



Meeting Date: October 10, 2018
Submitted by: Ann Wright, Clerk
Report No: C-06-2018
Subject: Compliance Audit Committee

Recommendation:

That the Council for the Municipality of Middlesex Centre receive Report No. C-06-18, as information.

Purpose:

The purpose of this Report is to provide some information concerning the establishment of a Compliance Audit Committee in accordance with Section 88.37 of the Municipal Elections Act.

Background:

Section 88.37 of Municipal Elections Act, 1996 (MEA), pertaining to compliance audit applications, requires all municipalities and local boards to establish compliance audit committees.

The following summarizes the requirements as set out in section 88.37 of the MEA:

- mandatory appointment by all municipalities;
- minimum of three, maximum of seven members;
- the committee shall not include members of Council or local board, employees or officers of the municipality or local board, or any persons who are candidates in the election for which the committee is established; or any persons who are registered third parties in the municipality in the election for which the committee is established;
- serves a term concurrent with the term of office of the Council that takes office following the next regular election; and
- Clerk has specific responsibility for the committee.

The powers and obligations of a compliance audit committee are as follows:

- consider a compliance audit application received from an elector that a candidate or a registered third party has contravened provisions of the MEA relating to election campaign finances;
- determine whether such applications should be granted or rejected;
- if the committee determines the application should be granted, appoint an auditor to conduct a compliance audit;
- receive the auditor's report;
- consider the auditor's report and if the report concludes that the candidate or registered third party appears to have contravened a provision of the MEA relating to election campaign finances, the committee may commence legal proceedings against the candidate or third party for the apparent contravention; and
- consider the report(s) of the clerk identifying each contributor to a candidate for office on a council or a registered third party who appears to have contravened any of the contribution limits under section 88.9 or 88.13 of the MEA and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

Compliance Audit - Candidates

All candidates are required to file provincially-prescribed financial statements with the clerk, detailing their campaign financing activities. An eligible elector who believes, on reasonable grounds, that a candidate has contravened the MEA, relating to campaign finances, may apply for a compliance audit of the candidate's election campaign finances. The application must be made in writing to the clerk, include the reasons for the elector's belief that the candidate has contravened the MEA, and must be made within 90 days after the latest of:

- (a) the filing date under section 88.30 of the MEA;
- (b) 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 of the MEA;
- (c) the candidate's supplementary filing date, if any, under section 88.30 of the MEA;
or
- (d) the date on which the candidate's extension, if any, under subsection 88.23(6) of the MEA expires.

Candidate – Contributions

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 of the MEA and submit a report to the compliance audit committee identifying any contributor who appears to have contravened any of the contribution limits under section 88.9 of the MEA.

Within 30 days after receiving a report, the compliance audit committee shall consider it and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

COMMENTS:

The proposed terms of reference, attached as Schedule A to By-law 2018-089, provides for a 2018 Municipal Election Compliance Audit Committee composed of three (3) members.

It is important that the 2018 Municipal Election Compliance Audit Committee members possess an in-depth knowledge of the campaign finance rules of the MEA so that they can make independent decisions on the merits of the applications. As the Committee will operate as a quasi-judicial committee, prior experience on a committee, task force or tribunal would be an asset. A Committee composed of professionals such as auditors, accountants, lawyers, academics and other individuals having a familiarity with municipal election campaign financing rules is recommended.

To avoid possible conflicts of interest, any member appointed to the 2018 Municipal Election Compliance Audit Committee shall not prepare the financial statements of any candidate running for office on Municipal Council or local board during the term for which the Committee has been established; or any registered third party. In addition, a Committee Member may not be a contributor or provider of any election-related services to a registered candidate or third party advertiser in the 2018 Municipal Election or any subsequent by-election including but not limited to accounting, legal, auditing, marketing or campaign services.

The Council appointed Andrew Wright, Christene Scrimgeour and Tim Cobban, the City of London's Compliance Audit Committee, for the 2010-2014 term to represent the Municipality of Middlesex Centre for compliance audit issues.

The City of London appointed Andrew Wright, Christene Scrimgeour and Dan Ross, for the 2018-2022 term. The Municipal Staff have worked closely with the other Middlesex County Clerks and recommend that the Council appoint the same individuals appointed to the City of London's Compliance Audit Committee to represent the Municipality of Middlesex Centre for compliance audit issues. However, because transparency, fairness and the avoidance of any possible conflict of interest is of the utmost importance we believe that there could be a perceived conflict of interest with appointing Andrew Wright because he and I are related to each other, and although Mr. Wright would have been a valued asset to the Committee again this year for Middlesex Centre, we felt it appropriate

to appoint a new member. Paula Lombardi, is well qualified as an established lawyer and will take that position on the Committee. Christene Srimgeour, Paula Lombardi and Dan Ross have agreed to represent Middlesex Centre. Every municipality is responsible to appoint its own Compliance Audit Committee and to adopt a Terms of Reference for such committee. The Clerk has, on file, a summary of their qualifications.

The Municipal Staff propose that an honorarium of \$100.00 per meeting, plus mileage, be paid to the Members of the Audit Compliance Committee.

The draft appointment by-law and proposed Terms of Reference is attached for the Council's review and consideration tonight.

Penalties

The following penalties are available to the courts upon conviction of violations under the Municipal Elections Act, 1996:

- Individual:
 - maximum fine of \$25,000
 - if convicted of a corrupt practice, automatic loss of seat and ineligible to run or be appointed to office
 - the Court has discretion to impose up to six months imprisonment for corrupt practice and for any other offence if the offence was committed knowingly
 - ineligible to be elected or appointed to any office until after the next general election if convicted of a corrupt practice
- Unions and Corporations:
 - maximum fine of \$50,000

CONSULTATION:

Clerk, City of London

Clerks of Middlesex County

FINANCIAL IMPLICATIONS:

The municipality is responsible for any costs resulting from the review of applications submitted to the MECAC. These costs include:

- Committee members' honorarium, which is being recommended to be \$100.00 per member, per meeting, plus mileage
- auditor's costs to perform an audit

- costs related to the Committee's operations and activities
- legal costs related to an appeal to the Ontario Court of Justice with respect to a decision of the Committee
- legal costs to undertake legal action against the candidate for violations of the elections finance provisions of the MEA

Factors involved in determining the costs for the Compliance Audit Committee include the number of compliance audit applications that are received, the number of meetings that are required to be held, and the complexity of the audits that need to be conducted. It is therefore difficult to pre-determine the costs that will result from the establishment of the MECAC process, as the number of applications to be submitted are unknown in advance. Additional funds will be allocated in the 2019 Budget to finance the operational expenses of the Compliance Audit Committee.

ATTACHMENT:

By-law appointing a Compliance Audit Committee and Terms of Reference for the committee.