



The Corporation of the Town of Milton

Report To:	Council
From:	Meaghen Reid, Director, Legislative & Legal Services/Town Clerk
Date:	May 9, 2022
Report No:	CORS-035-22
Subject:	Regional Election Compliance Audit Committee
Recommendation:	THAT the Terms of Reference, attached as Appendix A to staff report CORS-035-22, establishing a Compliance Audit Committee, be approved.

EXECUTIVE SUMMARY

- The Municipal Elections Act, 1996 (MEA) requires that all municipalities appoint a Compliance Audit Committee.
- A qualified elector who believes on reasonable grounds that a candidate has contravened a provision of the MEA relating to election campaign finances, may apply to the Compliance Audit Committee for a compliance audit of the candidate's finances.
- The attached Terms of Reference establish a Joint Compliance Audit Committee with municipalities in Halton Region. Any costs associated with the Joint Compliance Audit Committee or an auditor will be the responsibility of the municipality requiring the services of the Committee or auditor.

REPORT

Background

Section 88.37(1) of the Municipal Elections Act, 1996 (MEA) makes the establishment of compliance audit committees mandatory for municipalities and local boards. The MEA states that a qualified elector who 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 or the registered third party's election campaign finances.

Applications for a compliance audit are submitted to the Town Clerk, who then forwards the application to the Compliance Audit Committee. The Compliance Audit Committee reviews each application to determine whether or not there are reasonable grounds to request an audit. If the request is granted, the committee appoints an auditor to audit the candidate's finances. Upon completion of the audit, the Committee reviews the auditor's

Background

report to determine whether there are contraventions of the MEA and whether legal proceedings against the candidate should proceed. Further, if the report concludes that a candidate or registered third party does not appear to have contravened a provision of MEA relating to election campaign finances, the Committee may make a finding as to whether there were reasonable grounds for the application for a compliance audit. If the auditor's report indicates that there was no apparent contravention of the MEA and the Committee finds that there were no reasonable grounds for the application, Council is entitled to recover the auditor's costs from the applicant.

In accordance with the Terms of Reference, the mandate of the Compliance Audit Committee is considered complete at the end of each four year term of Council at which time a successor committee must be appointed.

In 2014, Milton Council approved Terms of Reference establishing a Joint Compliance Audit Committee with the Region of Halton, the City of Burlington, the Town of Halton Hills, and the Town of Oakville for the current term of Council. However, in 2018, Milton Council directed that a committee for the Town of Milton made up of four Milton residents be established, rather than participating in the Joint Regional Compliance Audit Committee.

Discussion

Staff recommends that the Town of Milton, City of Burlington, the Town of Halton Hills, the Town of Oakville and Halton Region (the "participating municipalities") recruit and appoint a Joint Compliance Audit Committee for the November 15, 2022 to November 14, 2026 term of Council.

Taking into consideration the competition for qualified applicants and the potential for conflicts for those applicants with accounting/auditing backgrounds, a Joint Compliance Audit Committee offers the greatest potential to reach the broadest spectrum of interested applicants across Halton Region in a cost-effective manner.

Terms of Reference

A Terms of Reference for the Joint Compliance Audit Committee was approved by municipal Councils of participating municipalities in 2018. Minor edits have been made to the existing Terms of Reference to include allowing electronic participation in meetings, as required, and requiring that a Clerk or designate be present during any private deliberation sessions of the Committee.

Upon approval of the updated Terms of Reference, attached as Appendix A to this report, the Region of Halton and all participating municipalities, will commence recruitment of members for the Joint Compliance Audit Committee. Halton Regional Council considered and approved the updated Terms of Reference at the Regional Council meeting of April 20, 2022.

Discussion

The MEA specifies that Compliance Audit Committees be composed of between 3 and 7 members. Staff is recommending that the Joint Compliance Audit Committee be composed of between 3 and 7 members; ideally to include auditors, accountants, lawyers, academics and other individuals with knowledge of the MEA's campaign financing rules. As the Committee will operate on a quasi-judicial basis, prior experience on a committee or task force would be an asset.

