



CLEARVIEW

Staff Recommendation Report

To: Mayor and Council

From: Sasha Helmkey, Clerk/Director of Legislative Services

Date: March 21, 2022

Subject: LS-008-2022 Joint Compliance Audit Committee – 2022
Municipal & School Board Election

Recommendation

Be It Resolved that Council of the Township of Clearview hereby:

- 1) Receive Report LS-008-2022 (Joint Compliance Audit Committee – 2022 Municipal & School Board Election) dated March 21, 2022; and,
- 2) That Council approve the Township of Clearview participating in the Joint Compliance Audit Committee facilitated and administered by the County of Simcoe for the 2022 Municipal & School Board Election; and,
- 3) That a by-law be presented to Council prior to October 1, 2022, to establish and appoint members to the Joint Compliance Audit Committee with participating municipalities within the County.

Background

Under section 88.37 (1) of the Municipal Elections Act, 1996, all municipalities in Ontario are required to have a Compliance Audit Committee for election purposes. This committee is required to be established prior to October 1 in every election year.

Within 90 days of the financial filing deadline for candidates and third-party advertisers, an elector can file an application with the Compliance Audit Committee if they believe on reasonable grounds that a candidate or third-party advertiser has contravened a provision of the Act relating to election campaign finances.

One of the new provisions added to the Municipal Elections Act prior to the 2018 Election, requires the Clerk to review all contributions provided to both candidates and third-party advertisers. This is to determine whether any contributor appears to have exceeded any of the contribution limits as outlined under section 88.9 of the Act. Any discrepancies will require the Clerk to report these findings directly to the Compliance Audit Committee.

Joint Compliance Audit Committee – 2018 Election

For the 2018 Municipal & School Board Election the Township of Clearview participated in a Joint Compliance Audit Committee (JCAC) with the City of Orillia, Townships of Oro-Medonte, Ramara, Severn, Springwater, Tay, Tiny and Towns of Collingwood, Midland, Penetanguishene and Wasaga Beach. The County of Simcoe facilitated this joint venture, providing administrative support, assistance in drafting the terms of reference and recruitment of members. Having a Joint Committee worked well as it can be difficult for individual municipalities to find qualified members to sit on the Committee and meet the membership threshold determined by the Act, which is 3-7 members.

Comments and Analysis

In the summer of 2021, the County Clerk sent correspondence to all Clerks of member municipalities to see if there was interest in participating in a Joint Compliance Audit Committee for the 2022 Municipal & School Board Election. All sixteen (16) municipalities expressed interest, including Clearview.

On January 11, 2022, the County Clerk's Department submitted report CCW 2022-007 to County Council recommending that the County establish and administer a Joint Compliance Audit Committee with participating lower tier municipalities for the 2022 Municipal Election and term of office. This recommendation was approved by Council.

As was seen with the 2018 Election, the County would administer the Joint Compliance Audit Committee, allowing for an arms length process from applicants, third party advertisers, candidates and the lower tier municipality. The County Clerk would be delegated the authority for the provision of administrative support to the Committee including the taking of minutes, distribution of minutes and agendas and coordination of meetings. The JCAC members would receive a per diem and mileage based on the County rates. All associated costs deemed to be common would be shared with participating municipalities. Costs specific to an application filed against a specific candidate or third party would be covered by the municipality involved. For reference, the 2018 JCAC Terms of Reference have been attached as Appendix A. These terms of reference will be reviewed for the 2022 Election and any updates made prior to presenting to Council for approval before the October 1st deadline. This by-law will also appoint the members.

In 2018, the Township found it an effective and efficient use of resources to partner with the County on the joint committee. It is being recommended that this structure be approved/established for the 2022 Municipal Election.

Clearview's Strategic Plan

The above initiative supports the following strategic pillars:

- Governance

Financial Implications

Joint Compliance Audit Committee members will receive the applicable County per diem and mileage for attendance at each meeting with each participating municipality being responsible to cover their share of Committee operational costs for each meeting. Costs specific to an application filed against a specific candidate or third party would be covered by the municipality involved.

Report Appendices

Appendix A – 2018 JCAC Terms of Reference

Approvals

Submitted by:	Sasha HelmKay, B.A., Dipl. M.A., AOMC, Clerk/Director of Legislative Services
Reviewed by:	John Ferguson, CAO
Financial Implications Reviewed by:	Kelly McDonald, Treasurer
Approved by:	John Ferguson, CAO

Joint Compliance Audit Committee

Terms of Reference

The Participating Municipalities will select Committee members jointly. In the event a Participating Municipality receives an application for a compliance audit, the County Clerk will be responsible for meeting administration while the Municipal Clerk for the Participating Municipality will be responsible for payment of 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*, to conduct a Compliance Audit of a Candidate's election campaign finances pursuant to Section 88.33(10) and (11) 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.

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

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

“County Clerk” means the Clerk of The Corporation of the County of Simcoe or their designate.

“Family Member” means a child, parent and spouse of a Committee member, as defined in the *Municipal Conflict of Interest Act*, and shall also include mother, father, sister, brother, daughter-in-law, son-in-law, step-child, sibling, grand-child, aunt, uncle, niece, nephew and first cousins.

