

2014-2018 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE

**COMITÉ DE VÉRIFICATION DE LA CONFORMITÉ POUR LES
ÉLECTIONS 2014-2018**

COMMITTEE RECOMMENDATIONS

That Council:

- 1. Approve the establishment of the 2014-2018 Election Compliance Audit Committee, as described in this report and including:**
 - a) The Terms of Reference for the Election Compliance Audit Committee as outlined in Document 1;**
 - b) Delegating the authority to appoint the members of the Committee to the City Clerk and Solicitor, the Auditor General and the Deputy City Clerk;**
 - c) Delegating the authority to the City Clerk and Solicitor to negotiate and finalize the agreements with any local school board that wishes to appoint the City's Election Compliance Audit Committee to serve as their Election Compliance Audit Committee;**
 - d) Waiving the City's fees for commissioning documents for requests for compliance audits;**
 - e) Exempting the Election Compliance Audit Committee from Section 2.5 of the Appointment Policy for citizen members of City advisory committees, boards, task forces, external boards, commissions and authorities.**
- 2. Receive information regarding proposed changes to administrative practices and processes, as outlined in this report.**

RECOMMANDATIONS DU COMITÉ

Que le Conseil :

1. approuve la mise sur pied du Comité de vérification de la conformité pour les élections 2014-2018, tel que décrit dans le présent rapport, ainsi que :
 - a) le mandat du Comité de vérification de la conformité pour les élections, comme l'indique le document 1;
 - b) la délégation du pouvoir de nommer les membres du Comité au greffier municipal et chef du contentieux, au vérificateur général et à la greffière municipale adjointe;
 - c) la délégation au greffier municipal et chef du contentieux du pouvoir de négocier et de conclure des ententes avec les conseils scolaires locaux qui désirent désigner le Comité de vérification de la conformité pour les élections de la Ville comme leur comité de vérification de la conformité pour les élections;
 - d) l'abolition des frais imposés par la Ville pour la commande de documents servant aux requêtes de vérification de la conformité;
 - e) l'exemption du Comité de vérification de la conformité pour les élections de l'article 2.5 de la politique de nomination de citoyens membres de comités consultatifs, de conseils, de groupes de travail, de conseils externes, de commissions et d'autorités administratives de la Ville.
2. prenne connaissance des renseignements au sujet des changements proposés aux pratiques et processus administratifs décrits dans le présent rapport.

DOCUMENTATION / DOCUMENTATION

1. M. Rick O'Connor, City Clerk and Solicitor, report dated May 27, 2014
(ACS2014-CMR-CCB-0012)

M. Rick O'Connor, Greffier municipal et chef du contentieux, rapport daté du 27
mai 2014 (ACS2014-CMR-CCB-0012)

2. Extract of Draft Minutes 44, 3 June 2014

Extrait de l'ébauche du procès-verbal 44 du 3 juin 2014

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique**

**and Council
et au Conseil**

**May 27, 2014
27 mai 2014**

**Submitted by
Soumis par:**

M. Rick O'Connor City Clerk and Solicitor/Greffier et Chef du contentieux

Contact Person

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**Ward: CITY WIDE/À L'ÉCHELLE DE LA
VILLE**

File Number: ACS2014-CMR-CCB-0012

SUBJECT: 2014-2018 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE

**OBJET: COMITÉ DE VÉRIFICATION DE LA CONFORMITÉ POUR LES
ÉLECTIONS 2014-2018**

REPORT RECOMMENDATIONS

**That the Finance and Economic Development Committee recommend that
Council:**

- 1. Approve the establishment of the 2014-2018 Election Compliance Audit
Committee, as described in this report and including:**

- a) **The Terms of Reference for the Election Compliance Audit Committee as outlined in Document 1;**
 - b) **Delegating the authority to appoint the members of the Committee to the City Clerk and Solicitor, the Auditor General and the Deputy City Clerk;**
 - c) **Delegating the authority to the City Clerk and Solicitor to negotiate and finalize the agreements with any local school board that wishes to appoint the City's Election Compliance Audit Committee to serve as their Election Compliance Audit Committee;**
 - d) **Waiving the City's fees for commissioning documents for requests for compliance audits;**
 - e) **Exempting the Election Compliance Audit Committee from Section 2.5 of the Appointment Policy for citizen members of City advisory committees, boards, task forces, external boards, commissions and authorities.**
- 2. Receive information regarding proposed changes to administrative practices and processes, as outlined in this report.**

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil :

- 1. D'approuver la mise sur pied du Comité de vérification de la conformité pour les élections 2014-2018, tel que décrit dans le présent rapport, ainsi que :**
 - a) **le mandat du Comité de vérification de la conformité pour les élections, comme l'indique le document 1;**
 - b) **la délégation du pouvoir de nommer les membres du Comité au greffier municipal et chef du contentieux, au vérificateur général et à la greffière municipale adjointe;**
 - c) **la délégation au greffier municipal et chef du contentieux du pouvoir de négocier et de conclure des ententes avec les conseils scolaires locaux qui désirent désigner le Comité de vérification de la conformité pour les**

élections de la Ville comme leur comité de vérification de la conformité pour les élections;

- d) l'abolition des frais imposés par la Ville pour la commande de documents servant aux requêtes de vérification de la conformité;**
- e) l'exemption du Comité de vérification de la conformité pour les élections de l'article 2.5 de la politique de nomination de citoyens membres de comités consultatifs, de conseils, de groupes de travail, de conseils externes, de commissions et d'autorités administratives de la Ville.**

2. De prendre connaissance des renseignements au sujet des changements proposés aux pratiques et processus administratifs décrits dans le présent rapport.