To avoid possible conflicts of interest, care must be taken that any auditors or accountants appointed to the Joint Compliance Audit Committee do not audit or prepare the financial statement of any candidate running for office in any of Halton's municipalities. To avoid possible conflicts of interest, prior to being appointed to the Committee, any auditor or accountant must agree in writing not to undertake the audits or preparation of financial statements of any candidates seeking election to Councils in the Participating Municipalities during the term of the Committee. Failure to adhere to this requirement will result in the individual being removed from the Committee.

The Regional Clerk will coordinate a targeted recruitment of Joint Compliance Audit Committee members. This committee opportunity will be advertised in Halton's local newspapers and organizations such as the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada. Area universities and colleges will also be contacted. Information and an application form will be available on the websites of each municipality. The Selection Committee, composed of the Clerks of the Participating Municipalities, or delegates, will meet to review the applications and appoint Committee members. The Terms of Reference sets out the criteria that will be considered when appointing Joint Compliance Audit Committee members.

When a participating municipality receives an application for a compliance audit, the Clerk of that municipality will call a meeting of the Joint Compliance Audit Committee, prepare the necessary notices, agendas, minutes, etc. Any costs associated with the holding of meetings or the decisions of the Committee will be the responsibility of the municipality requesting the services of the Joint Compliance Audit Committee. The Terms of Reference suggests that each member receive a retainer of \$400 shared by each Participating Municipality, a \$250 per meeting fee by the municipality requiring the meeting, and mileage at the current rate of the municipality requesting the services of the Joint Compliance Audit Committee. Joint Compliance Audit Committee members will be covered by the applicable municipality's errors and omissions and general liability policies to protect and defend against claims from third parties while performing duties outlined in the Terms of Reference for their position as a Committee member.

Each participating municipality will be responsible for the meeting(s) of the Compliance Audit Committee, and any associated costs, in receiving a Clerk's Report identifying any contributor to a candidate or registered third party who appears to have contravened established contribution limits, in accordance with section 88.34 of the MEA. Committee



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members will participate in the selection of an Auditor in response to a request for proposal prepared by staff. The Auditor will be appointed by resolution of the Committee. The engagement letter will indicate that the Auditor has been engaged by the Committee and will be prepared and executed by the Clerk, or other officer of the municipality as may be designated, on behalf of the municipality.

Financial Impact

Any costs related to the Joint Compliance Audit Committee will be charged through the Legislative and Legal Services Division operating budget. The affected municipality is required to pay any applicable costs in relation to the Committee's operation, activities and any auditor costs, should an audit be required. Council is entitled to recover the auditor's costs from the applicant if an auditor's report indicates that there was no apparent contravention of the Act, and the Committee finds that there were no reasonable grounds for the application. Recovery of costs will be considered on a case-by-case basis.

The Town budgets for the fixed retainer fee associated with the Joint Compliance Audit Committee. Other potential costs that may be associated with potential compliance audits are challenging to predict and may not materialize, and are managed in accordance with Budget Management Policy No. 113. As such, efforts will be made to mitigate cost pressures should they arise from any compliance audits.

Respectfully submitted,

Troy McHarg
Commissioner, Corporate Services

For questions, please contact: Meaghen Reid

Phone: Ext. 2132

Attachments

Appendix A: Draft Terms of Reference for Joint Compliance Audit Committee

CAO Approval
Andrew M. Siltala
Chief Administrative Officer

Recognition of Traditional Lands



The Corporation of the Town of Milton

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The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands

Joint Compliance Audit Committee
Draft Terms of Reference

The Participating Municipalities will select Committee members jointly. In the event a Participating Municipality receives an application for a Compliance Audit, that Municipality will be solely responsible for Meeting administration and covering all costs associated with the Committee, including audits, if required.

1. Definitions

“Act” means the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended from time to time.

“Applicant” means the individual who submitted the application requesting a Compliance Audit.

