



## The Corporation of the Town of Tecumseh

Corporate Services & Clerk

**To:** Mayor and Members of Council

**From:** Jennifer Alexander, Deputy Clerk & Manager Legislative Services

**Date to Council:** September 25, 2018

**Report Number:** CS-2018-27

**Subject:** Elections 2018 – Compliance Audit Committee

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### Recommendations

**That** the CS-2018-27 Report regarding the Compliance Audit Committee for the 2018 Municipal and School Board Elections **be received**;

**And that** the Terms of Reference for the Compliance Audit Committee, as provided as Attachment 1 to Report CS-2018-27, **be approved**;

**And further that** the Compliance Audit Committee consist of the following four (4) members to **be appointed** for the term of December 1, 2018, and ending November 14, 2022: Jerry Marion, Mary Birch, Mary Masse, and Walter Copeland.

### Background

#### Municipal Elections Act

The *Municipal Elections Act, 1996*, Chapter 32 (MEA) as amended, requires under Section 88.37(1), that every council establish a Compliance Audit Committee (CAC) on or before October 1<sup>st</sup> of an election year. The term of the CAC is the same as the Council that appointed them.

The MEA, in Section 88.33, permits an elector who is entitled to vote in an election and who believes on reasonable grounds that a candidate or a registered third party advertiser has contravened a provision of the MEA relating to election campaign finances may apply for a compliance audit of a candidate's 2018 election campaign finances.

## **Comments**

### **Compliance Audit Committee Composition**

The mandate of the CAC is outlined in Section 88.33 to 88.37 of the MEA.

The CAC is comprised of not fewer than three (3) and not more than seven (7) members. The MEA restricts the following persons from being appointed:

- a) Employees or officers of the municipality;
- b) Members of Council;
- c) Any persons who are candidates in the election for which the CAC is established; and
- d) Any persons who are registered third parties in the municipality in the election for which the committee is established.

It is common for municipalities to choose to appoint members to their CAC with an accounting or auditing background, legal expertise, an academic education (such as college or university professors with expertise in political science or local government); and/or other individuals with knowledge of the MEA, due to the complexity of the election campaign finances.

### **Recruitment of Compliance Audit Committee Members**

To ensure a fair, open and transparent process, the recruitment process for Tecumseh's CAC was posted on the Town's website and social media, as well as advertised in the Shoreline Week and the Essex Free Press.

Applications have been reviewed by Director Corporate Services & Clerk.

The selection process is based on clearly understood and equitable criteria. Members are recommended on the basis of the following qualifications:

- a) demonstrated knowledge and understanding of municipal election campaign financing rules;
- b) proven analytical and decision-making skills;
- c) experience working on committees or similar setting;
- d) availability and willingness to attend meetings;
- e) excellent oral and written communication skills; and
- f) ability to remain impartial in order to fulfill their responsibilities.

## Terms of Reference

As previously mentioned, the term of office for the CAC is the same as the term of office as the Council that takes office following the next regular election. The current term of office would therefore be December 1, 2018 to November 14, 2022.

The Terms of Reference for the Town's 2018 Election Compliance Audit Committee is appended as [Attachment 1](#).

## Compliance Audit Process

The MEA requires all candidates and registered third party advertisers to file a financial statement on the prescribed form, with the Clerk, reflecting their finances.

The CAC is to review and determine if an application for compliance audit should be granted. The CAC decision as to whether or not to grant an application for an audit can be appealed to the Ontario Superior Court of Justice within fifteen (15) days after a decision is made; and the Court may make any decision the CAC could have made.

An application for a compliance audit is to be made to the Clerk of the municipality for which the third party registered or candidate was nominated for an office. The application shall be in writing and outline the reasons for the CAC to grant the audit. The deadline for making an application is ninety (90) days after the latest filing dates under section 88.33(3) of the MEA:

1. The filing date under section 88.30 (In the case of a regular election, the last Friday in March following the election – March 29, 2019);
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.

