

Joint Compliance Audit Committee [JCAC] Terms of Reference

LEGISLATIVE AUTHORITY: sections 88.33, 88.34, 88.35, 88.36 and 88.37 of the *Municipal Elections Act, 1996* as amended [MEA].

ESTABLISHMENT: The Joint Compliance Audit Committee is established by the municipalities of North Perth, Perth East, Perth South, St. Marys, Stratford and West Perth (collectively the “participating municipalities”) pursuant to the requirements of the *Municipal Elections Act, 1996* as amended.

MANDATE: The powers and functions of the Committee are set out in section 88.33 and 88.34 of the *Municipal Elections Act, 1996* as amended. The Committee will perform the functions relating to the compliance audit application process as outlined in the Act.

The powers and functions are generally described as:

Candidate Contravention

1. Within 30 days receipt of a compliance audit application by an elector, consider the application and decide whether it should be granted or rejected;
2. Give to the Candidate, the Clerk and the Applicant, the decision of the Committee to grant or reject the application and brief written reasons for the decision;
3. If the application is granted, appoint a licensed auditor to conduct a compliance audit of the Candidate’s election campaign finances;
4. Receive the auditor’s report from the Clerk;
5. Within 30 days receipt of the auditor’s report, consider the report;
6. If the auditor’s report concludes that the Candidate appears to have contravened a provision of the Act relating to election campaign finances, decide whether to commence legal proceedings against the Candidate for the apparent contravention;
7. After reviewing the report, give to the Candidate, the Clerk and the Applicant the decision of the Committee, and brief written reasons for the decision.

Candidate Contributor Contravention

1. Within 30 days receipt of a report identifying each contributor to a candidate for office on a council who appears to have contravened any of the contribution limits, consider the report and decide whether to commence a legal proceeding against the contributor for an apparent contravention;
2. After reviewing the report, give to the Contributor and the Clerk the decision of the Committee, and brief written reasons for the decision.

Registered Third party Contravention

1. Within 30 days receipt of a compliance audit application by an elector, consider the application and decide whether it should be granted or rejected;
2. Give to the Registered Third Party, the Clerk and the Applicant, the decision of the Committee to grant or reject the application and brief written reasons for the decision;
3. If the application is granted, appoint a licensed auditor to conduct a compliance audit of the Registered Third Party's campaign finances;
4. Receive the auditor's report from the Clerk;
5. Within 30 days receipt of the auditor's report, consider the report;
6. If the auditor's report concludes that the Registered Third Party appears to have contravened a provision of the Act relating to campaign finances, decide whether to commence legal proceedings against the Registered Third Party for the apparent contravention;
7. After reviewing the report, give to the Registered Third Party, the Clerk and the Applicant the decision of the Committee, and brief written reasons for the decision.

Registered Third Party Contributor Contravention

1. Within 30 days receipt of the report, consider the report
2. If the report concludes that the Contributor appears to have contravened a provision of the Act relating to campaign finances, decide whether to commence legal proceedings against the Contributor for an apparent contravention;
3. After reviewing the report, give to the Contributor and the Clerk the decision of the Committee, and brief written reasons for the decision.

TERM OF THE COMMITTEE: The term of the Committee shall be concurrent with the term of Council that takes office following the 2018 regular election, being December 1, 2018 to November 14, 2022.

AUDITOR SELECTION: If the Committee decides to grant the application, it shall appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the Candidate's election campaign finances.

The selection process will be coordinated through the Clerk of the member municipality.

MEMBERSHIP: The Committee shall be composed of three (3) voting members with two (2) alternate members that would assume all the rights and privileges of a voting member if called upon. Alternate members shall be ranked and will be called upon to replace a voting member that has resigned from the Committee or declared a conflict of interest under the *Municipal Conflict of Interest Act*.

Membership of the Committee shall be drawn from the following stakeholder groups, where possible:

1. Accounting and audit profession – accountants or auditors with experience in preparing or auditing financial statements of municipal candidates and registered third parties;
2. Legal profession with experience in municipal law, or administrative law;
3. Professionals who in the course of their duties are required to follow codes or standards of their profession which may be enforced by disciplinary tribunals;
4. Other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Pursuant to section 88.37 of the *Act*, the following are not eligible to be appointed to the Committee:

- a) members of Council or local board,
- b) employees or officers of the municipality,
- c) any Candidates or any persons who are Registered Third Parties in the 2018 election or in any by-election during the term of Council for any member municipality;
- d) any persons who are registered third parties in the municipality in the election for which the Committee is established.

