. within 30 days receipt of the auditor's report, consider the report;
- e. if the report concludes that the candidate or Registered Third Party appears to have contravened a provision of the Act relating to election campaign finances, commence legal proceedings against the candidate for the apparent contravention;
- f. if the report concludes that the candidate or Registered Third Party does not appear to have contravened a provision of the Act relating to election campaign finances and the Committee finds that there were no reasonable grounds for the application, Council may recover the auditor's costs from the applicant.

Membership

The Committee will be composed of three (3) voting members.

Membership will be drawn from the following groups:

- a. accounting and audit - accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- b. legal;
- c. 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/or
- d. other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Municipal employees or officers, members of Council, any candidates in the 2022 municipal election or in any by-election during the term of Council and persons who are Registered Third Parties in any member municipality are ineligible to be appointed as a member of the Committee pursuant to subsection 88.37(2) of the *Municipal Elections Act, 1996*.

Members will be required to take Accessible Customer Service training as a condition of appointment.

Membership Selection

The advertisement will be posted on the municipal websites of the member municipalities and shared on various Social Media platforms used by member municipalities. Staff will also contact and solicit those individuals as set out under section 4 of the Terms of Reference.

All applicants will be required to submit a letter outlining their qualifications and experience. Staff may interview applicants who meet the selection criteria and prepare a short list. Recommended candidates will be submitted to the Council of each member municipality for consideration.

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. availability and willingness to attend meetings; and
- e. excellent oral and written communication skills.

Any members appointed must also agree in writing they will not be a candidate in the 2022 election or in any by-election during the term of Council for any member municipality. Failure to adhere to this requirement will result in the individual being removed from the Committee.

Members from a previous election Committee may be re-appointed for future Compliance Audit Committees without re-advertising the positions provided the members provide interest in serving in writing.

Conflict of Interest

The principles of the *Municipal Conflict of Interest Act*, apply to this Committee. Failure to adhere to this requirement will result in the individual being removed from the Committee.

To avoid a conflict, any person applying and appointed to the Committee must agree not to prepare or audit the election financial statements of any candidate for office for any of the member municipalities in the 2022 municipal election. Failure to adhere to this requirement will result in the individual being removed from the Committee

Selection of the Chair

The Committee will select a Chair from amongst its members at its first meeting when a compliance audit application is received.

The Chair is the liaison between the members and the Secretary of the Committee on matters of policy and process.

The Chair shall enforce the observance of order and decorum among the Committee members and the public at all meetings.

When the Chair is absent, the Committee may appoint another member as Acting Chair. While presiding, the Acting Chair shall have all the powers of the Chair.

Staffing and Costs

The Clerk from the applicable member municipality shall act as Secretary to the Committee.

The member municipality requiring the services of the Committee shall be responsible for all associated expenses.

Committee Member Remuneration - \$60.00 per diem per meeting.

Meetings

Meetings of the Committee will be conducted in accordance with the open meeting provisions of the *Municipal Act, 2001*.

a. Timing of Meetings

The first meeting will be called by the Clerk of the member municipality upon receipt of an application. The date and time of the meeting will be determined by the Clerk and communicated directly to the Committee members. Subsequent meetings will be held at the call of the Chair in consultation with the Clerk.

Committee activity shall be determined primarily by the number and complexity of applications for compliance audits that may be received. The frequency and duration of meetings will be determined by the Committee in consultation with the Clerk.

b. Meeting Location

The Committee shall meet at the location determined by the member municipality.

c. Notices, Agendas and Minutes

The agenda shall constitute notice. The Clerk of the member municipality requiring the services of the Committee shall cause notice of the meetings to be provided to members of the Committee and involved parties by electronic mail and regular mail a minimum of two (2) business days prior to the date of each meeting, not including weekends or holidays. The agenda shall be posted on the member municipality's website and shall serve as public notice.

Minutes of each meeting shall outline the general deliberations and specific actions and recommendations that result. Minutes of the meeting shall be

circulated to the Committee members and involved parties by electronic mail. Minutes shall be posted on the member municipality's website for public viewing.

Agenda Format

1. Call to Order
2. Disclosure of Pecuniary Interest and General Nature Thereof
3. Consideration of Compliance Audit Application or Auditor's Report
4. Adjournment

d. Quorum

Quorum for meetings shall consist of a majority of the members of the Committee.

If no quorum is present fifteen (15) minutes after the time appointed for a meeting, the Clerk shall record the names of the members present and the meeting shall stand adjourned until the date of the next meeting.

e. Meeting Attendance

Any member of the Committee, who misses three (3) consecutive meetings, without being excused by the Committee, may be removed from the Committee. The Committee must make recommendations, by a report to Council for the removal of any member.

f. Motions and Voting

A motion shall only need to be formally moved before the Chair can put the question or a motion can be recorded in the minutes.

A motion shall be reduced to writing and shall be signed by the Chair and Secretary. Every Member present shall be deemed to vote against the motion if they decline or abstain from voting, unless disqualified from voting by reason of a declared pecuniary interest.

