

DATE: March 29, 2018

REPORT TITLE: **REGIONAL CHAIR ELECTION COMPLIANCE AUDIT COMMITTEE**

FROM: Lorraine Graham-Watson, Commissioner of Corporate Services

RECOMMENDATION

That a Peel Election Compliance Audit Committee for the Office of Regional Chair position only, be established according to Section 88.37 (1) of the *Municipal Elections Act, 1996*, as amended (the Act);

And further, that the Terms of Reference attached as "Appendix I" to the report of the Commissioner of Corporate Services, titled "Regional Chair Election Compliance Audit Committee", be approved;

And further, that the Regional Clerk be delegated the authority to advertise for applicants, review applications, conduct interviews, and appoint members to the Committee;

And further, that the remuneration of \$175 per diem, plus mileage rate of \$0.55 cents per kilometer be approved for members of the Peel Election Compliance Audit Committee and follow the same process as outlined in the Business Expenses Accounts – Members of Council Policy Number F30-02.

REPORT HIGHLIGHTS

For the Region of Peel, these Sections will apply to the Office of the Regional Chair position only:

- Section 88.33 (1) of the Act provides that an eligible elector in a municipal election may apply for a compliance audit if he or she believes on reasonable grounds that a candidate is in contravention of the Act relating to campaign finances, even if the candidate has not filed a financial statement under Section 88.25.
- Section 88.34 (1) of the Act provides that 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.
- The Act states that the Clerk shall prepare a report identifying each contributor to a candidate for office of Regional Chair who appears to have contravened any of the contribution limits under Section 88.9, and forward the report to the Committee.
- Section 88.37 (1) of the Act requires the establishment of a compliance audit committee by October 1st of an election year. This report outlines the process for compliance audits, terms of reference for the Peel Election Compliance Audit Committee and membership selection.

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- Section 23.1 of the *Municipal Act, 2001*, confers authority for a delegation by the council to the Regional Clerk to establish the compliance audit committee required by the *Municipal Elections Act, 1996*, as amended.

DISCUSSION

The Act requires municipalities to establish a compliance audit committee for each municipal election. In the past, each area local Council within the Region of Peel established its own compliance audit committee. The establishment of a committee for the Region of Peel will be to hear and consider matters pertaining to the Regional Chair position only.

With the approval of Bill 70 on December 8, 2016, sub-section 218(1) of the *Municipal Act, 2001*, was amended to provide that the head of council of an upper-tier municipality shall be elected by general vote in accordance with the *Municipal Elections Act, 1996*. The Clerk is now responsible for the direct election of the Regional Chair. As part of the election process, each upper tier municipal Council must establish a compliance audit committee before October 1 of an election year (Section 88.37 (1) of the Act). Section 23.1 of the *Municipal Act, 2001*, confers authority for a delegation by the council to the Regional Clerk to establish the compliance audit committee required by the *Municipal Elections Act, 1996*, as amended.

Membership for the Peel Election Compliance Audit Committee (the “Committee”) will be solicited by advertising in local newspapers and posting on the Regional website. The Committee will have five (5) members. The selection of members will be based on criteria such as: demonstrated knowledge and understanding of municipal election finance rules; analytical and decision-making skills; and previous committee experience. This delegation process is being recommended in order to streamline the selection process and also to eliminate any potential conflict or controversy to a member of council if an application for compliance audit is made against their campaign.

Section 88.33 of the Act outlines the process for receiving and hearing compliance audit applications from eligible electors. In accordance with Section 88.33, the Committee will only receive applications for the Office of Regional Chair position and determine if received applications should be granted or rejected, and provide brief written reasons for the decision. The decision of the Committee may be appealed to the Superior Court of Justice and the court may make any decision the committee could have made. If the Committee grants the application, the Committee will appoint an Auditor to review the candidate’s election campaign finances and provide an audit report outlining any apparent contraventions of the Act. The audit report will be forwarded to the candidate and the Clerk who will, within 10 days, forward the report to the Committee. The Committee will receive and consider the Auditor’s report and decide, as per Section 88.33 (17), whether legal proceedings should commence against the candidate for the apparent contravention. Section 88.34 of the Act, to be enacted on April 1, 2018, outlines the new requirement for Clerks to review contributions to candidates and the process for the Committee to receive reports from the Clerk with respect to candidate contributions who may have contravened any of the contribution limits under the Act. The Clerk will forward each report to the Committee and the Committee will decide whether to commence a legal proceeding against a contributor for apparent contravention.

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The per diem amounts paid to committee members vary among municipalities. Based on a survey of other municipalities in the 2014 election, the amounts ranged from \$100 to \$350 per meeting, with most other municipalities paying between \$125 to \$200. A per diem rate of \$175 is being recommended.

The recruitment of the Committee members will follow established practices for other committees with citizen membership such as the AAC.

FINANCIAL IMPLICATIONS

The cost of establishing the Committee will come from the existing budget approved for the costs of the election of the Chair at large.

Further costs would be incurred if requests for compliance audits are received.



Lorraine Graham-Watson, Commissioner of Corporate Services

Approved for Submission:

D. Szwarc, Chief Administrative Officer

APPENDICES

Appendix I – Peel Election Compliance Audit Committee – Terms of Reference

For further information regarding this report, please contact Kathryn Lockyer, Regional Clerk, extension 4325, Kathryn.lockyer@peelregion.ca.