Joint Compliance Audit Committee
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“Meeting” means a meeting of the Committee in accordance with section 5.1 of the Act.

“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 City of Orillia, The Town of Collingwood, Town of Midland, Town of Penetanguishene, Town of Wasaga Beach, Township of Clearview, Township of Oro-Medonte, Township of Ramara, Township of Severn, Township of Springwater, Township of Tay and the Township of Tiny.

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

“Private Session” means any portion of the meeting that is closed to the public for confidential deliberation in accordance with the Act.

“Reasonable Notice” means the posting of the meeting agenda on the County website and the applicable participating municipalities’ website and advising the Applicant, Candidate, Contributor or Registered Third Party Advertiser, as applicable, by email, telephone or by regular mail seven (7) calendar days in advance of the meeting.

“Registered Third Party Advertiser” 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 advertiser for the election pursuant to Section 88.6 of the Act.

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

“Simcoe County” means The Corporation of the County of Simcoe.

“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

Section 88.37(1) of the Act requires that before October 1st in an election year, Council establish a compliance audit committee for the purposes of Section 88.33 of the Act relative to a possible contravention of the Act’s election campaign finance provisions.

Joint Compliance Audit Committee
Terms of Reference

3. Mandate

This Committee is an investigative/adjudicative body created to enforce provincially enacted laws related to municipal election campaign funding.

4. 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 - s. 88.33(7)
Provide written reasons for the decision to grant or reject the applications.	s. 88.33(8)
If an application is granted, appoint an Auditor to conduct a Compliance Audit of the Candidate's election campaign finances.	s. 88.33(10) and (11)
Receive the Auditor's Report.	s. 88.33(14)
(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 - s. 88.33(17)
Receive a Clerk's Report identifying any contributor to a Candidate or Registered Third Party Advertiser 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: - Participate in the selection of an Auditor in response to the request for quotation	

Joint Compliance Audit Committee
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- process;
- 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.

5. 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.

6. 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 Advertiser in the Participating Municipalities 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.

7. 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

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- other individuals with knowledge of the campaign financing 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 Clerks from the Participating Municipalities shall be responsible for the recruitment of applicants. All applicants will be required to submit an application form outlining their qualifications and experience to the County Clerk by a specified deadline. After the deadline has passed, the Selection Committee will meet to review the applications, interview and appoint Committee members.

To avoid possible conflicts of interest, any auditor or accountant appointed to the Committee must 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 agree in writing that they have not provided and will not provide legal advice to any Candidates seeking election to Councils or to 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.

8. Notice

The County Clerk shall give notice of a Committee meeting to the Committee by email, telephone or by regular mail in advance of the notice to the public.

The County Clerk and applicable Municipal Clerk shall give reasonable notice of the meeting by posting the meeting agenda on their websites. This will serve as public notice of the Committee meeting.

Where an application will be considered at the meeting, the County Clerk shall give reasonable notice to the Applicant and Candidate or Registered Third Party Advertiser of the time, place and purpose of the Committee meeting, and further advise 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 Municipal Clerk's Report regarding contribution limit exceedances will be

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considered at the meeting, the County Clerk shall give reasonable notice to the Contributor and Candidate or Registered Third Party Advertiser 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. The notice shall include the content of the application.

9. Meetings

The County Clerk shall call a meeting of the Committee when he or she receives an application for a Compliance Audit or when he or she receives a report under Section 88.34 from the participating municipalities Clerk. The Applicant, Candidate, Registered Third Party Advertiser or their representative will be provided with an opportunity to address the Committee and provide written submissions.

Meeting dates, start times, locations and agendas shall be set by the County Clerk. The agenda shall provide an opportunity for any member to declare a conflict of interest.

Committee meetings will be open to the public but the Committee may deliberate in private, as noted in Section 88.33(5.1). No votes may be taken in private session.

10. 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.

11. Selection of the Chair

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

If the Chair of the Committee resigns as the Chair or as a member of the Committee, the Committee shall appoint another member as Chair for the balance of the term of Council.

12. 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 and voting member; and,
- (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.

13. 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 the member shall leave the meeting during all discussion on the matter including a private session.
- (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 first meeting of the Committee attended by the member after the meeting referred to in subsection (iv).
- (vi) Participate as an active and voting member, asking questions, and seeking clarification through the Chair.
- (vii) Provide the reasons for a decision in writing, 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.

14. Selection of an Auditor

Committee members will participate in the selection of an Auditor in response to the request for quotation. The Auditor will be appointed by resolution of the Committee at their

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first meeting. An engagement letter will be prepared and executed by the County Clerk, on behalf of the Participating Municipalities, which will indicate that the Auditor has been retained by the Committee following appointment.

15. Resources

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

16. Committee Records

The County Clerk will co-ordinate and retain certified true copies of the Committee records including agendas and minutes with original documents being retained by the appropriate Participating Municipalities.

17. 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 County or the Participating Municipalities will not provide advice or interpretation related to declarations.

18. Compensation

Members will receive the applicable County per diem and mileage for attendance at each meeting with each Participating Municipality being responsible to cover their share of the costs for each meeting.

19. Practices and Procedures

The Clerks of the Participating Municipalities along with the County Clerk 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 along with the County Clerk 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 impact the intent of the Terms of Reference.

August 3, 2018