"Auditor" means a person appointed by the Committee, licensed under the *Public Accounting Act, 2004*, S.O. 2004, c. 8 to conduct a Compliance Audit of a Candidate's election campaign finances pursuant to Section 88.33(10) of the Act.

"Auditor's Report" means a report prepared by an Auditor for the Committee pursuant to Section 88.33(12) of the Act.

“Candidate” means the candidate whose election campaign finances are the subject of an application for a Compliance Audit.

“Clerk” means, as the context provides, the Clerk of any of the Participating Municipalities, or his or her designate.

“Committee” means the Joint Compliance Audit Committee established pursuant to Section 88.37(1) of the Act.

“Committee Member(s)” means a member or members, as appropriate, of the Joint Compliance Audit Committee established pursuant to Section 88.37(1) of the Act.

"Compliance Audit" means an audit of a Candidate's election campaign finances conducted by an Auditor appointed by the Committee.

“Contributor” means an individual or organization that has made a financial donation to a candidate or registered third party in an election campaign.

“Council” means, as the context provides, the Council of any of the Participating Municipalities.

“Family Member” means a parent, spouse, or child of a Committee member, as defined in the Municipal Conflict of Interest Act, and shall also include a grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood, marriage or adoption.

“Halton Region” means The Regional Municipality of Halton.

“Meeting” means a meeting of the Committee.

“Municipal Conflict of Interest Act” means the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended from time to time.

“Participating Municipalities” means all or some of the following municipalities participating in the joint compliance audit committee process: The Regional Municipality of Halton, The City of Burlington, The Town of Halton Hills, The Town of Milton and the Town of Oakville.

“Pecuniary Interest” means a direct or indirect interest within the meaning of the Municipal Conflict of Interest Act.

“Regional Clerk” means the Clerk of Halton Region.

“Selection Committee” means the committee, composed of the Clerks of the Participating Municipalities that will choose the members of the Committee.

“Registered Third Party” means an individual resident in Ontario, a corporation carrying on business in Ontario or trade union who has filed with the clerk of the municipality responsible for conducting an election a notice of registration to be a registered third party for the election pursuant to Section 88.6 of the Act.

“Trade Union” means a trade union as defined in the *Labour Relations Act, 1995* or the *Canada Labour Code* (Canada) and includes a central, regional or district labour council in Ontario.

2. Enabling Legislation and Mandate

Section 88.37(1) of the Act requires that before October 1st in an election year, Council establish a compliance audit committee. **The mandate of the Committee is to carry out the functions of a compliance audit committee as set out in the Act.**

3. Roles and Responsibilities

The Committee shall:

	Timeline/Section of the Act
Consider Compliance Audit applications for Candidates and/or Registered Third Parties and decide whether they should be granted or rejected.	Within 30 days after receipt of the application - ss. 88.33(7) and 88.35(4)
Provide written reasons for the decision to grant or reject the applications.	ss. 88.33(8) and 88.35(4)
If an application is granted, appoint an Auditor to conduct a Compliance Audit of the Candidate's election campaign finances.	ss. 88.33(10) and (11) and 88.35(4)
Receive the Auditor's Report.	ss. 88.33(14) and 88.35(4)
(i) Once the Auditor's Report is received, consider the Report if it contains a conclusion of apparent contravention of the Act, and decide whether to commence a legal proceeding against the Candidate for the apparent contravention	Within 30 days of receipt of the Auditor's Report - ss. 88.33(17) and 88.35(4)
Receive a Clerk's Report identifying any Contributor to a Candidate or Registered Third Party who appears to have contravened established contribution limits.	s. 88.34(4) s. 88.36(4)
Once the Clerk's Report is received, consider the Report and decide whether to commence a legal proceeding against the Contributor for the apparent contravention.	Within 30 days of receipt of the Clerk's Report - s. 88.34(8), s. 88.36(5)
In addition, the Committee shall:	
<ul style="list-style-type: none"> - Participate in the selection of an Auditor in response to the request for proposal prepared by staff from the Participating Municipalities; - Provide instructions to the selected Auditor about the scope of each Compliance Audit, as needed; - Determine a timeline for the Auditor to complete each Compliance Audit. 	