In the case of a tie vote, the motion shall be considered to have been lost. The manner of determining the vote on a motion shall be by show of hands. The Chair shall announce the result of every vote.

Auditor Appointment

Municipal Elections Act, 1996, s. 88.33 (10) states that 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.

If an Auditor is required by the Committee, the Clerk of the municipality shall obtain information on Auditors licensed under the *Public Accounting Act, 2004*, for final selection by Committee members. The Clerk shall secure the services of the Auditor and the municipality shall be responsible for all fees associated with the services provided by the Auditor.

The Auditor shall submit a report to the Clerk with whom the Candidate filed his or her nomination, the Candidate and the Applicant. The Clerk will forward the report to Committee members by electronic mail and assist with scheduling a meeting of the Committee within 30 days, at the call of the Chair.

Administrative Practices and Procedures

The Terms of Reference constitute the Administrative Practices and Procedures of the Committee. Any responsibilities not clearly identified within these Terms of Reference shall be in accordance with Section 88 of the *Municipal Elections Act, 1996*.

The Clerk at any time has the right to develop additional administrative practices and procedures.

Municipal Elections Act, 1996

**S.O. 1996, CHAPTER 32
SCHEDULE**

COMPLIANCE AUDITS AND REVIEWS OF CONTRIBUTIONS

Compliance audit of candidates' campaign finances

Application by elector

88.33 (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 meetings

(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.

Same

(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.

Same

(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.

Same

(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.

Section Amendments with date in force (d/m/y)

2016, c. 15, s. 63 - 09/06/2016

2017, c. 20, Sched. 10, s. 1 - 14/11/2017

Note: On April 1, 2018, the Act is amended by adding the following section: (See: 2016, c. 15, s. 64)

Review of contributions to candidates

88.34 (1) The clerk shall review the contributions reported on the financial statements submitted by a candidate under section 88.25 to determine whether any contributor appears to have exceeded any of the contribution limits under section 88.9. 2016, c. 15, s. 64.

Report, contributions to candidates for council

(2) 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, the clerk shall prepare a report identifying each contributor to a candidate for office on a council who appears to have contravened any of the contribution limits under section 88.9 and,

- (a) if the contributor's total contributions to a candidate for office on a council appear to exceed the limit under section 88.9, the report shall set out the contributions made by that contributor to the candidate; and
- (b) if the contributor's total contributions to two or more candidates for office on the same council appear to exceed the limit under section 88.9, the report shall set out the contributions made by that contributor to all candidates for office on the same council. 2016, c. 15, s. 64.

Same

(3) 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 88.9. 2016, c. 15, s. 64.

Same

(4) The clerk shall forward each report prepared under subsection (2) to the compliance audit committee. 2016, c. 15, s. 64.

Report, contributions to candidates for a local board

(5) 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, the clerk shall prepare a report identifying each contributor to a candidate for office on a local board who appears to have contravened any of the contribution limits under section 88.9 and,

- (a) if the contributor's total contributions to a candidate for office on a local board appear to exceed the limit under section 88.9, the report shall set out the contributions made by that contributor to the candidate; and
- (b) if the contributor's total contributions to two or more candidates for office on the same local board appear to exceed the limit under section 88.9, the report shall set out the contributions made by that contributor to all candidates for office on the same local board. 2016, c. 15, s. 64.

Same

(6) The clerk shall prepare a separate report under subsection (5) in respect of each contributor who appears to have contravened any of the contribution limits under section 88.9. 2016, c. 15, s. 64.

Same

(7) The clerk shall forward each report prepared under subsection (5) to the secretary of the local board for which the candidate was nominated for office and, within 10 days after receiving the report, the secretary of the local board shall forward it to the compliance audit committee. 2016, c. 15, s. 64.

Decision of compliance audit committee

(8) Within 30 days after receiving a report under subsection (4) or (7), the compliance audit committee shall consider it and decide whether to commence a legal proceeding against a contributor for an apparent contravention. 2016, c. 15, s. 64.

Procedural matters

(9) The meetings of the committee under subsection (8) shall be open to the public, and reasonable notice shall be given to the contributor, the applicable candidate and the public. 2016, c. 15, s. 64.

Note: On April 1, 2018, the day section 65 of the *Municipal Elections Modernization Act, 2016* comes into force, subsection 88.34 (9) of the Act is repealed and the following substituted: (See: 2017, c. 20, Sched. 10, s. 2)

Notice of meetings

(9) Reasonable notice of the meetings of the committee under subsection (8) shall be given to the contributor, the applicable candidate and the public. 2017, c. 20, Sched. 10, s. 2.

Open meetings

(9.1) The meetings of the committee under subsection (8) shall be open to the public, but the committee may deliberate in private. 2017, c. 20, Sched. 10, s. 2.

Same

(10) Subsection (9) applies despite sections 207 and 208.1 of the *Education Act*. 2016, c. 15, s. 64.