EXECUTIVE SUMMARY

Ontario municipal elections for members of councils and school boards are conducted by the clerk of the local municipality every four years. They are governed by the *Municipal Elections Act, 1996* (the "MEA"), a piece of legislation that is prescriptive about the roles and responsibilities of all parties directly involved in an election. Among other matters, the MEA outlines specific elections campaign finance rules for candidates, including the requirement to file provincially prescribed financial statements with the City Clerk outlining campaign finance activities. It also mandates the establishment of an Election Compliance Audit Committee (the "Committee"), a quasi-judicial body, to receive and address complaints from electors about a campaign's election finances.

Under Section 81.1 of the MEA, a compliance audit committee is mandatory for all municipalities and school boards. Ontario municipalities are required to establish such a committee before October 1 of an election year and the term of office of the Committee is the same as the term of office of the council or school board that takes office following the next regular election.

This requirement to have an Election Compliance Audit Committee was new for the 2010-2014 Term of Council. It was made mandatory as part of the omnibus Bill 212, enacted on December 15, 2009. On July 14, 2010, Ottawa City Council approved the

establishment of a five-member Election Compliance Audit Committee (“the Committee”) for the 2010-2014 Term of Council in compliance with the legislation.

The Committee is responsible for addressing all requests for compliance audits for candidates for the municipal council. Section 81 of the MEA provides that any eligible elector who believes that a candidate has contravened these rules may apply for a compliance audit of the candidate’s election campaign finances. The application must be submitted to the clerk of the municipality (or the secretary of the local board in the case of school boards) for which the candidate was nominated for office. The application must be in writing, include the reasons for the application, and be made within 90 days after the filing date for financial statements.

The 2010-2014 Committee received two applications for a compliance audit concerning the financial statements filed by a candidate for City Council. After hearing from the parties involved, the Committee rejected both applications.

The total costs incurred by the City of Ottawa for the Election Compliance Audit Committee, 2010-2014, are summarized as follows:

Item	Cost
Committee Members’ honorarium, per diem and parking	-\$16,103
External Legal Counsel	-\$4,181
Costs Recovered	+\$8,000
<i>Total cost – ECAC, 2010-14:</i>	\$12,284

All costs related to the Committee’s operation and activities were funded from the Election Reserve. As the Committee did not grant either of the two requests it received for a compliance audit, the Committee did not incur any costs associated with obtaining external audit reports.

Pursuant to Section 81.1 of the MEA, school boards must also establish a Committee for the purpose of considering applications for compliance audits of financial statements submitted by candidates for school board trustee positions.

For the 2010-2014 term, the City of Ottawa's Election Compliance Audit Committee also served as the Election Compliance Audit Committee for the Ottawa-Carleton District School Board and the Ottawa Catholic School Board. This arrangement resulted in those Boards sharing some of the costs of the Election Compliance Audit Committee. Specifically, the school boards agreed to the honorarium that had been previously approved by Council and the three parties shared the annual honorarium for each committee member (resulting in the cost recovery line in the expenses table above). The City of Ottawa paid the members' per diems, legal and related costs for those compliance audit applications related to a candidate for City Council, while each respective school board was responsible for the per diem, legal and related costs of the compliance audit applications arising from their elections.

The 2010-2014 Election Compliance Audit Committee was the first for the City of Ottawa. Staff has reviewed best practices in other municipalities and consulted with the school boards and the Committee's legal counsel in developing recommendations related to the establishment of the 2014-2018 Election Compliance Audit Committee.

The MEA provides that City Council must establish the 2014-2018 Election Compliance Audit Committee, while the City Clerk and Solicitor has the sole authority to establish the administrative practices and procedures for the Committee (Section 81.1(4)). This report presents the recommendations related to the establishment of the Committee for Council's approval and the changes to the administrative practices as a whole for Council's information.

The 2014-2018 Election Compliance Audit Committee: *Status Quo* Recommendations

Staff is recommending the *status quo* for a number of matters concerning the Election Compliance Audit Committee. Some aspects are legislated, and the Terms of Reference for the Committee reflect the requirements of the MEA.

Responsibilities and Powers

The MEA provides that the Election Compliance Audit Committee's responsibilities and powers are restricted to determining whether a compliance audit is required and reviewing the compliance audits that are conducted. The legislation states that the Committee is responsible for addressing any applications asking for a compliance audit resulting from the regular municipal election or any by-election held during the term of

Council for which the Committee was appointed. The powers and responsibilities outlined for the Committee in the MEA include:

- Initial consideration of the application to determine whether the compliance audit should be granted or rejected;
- Appointment of an auditor, if the compliance audit is granted;
- Receiving the compliance audit report from the auditor;
- Reviewing the auditor's report and:
 - If the report concludes that the candidate appears to have contravened the MEA, deciding whether legal proceedings should be commenced against the candidate; or
 - If the report finds that the candidate does not appear to have contravened the MEA, making a finding as to whether there were reasonable grounds for the application.