Authored By: Tim Ivanyshyn, Legislative Specialist - Elections

APPENDIX I
REGIONAL CHAIR ELECTION COMPLIANCE AUDIT COMMITTEE

Peel Election Compliance Audit Committee

Terms of Reference

The Clerk will recruit and appoint members for the Peel Election Compliance Audit Committee (the "Committee"). In the event the Region of Peel receives an application for a compliance audit for Office of Regional Chair position only, the Clerk will be responsible for meeting administration as required.

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 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 for the office of Regional Chair whose election campaign finances and/or election contributions are the subject of an application for a Compliance Audit.

"Clerk" means, as the context provides, the Regional Clerk of the Regional Municipality of Peel, or his or her designate.

"Committee" means the Peel Elections Compliance Audit Committee established pursuant to Section 88.37 of the Act.

"Compliance Audit" means an audit of a Candidate's election campaign finances or Candidate's election contributions, and will be conducted by an Auditor appointed by the Committee.

"Council" means, as the context provides, the Council of the Regional Municipality of Peel.

"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.

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

"Region of Peel" means The Regional Municipality of Peel.

**APPENDIX I
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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 and Section 88.34 of the said Act.

Name

The name of the Committee is the “Peel Election Compliance Audit Committee”.

Duration

The term of office is from December 1, 2018 to November 14, 2022 to deal with applications for the office of Regional Chair position from the 2018 election and any by-elections during the 2018-2022 term of Council.

Mandate

The powers and functions of the Committee are set out in Section 88.37 of Act. The Committee will perform the functions relating to the compliance audit application process as outlined in the Act respecting campaign finances of candidates for the office of Regional Chair. These functions include:

Candidate Contravention

- a. within 30 days receipt of a compliance audit application by an eligible elector, consider the application and decide whether it should be granted or rejected;
- b. 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;
- c. if the application is granted, appoint a licensed Auditor to conduct a compliance audit of the Candidate's election campaign finances;
- d. receive the Auditor's report from the Clerk;
- e. within 30 days receipt of the Auditor's report, consider the report;
- f. if the report concludes that the Candidate appears to have contravened a provision of the Act relating to election campaign finances, the Committee will decide whether to commence legal proceedings against the Candidate for the apparent contravention;
- g. after reviewing the Auditor's 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

- a. within 30 days receipt of a report from the Clerk identifying each contributor to a Candidate who appears to have contravened any of the contribution limits, consider the report and the Committee will decide whether to commence a legal proceeding against the contributor for an apparent contravention.
- b. after reviewing the report from the Clerk, give to the Contributor and the Clerk the decision of the Committee, and brief written reasons for the decision.

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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.

Membership

The Committee shall be composed of five (5) voting members.

Membership will include individuals with the following skill set, if possible:

- a. accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates and registered third parties;
- 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 Act.

Municipal employees or officers of the municipality, members of Council or local board; any Candidate or any persons who are Registered Third Parties in the 2018 municipal election or in any by-election during the 2018-2022 term of Council for the Region or for any area local municipality are ineligible to be appointed as a member of the Committee pursuant to subsection 88.37 (2) of the of the Act.

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

Membership Selection

The terms of reference and application form will be posted, as a minimum, on the Region of Peel website. The Clerk will also contact and solicit individuals who meet the criteria as set out under "Membership" of the Terms of Reference. In addition, advertisements will be placed in local papers.

All applicants for membership 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 five voting members.

Members will be selected on the basis of the following:

- a. demonstrated knowledge and understanding of municipal election 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.

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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 2018-2022 term of Council for the Region or for any area local 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.

To avoid a conflict, any person appointed to the Committee must agree in writing not to prepare or audit the election financial statements of any Candidate or Registered Third Party for the Region or any of the area local municipalities in the current municipal election. 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 its members at its first meeting when an application is received and shall remain the Chair for the duration of the audit committee term.

The Chair is the liaison between the members and the Clerk 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.

Duties of Committee Members

The duties of Committee members are as follows:

- (i) attend all Committee meetings, sending regrets otherwise.
- (ii) understand their role, the Committee's mandate and meeting procedures.
- (iii) 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.
- (iv) 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 (iii) at the first meeting of the Committee attended by the member after the meeting referred to in subsection (iii).

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- (v) participate as an active and voting member, asking questions, and seeking clarification through the Chair.
- (vi) develop and maintain a climate of mutual support, trust, courtesy and respect.
- (vii) work together to utilize the knowledge, expertise and talents of all members.
- (viii) respect the decisions of the Committee and that such decisions reflect the majority view.

Staffing and Funding

The Clerk shall act as Secretary to the Committee.

The Regional Municipality of Peel will be responsible for all associated expenses, including the Auditor's costs, with recommendations from the Clerk.

Committee Member Remuneration - \$175 per diem, plus mileage at a rate of \$0.55 cents per kilometre, and will follow the same process as outlined in the Business Expense Accounts – Members of Council Policy Number F30-02.

Meetings

Meetings of the Committee shall be open to the public, but the Committee may deliberate in private.

Timing of Meetings

Meetings shall be called by the Clerk 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 Clerk.

Meeting Notices, Agendas & Minutes

The agenda shall constitute notice. The Clerk shall cause notice of 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.

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 Region's website.

Minutes of each meeting shall outline the specific actions and recommendations.

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Will follow the Regional Council Procedure By-law.

Quorum

A quorum shall be three (3) committee members.

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 Act.

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