Note: April 1, 2018, the day section 65 of the *Municipal Elections Modernization Act, 2016* comes into force, subsection 88.34 (10) of the Act is repealed and the following substituted: (See: 2017, c. 20, Sched. 10, s. 2)

Same

(10) Subsection (9.1) applies despite sections 207 and 208.1 of the *Education Act*. 2017, c. 20, Sched. 10, s. 2.

Notice of decision, reasons

(11) The decision of the committee under subsection (8), and brief written reasons for the decision, shall be given to the contributor and to the clerk of the municipality or the secretary of the local board, as the case may be. 2016, c. 15, s. 64.

Saving provision

(12) 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. 2016, c. 15, s. 64.

Section Amendments with date in force (d/m/y)

2016, c. 15, s. 64 - 01/04/2018

2017, c. 20, Sched. 10, s. 2 - 01/04/2018

Note: On April 1, 2018, the Act is amended by adding the following sections: (See: 2016, c. 15, s. 65)

Compliance audit of registered third parties

Application by elector

88.35 (1) 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 under section 88.29. 2016, c. 15, s. 65.

Requirements

(2) An application for a compliance audit shall be made to the clerk of the municipality in which the registered third party was registered, and it shall be made in writing and shall set out the reasons for the elector's belief. 2016, c. 15, s. 65.

Deadline

(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 registered third party filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30.
3. The supplementary filing date, if any, for the registered third party under section 88.30.
4. The date on which the registered third party's extension, if any, under subsection 88.27 (3) expires. 2016, c. 15, s. 65.

Application of s. 88.33 (4) to (20)

(4) Subsections 88.33 (4) to (20) apply to a compliance audit under this section, with the following modifications:

1. A reference to a candidate shall be read as a reference to the registered third party.
2. A reference to the clerk with whom the candidate filed his or her nomination shall be read as a reference to the clerk of the municipality in which the registered third party is registered.
3. A reference to election campaign finances shall be read as a reference to the campaign finances of the registered third party in relation to third party advertisements that appear during an election in the municipality. 2016, c. 15, s. 65.

Section Amendments with date in force (d/m/y)

2016, c. 15, s. 65 - 01/04/2018

Review of contributions to registered third parties

88.36 (1) 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. 2016, c. 15, s. 65.

Report by the clerk

(2) 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. 2016, c. 15, s. 65.

Same

- (3) 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. 2016, c. 15, s. 65.

Same

- (4) The clerk shall forward each report prepared under subsection (2) to the compliance audit committee. 2016, c. 15, s. 65.

Decision of compliance audit committee

- (5) Within 30 days after receiving a report under subsection (4), the compliance audit committee shall consider it and decide whether to commence a legal proceeding against a contributor for an apparent contravention. 2016, c. 15, s. 65.

Procedural matters

- (6) The meetings of the committee under subsection (5) shall be open to the public, and reasonable notice shall be given to the contributor, the registered third party and the public. 2016, c. 15, s. 65.

Note: On April 1, 2018, the day section 65 of the *Municipal Elections Modernization Act, 2016* comes into force, subsection 88.36 (6) of the Act is repealed and the following substituted: (See: 2017, c. 20, Sched. 10, s. 3)

Notice of meetings

- (6) Reasonable notice of the meetings of the committee under subsection (5) shall be given to the contributor, the registered third party and the public. 2017, c. 20, Sched. 10, s. 3.

Open meetings

- (6.1) The meetings of the committee under subsection (5) shall be open to the public, but the committee may deliberate in private. 2017, c. 20, Sched. 10, s. 3.

Notice of decision, reasons

- (7) The decision of the committee under subsection (5), and brief written reasons for the decision, shall be given to the contributor and to the clerk of the municipality. 2016, c. 15, s. 65.

Saving provision

- (8) 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. 2016, c. 15, s. 65.

Section Amendments with date in force (d/m/y)

2016, c. 15, s. 65 - 01/04/2018

2017, c. 20, Sched. 10, s. 3 - 01/04/2018

Compliance audit committee

88.37 (1) A council or local board shall establish a compliance audit committee before October 1 of an election year for the purposes of this Act. 2016, c. 15, s. 66.

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;
 - (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.
- 2016, c. 15, s. 66.

Eligibility for appointment

- (3) A person who has such qualifications and satisfies such eligibility requirements as may be prescribed is eligible for appointment to the committee. 2016, c. 15, s. 66.

Same

- (4) In appointing persons to the committee, the council or local board shall have regard to the prescribed eligibility criteria. 2016, c. 15, s. 66.

Term of office

(5) 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. 2016, c. 15, s. 66.

Role of clerk or secretary

(6) 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. 2016, c. 15, s. 66.

Costs

(7) The council or local board, as the case may be, shall pay all costs in relation to the committee's operation and activities. 2016, c. 15, s. 66.

Section Amendments with date in force (d/m/y)

2016, c. 15, s. 66 - 09/06/2016