In addition, any person who prepares the financial statements of any candidate running for office on Council during the term for which the Committee has been established would not be eligible for appointment to the Committee.

All Committee applicants will be required to complete an application form outlining their qualifications and experience.

Members will be required to participate in an orientation session as a condition of appointment.

MEMBERSHIP SELECTION: The Terms of Reference and the application form will be posted as a minimum on the municipal websites of the member municipalities and the County of Perth website. Staff will also contact and solicit those individual as set out under section 4 of the Terms of Reference. In addition, advertisements will be placed in local newspapers in member municipalities, where applicable.

All applicants will be required to complete an application form outlining their qualifications and experience. Staff may interview applicants who meet the selection criteria and prepare a short list of voting members and alternate members. Recommended candidates will be submitted to the Council of each member municipality for consideration.

Members will be selected on the basis of the following:

- demonstrated knowledge and understanding of municipal election financing rules
- proven analytical and decision-making skills;
- experience working on a committee, task force or similar setting
- availability and willingness to attend meetings and
- excellent oral and written communication skills;

Any members appointed must also agree in writing they will not be a candidate or an individual who is a Registered Third Party in the current municipal 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.

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.

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

The Chair is the spokesperson for the Committee and speaks on behalf of the Committee to the media, as necessary.

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.

The Chair shall preside over the meetings of the Committee and assist the Committee in reaching consensus on fundamental policy issues of concern to the Committee.

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.

STAFF RESOURCES: The Clerk of the applicable member municipality shall act as Secretary to the Committee.

The Secretary may establish administrative practices and procedures for the Committee and shall carry out any other duties required under this Act to implement the Committee's decision.

When a member municipality receives a compliance audit request or a report of the Clerk, the Clerk of the member municipality shall, within 10 days, contact the committee members and arrange for a minimum of three committee members to sit as the Compliance Audit Committee for the purpose of considering the compliance audit request or report of the Clerk. The selected Members sitting as a Compliance Audit Committee shall be required to participate in all meetings and any other proceedings pertaining to the request(s) or report of the Clerk.

MEETINGS: Committee meetings will be conducted in accordance with the open meeting provisions of the *Municipal Act, 2001* and a municipality's official web site will be used to communicate the notices of meetings. The Committee may deliberate in private in accordance with section 88.33 (5.1).

Timing of Meetings – Meetings shall be called by the Clerk of the member municipality when required. 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.

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

Meeting Notices, Agendas and Minutes – The Agenda shall constitute notice. The Clerk of the member municipality requiring the services of the Committee shall cause notice to the meetings to be provided:

- to members of the Committee, Candidate, and the Public for a meeting regarding an application by an elector;
- to members of the Committee, Contributor, Candidate and the Public for a meeting regarding a Candidate Contributor Contravention report;
- to members of the Committee, Contributor, Registered Third Party and the Public for a meeting regarding a Registered Third Party Contributor Contravention.

Notice shall be given a minimum of two (2) business days prior to the date of each meeting, not including weekends or holidays. The Agendas and Minutes of meetings shall be posted on the member municipality's website.

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

Agenda Format

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

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

If no quorum is present thirty (30) 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.

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.

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.

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.

The Chair shall vote on all matters 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.

REMUNERATION: Committee members shall receive an honorarium of \$100.00 per meeting attended, payable by the member municipality requiring the services of the Committee.

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 88.33 to 88.37 of the *Municipal Elections Act, 1996*.

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

FUNDING: The member municipality requiring the services of the Committee shall be responsible for all associated expenses including the auditor's costs.

RECORDS The records of the Committee meetings shall be retained and preserved by the Clerk of the member municipality requesting the service of the Committee in accordance with that municipality's Records Retention rules.

Appendix A

Municipal Elections Act, 1996 **S.O. 1996, c. 32** (for reference only)

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.

Procedural matters

(5) The meetings of the committee under this section shall be open to the public and reasonable notice shall be given to the candidate, the applicant and the public. 2016, c. 15, s. 63.

Same

(6) Subsection (5) applies despite sections 207 and 208.1 of the *Education Act*. 2016, c. 15, s. 63.

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.

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.

Same

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

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.

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.

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.

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.

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.