4. Term

The term of the appointment is concurrent with the term of Council. Upon the term's expiry, Committee members may reapply to the Selection Committee to serve additional terms.

5. Composition

The Committee shall be composed of not fewer than three (3) and not more than seven (7) members and shall not include:

- (a) employees or officers of the Participating Municipalities;
- (b) members of Council of the Participating Municipalities;
- (c) any persons who are Candidates in the election for which the Committee is established, or Family Members of same, or any person connected to a Candidate through an employment, contractual, business or partnership relationship;
- (d) any persons who have participated as a Candidate for an office or Registered Third Party in the Participating Municipalities or run for Regional Chair in the past two regular elections, or who have conducted audits or provided financial or legal advice in respect of such campaigns;
- (e) any persons who do or intend to assist any Candidate or Registered Third Party, as a volunteer or for compensation, in the election for which the Committee is established.

6. Selection of Members

Information pertaining to the Committee, including the terms of reference and an application for appointment to the Committee will be posted on the websites of the Participating Municipalities.

Committee membership will be drawn from the following groups:

- accounting and audit – accountants or auditors, preferably with experience in preparing or auditing the financial statements of municipal candidates;
- academic – college or university professors with expertise in political science or local government administration;
- legal; and
- other individuals with knowledge of the campaign finance provisions of the Act.

The following criteria may be considered in the selection of members:

- demonstrated knowledge and understanding of the Act's municipal election campaign financing provisions;
- experience in administrative law;
- proven analytical and decision-making skills;
- experience working on a committee, task force or in a similar setting;
- availability and willingness to attend meetings;
- demonstrated oral and written communication skills; and
- any other criteria as may be prescribed under the Act.

The Regional Clerk will be responsible for the recruitment of applicants. All applicants will be required to submit an application form outlining their qualifications and experience to the Regional Clerk by a specified deadline. After the deadline has passed, the Selection Committee will meet to review the applications, and appoint Committee members.

To avoid possible conflicts of interest, any auditor or accountant appointed to the Committee must **confirm and** agree in writing that they have not undertaken and shall not undertake the audits or preparation of financial statements of any Candidates seeking election to Councils or Registered Third Parties in the Participating Municipalities during the term of the Committee. In addition, any lawyer or other legal professional appointed to the Committee must **confirm and** agree in writing that they have not provided and will not provide legal advice to any Candidates seeking election to Councils, or any Registered Third Parties or contributors to Candidates and Registered Third Parties in the election in the Participating Municipalities during the term of the Committee.

7. Notice

Posting of the Committee Meeting agenda on the website of the Participating Municipality requiring the services of the Committee shall constitute notice of a Committee Meeting.

The Clerk shall give notice of a Committee Meeting to the Committee by email, telephone or by regular mail.

Where an application will be considered at the Meeting, the Clerk shall give reasonable notice by email, telephone or by regular mail to the Applicant and Candidate or Registered Third Party, as applicable, of the time, place and purpose of the Committee Meeting, and of the fact that if either party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice concerning the Meeting.

Where a Clerk's Report regarding contribution limit exceedances will be considered at the Meeting, the Clerk shall give reasonable notice by email, telephone or by regular mail to the Contributor and Candidate or Registered Third Party as applicable, of the time, place and

purpose of the Committee Meeting, and of the fact that if either party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice concerning the Meeting.

8. Meetings

The Clerk shall call a Meeting of the Committee when **they receive an application for a Compliance Audit under Section 88.33 or Section 88.35 or where they have prepared a Clerk's Report under Section 88.34 or Section 88.36.** The Applicant and the Candidate or Registered Third Party or their representative will be provided with an opportunity to address the Committee and provide written submissions.

Meeting dates, start times and locations shall be set by the Clerk. **Meetings may be held by electronic means, including such applications as Zoom, Microsoft Teams or other, similar software applications, if public health measures advising limits on in person gatherings are in place or it is otherwise deemed advisable by the Clerk. Such electronic Meetings shall be conducted in such a manner as to permit public observation of the proceedings, with the exception noted below.**

Committee Meetings will be open to the public but the Committee may deliberate in private, as noted in Section 88.33(5.1). **A Clerk or designate must be present during any private deliberation sessions.** No votes may be taken in private session.