The Clerk is required to forward the application to the CAC within ten (10) days of receipt. Reasonable notice of the meetings of the CAC shall be given to the candidate, the applicant and the public. The CAC must consider the application and make a decision within thirty (30) days after receiving the application from the Clerk as to whether it should be granted or rejected. The decision of the CAC 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 filled his or her nomination, the secretary of the local board, if applicable, and the applicant.

If the CAC decides to grant the request, it shall appoint an auditor to conduct the audit of the candidate's election campaign. Upon completion of the audit, the auditor shall submit the report to the candidate, registered third party advertiser, the clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant. Within ten (10) days after receiving the report, the Clerk of the municipality shall forward the report to the CAC.

The CAC must consider the report within thirty (30) days after receiving it 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 CAC shall decide whether to commence a legal proceeding against the candidate, or registered third party, for the apparent contravention.

The MEA in section 88.37(6) requires the Clerk to establish administrative practices and procedures for the CAC to carry out their duties. Furthermore, CAC meetings under section 88.36 (6.1), shall be open to the public unless otherwise permitted in accordance with the Municipal Act, 2001.

### **Review of Contributions by Clerk**

Effective for the 2018 election, the Clerk now has the responsibility of reviewing the contributions reported on the financial statements submitted by a candidate and registered third party to determine whether any contributor appears to have exceeded any of the contribution limits.

As soon as possible following the thirty (30) days after the filing date, or supplementary filing date, the Clerk shall prepare a report, which identifies each contributor to a candidate in office of council and registered third party who appears to have contravened any of the contribution limits.

The Clerk shall forward each report to the CAC and within thirty (30) days of receiving a report the CAC shall consider it and decide whether to commence a legal proceeding against a contributor.

### **Recruitment Process**

Notice inviting applications for the Tecumseh Compliance Audit Committee was placed in the Shoreline Week, the Essex Free Press, Town's website and social media. Prior members were contacted for their continued interest in serving on the CAC. Additionally, professional associations were contacted to invite applicants.

The following applications have been received and are recommended to be appointed by Council to the CAC for the term of December 1, 2018 to November 14, 2022. The applications have been reviewed and meet the requirements set out above.

Jerry Marion

Walter Copeland

Mary Masse

Mary Birch

### **Consultations**

Area Clerks

## Financial Implications

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

- a) Committee members' per diems;
- b) Auditor's costs to perform the audit;
- c) Costs related to the CAC operation and activities (i.e.: copying, postage, mileage, etc...);
- d) Legal fees related to an appeal to the Ontario Court of Justice with respect to a decision of the CAC; and
- e) Legal fees related to undertake action against a candidate or third party advertiser for violation of the elections finance provisions of the MEA.

While the Town is responsible for paying the Auditor's costs to perform the audit, and all costs in relation to the CAC's operations and activities, should the Auditor's report indicate that there was no apparent contravention and the CAC finds that there were no reasonable grounds for the application, the Council is entitled to recover the Auditor's costs from the applicant.

Any costs incurred for a compliance audit during the term of Council would be charged to the Municipal Election Reserve. These costs are difficult to estimate in the absence of having previously received an application for compliance audit and the unforeseen number of applications which may be experienced.

Given the high level of responsibility of the CAC members and the importance of retaining professional and experienced persons, a meeting per diem of \$200 was previously established.

## Link to Strategic Priorities

Applicable	2017-18 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input type="checkbox"/>	Ensure that the Town of Tecumseh’s current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of the Town of Tecumseh’s plans and priorities.
<input type="checkbox"/>	Steward the Town’s “continuous improvement” approach to municipal service delivery to residents and businesses.
<input checked="" type="checkbox"/>	Demonstrate the Town’s leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

## Communications

Not applicable

Website       Social Media       News Release       Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Jennifer Alexander, MPA  
Deputy Clerk & Manager Legislative Services

Reviewed by:

Laura Moy, Dipl. M.M., CMMIII HR Professional  
Director Corporate Services & Clerk

Recommended by:

Tony Haddad, MSA, CMO, CPFA  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
1	Terms of Reference