

Subject: Niagara Compliance Audit Committee - Updated Terms of Reference

Report to:

Report date: June 2018

Recommendations

1. That the Niagara Compliance Audit Committee be **RE-ESTABLISHED**;
2. That the updated Terms of Reference attached as Appendix 1 to Report XX-2018 **BE APPROVED**;
3. That the Clerk **BE DELEGATED** the authority to make any legislative or administrative changes to the terms of reference;
4. That the Clerk **BE DELEGATED** the authority to appoint members to the Compliance Audit Committee; and
5. That By-law 91-2010 being a by-law to establish the Niagara Compliance Audit Committee for XXXX **BE REPEALED**.

Key Facts

- The *Municipal Elections Act, 1996* (the “Act”) requires municipalities and local boards to establish a Compliance Audit Committee before October 1st.
- A qualified elector who believes on reasonable grounds that a candidate or registered third party advertiser has contravened the campaign finance provisions of the Act may apply to the compliance audit committee for a compliance audit.
- Since 2010, the Region, the Local Area Municipalities (LAMS) and the Niagara Public and Catholic School Boards (the “Joint Participants”), have continued with the joint Niagara Compliance Audit Committee (the “Committee”) under identical terms of reference. Staff are recommending continued participation in the joint Committee.
- Due to legislative changes to the Act, it is necessary to update the terms of reference.

Financial Considerations

The terms of reference include a retainer of \$300.00 for each member (including training and mileage), and a per diem rate of \$200.00 per meeting, plus mileage, at the rate of the responding municipality requiring the services of the Committee. The

retainer costs will be shared among the Joint Participants while the per diem and mileage costs will be borne by the responding municipality. The proposed rates are in the middle of the range of regions/municipalities surveyed for 2018.

Any auditor or legal costs incurred with a compliance audit application will be the responsibility of the responding municipality.

Analysis

Since the Committee was first established in 2010, the Joint Participants have continued with the Committee under identical terms of reference, including recruitment and selection of members for appointment by councils/boards.

As a result of legislative changes to the Act, it is necessary to update the terms of reference for the Committee to include provisions for registered third party advertisers (local responsibility), over-contributor reports from the Clerk as well as housekeeping improvements. A copy of the updated terms of reference are attached as Appendix 1. They have been reviewed and agreed to by the Area Clerks Election Task Force. It is expected the Councils/Boards will have considered and finalized this matter within the month of June.

The updated terms of reference include a provision for delegated authority to the Clerk to make any future changes thereto as a result of legislative or administrative requirements, as well as delegated authority to the Joint Clerks for the appointment of the committee members, and to inform Council accordingly. It is more common now for Council to delegate the appointment authority to the Clerks of the Committee in order to remove any perception of bias and to keep the statutory committee at arms-length, given Members of Council who seek re-election for the 2018-2022 term may be the subject of a compliance audit committee. Examples of such delegated authority include the Regions of: Durham, Halton, Peel, Waterloo and York.

Compliance Audit Committee Highlights

- Each municipality and local board must establish a compliance audit committee before October 1 in an election year.
- The committee shall be composed of not less than 3 and not more than 7 members. Ineligible for appointment: employees or officers of municipality or local board, members of council or local board, candidates or registered third party advertisers in the election for which the committee is established.
- When appointing persons to the committee, regard shall be had to professionals with a background in law, auditing, accounting, administration and/or public administration. Preference will be given to those with an understanding of municipal campaign finance rules, analytical and decision-making skills, and

previous experience with or as a member of government boards, task forces and/or quasi-judicial bodies.

- Term of office of the committee is concurrent with the term of council or local board.
- The council or local board shall pay all costs in relation to the committee's operation and activities.
- The committee is responsible for considering applications from eligible electors that believe, on reasonable grounds, that a candidate or a registered third party has contravened a provision of the Act relating to election campaign finances even if a financial statement has not yet been filed under Section 88.25 of the Act.
- The Region will be responsible for processing and covering the costs for any application for the Chair and Regional Councillors. LAMS are responsible for registered third party advertiser applications. School Boards are responsible for any trustee application.

The role of the compliance audit committee includes:

- Receive and determine whether or not to grant or reject application.
- Appoint auditors, when necessary.
- Receive compliance audit report from auditor and make decision with regard to report if it indicates an apparent contravention of the Act and determine whether or not legal proceedings should be commenced against the candidate or registered third party.
- Consider reports submitted by the Clerk where it appears a contributor exceeded the contribution limit and make decisions with regard to such reports.

Joint Clerk's Role

- Acts as secretary to the compliance audit committee (for responding municipality)
- Establishes stipend for committee
- Recruits and appoints committee members.
- Trains committee members
- Establishes administrative practices and procedures
- Ensures a process is in place for the selection and appointment of an auditor
- Ensures legal representation is available to the committee
- Reviews and reports on each contributor that may have exceeded contribution limits

Alternatives Reviewed

This report is driven by amendments to the Act relating to campaign finances. Council may determine to opt out of the joint Committee, however, it is not recommended since the Committee is a good example of the Region, LAMS and School Boards working together to achieve efficiencies and cost savings. Council may determine to retain

authority for the appointment of the Committee members as well as considering any future changes to the terms of reference rather than delegating to the Clerk. However, it is not recommended in order to keep the Committee at arms-length for the reasons stated earlier and to provide for greater efficiencies in the event legislative changes occur.

Relationship to Council Strategic Priorities

(Participant specific)

Other Pertinent Reports

(Participant specific)

Prepared by:

Recommended by:

Submitted by:

Appendices

Appendix 1 Terms of Reference for
Niagara Compliance Audit Committee