9. Quorum

A quorum shall be a majority of Committee members.

If a quorum is not present within fifteen (15) minutes of the time fixed for the commencement of the Meeting, the Committee Meeting will be rescheduled to a future date.

10. Selection of the Chair

The Chair shall be selected from among the Committee members at the first Meeting of the Committee. If there is no consensus on a Chair, selection will be carried out by way of nomination and vote of the Committee members present.

11. Duties of the Chair

The Chair shall:

- (i) call Committee Meetings to order when there is a Quorum, preside over Committee discussions, facilitate Committee business, follow Meeting procedures, identify the order of proceedings and speakers and rule on points of order.

- (ii) participate as an active member.
- (iii) encourage participation by all members.

If the Chair is not present within the first ten minutes of a Committee Meeting or is absent through illness or otherwise, the Committee shall select another member as Acting Chair. While presiding, the Acting Chair shall have all the powers of the Chair. Selection of the Acting Chair will be made by resolution.

12. Duties of Committee Members

The duties of Committee members are as follows:

- (i) carry out all statutory obligations of the Committee in accordance with the Act.
- (ii) attend all Committee Meetings, sending regrets otherwise.
- (iii) understand their role, the Committee's mandate and Meeting procedures.
- (iv) declare any pecuniary interest in any matter prior to consideration by the Committee and refrain from discussion and voting on the matter. If the declaration relates to a matter being discussed during a closed portion of the meeting, the member must leave the Meeting during all discussion on the matter.
- (v) where the pecuniary interest of a member has not been disclosed by reason of the member's absence from the Meeting, the member shall disclose the pecuniary interest and otherwise comply with subsection (iv) at the next Meeting of the Committee attended by the member.
- (vi) participate as an active and voting member, asking questions, and seeking clarification through the Chair.
- (vii) assist in drafting the reasons for a decision, as applicable.
- (viii) develop and maintain a climate of mutual support, trust, courtesy and respect.
- (ix) work together to utilize the knowledge, expertise and talents of all members.
- (x) respect the decisions of the Committee and that such decisions reflect the majority view.

13. Selection of an Auditor

Committee members will participate in the selection of an Auditor in response to a request for proposal prepared by staff. The Auditor will be appointed by resolution of the Committee. The engagement letter will indicate that the Auditor has been engaged by the Committee and will be prepared and executed by the Clerk, or other officer of the municipality as may be designated, on behalf of the municipality.

14. Resources

The Clerk will provide administrative support to the Committee, including the taking of minutes, the distribution of minutes and agendas, and the coordination of Meetings.

15. Committee Records

The Clerk will co-ordinate and retain Committee records including agendas and minutes.

16. Declaration of Interest

Legislated requirements as set out in the *Municipal Conflict of Interest Act* shall apply to all Committee members. It is the responsibility of each member to disclose any pecuniary interest prior to discussion of a particular matter. Members are encouraged to seek independent legal advice if they are unsure of whether or not they have a pecuniary interest in a matter. Staff from the Participating Municipalities will not provide advice or interpretation related to declarations.

17. Compensation

Each member appointed to the Committee will receive a retainer of \$400 for the term. This cost will be shared by each Participating Municipality. Should a Meeting of the Committee be requested, each member will be paid a per Meeting fee of \$250 by the Participating Municipality requiring the Committee's services, plus mileage **(if travel to the place of Meeting is required)** at the current rate of the Participating Municipality.

18. Practices and Procedures

The Clerks of the Participating Municipalities shall establish administrative practices and procedures for the Committee in accordance with Section 88.37(6) of the Act and shall carry out any other duties required under the Act to implement the Committee's decisions.

The Clerks of the Participating Municipalities are delegated the 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 Clerks, the amendments do not change the intent of the Terms of Reference.

DRAFT