In terms of reporting, Council shall receive:

- A copy of the application for a compliance audit [ss.81(4)];
- A copy of the auditor's report [ss.81(10)]; and
- A report from the Committee outlining its findings and recommendations as a result of the auditor's report.

The Committee must review an application for a compliance audit within 30 days of its receipt. A similar 30-day legislated timeframe exists for reviewing a report from an auditor.

Composition

Section 81.1(2) provides that the Election Compliance Audit Committee shall have no fewer than 3 and no more than 7 members. Members of the Committee may not be employees or officers of the municipality or local boards, members of Council or local boards or candidates in the election.

Staff recommends the 2014-2018 Committee be composed of five members, with three being quorum. Consistent with the 2010-2014 Committee, at least two of these members will be bilingual.

Working with Local School Boards

The Ottawa-Carleton District School Board and the Ottawa Catholic School Board have confirmed their interest in sharing an Election Compliance Audit Committee with the City of Ottawa for the 2014-2018 term. Upon Council's approval of the establishment and composition of the 2014-2018 Committee, staff will finalize an agreement regarding cost-sharing for annual honorarium and division of costs arising from City Council and school board elections.

Fees, Per Diem and Other Costs

Staff recommends that there be no cost to submitting an application for a compliance audit. Staff further recommends that members of the Committee be paid the same honorarium and per diem as were in place for the 2010-2014 Committee: specifically, a \$600 annual retainer and \$175 an hour to a maximum of \$1250 a day. As well, the Committee has its own, independent legal counsel, in keeping with the City's standard practice with its quasi-judicial bodies (e.g. Committee of Adjustment, License and Property Standards Committee). Staff intends to ask the current legal counsel to the Election Compliance Audit Committee if he is willing to continue in the role to provide consistency.

Proposed Changes for the 2014-2018 Election Compliance Audit Committee

In keeping with the City of Ottawa's approach to continuous improvement in governance matters, and given the experience with Ottawa's first-ever Election Compliance Audit Committee, staff is recommending changes to the current process based on best practices and the results of consultations with the school boards and the Committee's legal counsel.

Committee Member Recruitment

Consistent with what occurred for the 2010-2014 Committee, staff recommends that the recruitment for members of the Election Compliance Audit Committee be delegated entirely to staff to ensure that appointments are not made by those who could later be the subject of a compliance audit request. This "arms-length" recruitment for the

members of the 2010-2014 Election Compliance Audit Committee was delegated to the City Clerk and Solicitor, the Deputy City Clerk and the City Treasurer. Staff is recommending that the recruitment for the 2014-2018 Election Compliance Audit Committee be delegated to the City Clerk and Solicitor, the Deputy City Clerk and the Auditor General.

With the understanding that a wider pool of candidates may allow for the appointment of Committee members of the highest calibre, staff will add a circulation to local post-secondary institutions regarding the appointment opportunity to faculty who possess relevant background and experience.

Section 2.5 of the Appointment Policy for citizen members of City advisory committees, boards, task forces, external boards, commissions and authorities states that a citizen member may only serve on one committee, board, task force, commission or authority at any one time. Staff is recommending an exemption for the Election Compliance Audit Committee.

Committee Member Training

In addition to training on the quasi-judicial nature of the Committee, staff will be conducting a more fulsome training on Committee procedures for the members of the Committee.

Rules of Procedure and Terms of Reference

Staff has updated the Committee's Rules of Procedure and their Terms of Reference to more clearly reflect the rules of "natural justice" that state both applicant and candidate are entitled to fully present evidence. Both documents now include a stipulation that Committee Members must be present throughout a hearing. Correspondingly, staff has added a new section on "Adjournments" to the Rules of Procedure in order to provide for a hearing to be adjourned from time to time. Staff recognizes that Committee members may, for reasons unrelated to their work on the Committee, be required to be absent for part of a Committee meeting. Similarly, Committee members may find themselves unable, at the last minute, to attend a scheduled meeting. Staff has included a provision on adjournments to recognize those realities, but also to acknowledge that Members must be present throughout a hearing.

Application Form to Request a Compliance Audit

The MEA mandates that requests for a compliance audit of an election campaign's finances be made by eligible electors (as opposed to any resident of the municipality). It requires that the request be made to the clerk of the local municipality in writing and stating the reasonable grounds for the complainant's belief that a compliance audit is necessary. It establishes the timelines for a request. Additionally, it allows the Council, under Section 81(15) of the MEA, to recover the auditor's costs from the applicant if the auditor's report indicates there was no apparent contravention and the Committee finds there were no reasonable grounds for the application.

For the 2010-2014 Election Compliance Audit Committee, the City Clerk and Solicitor did not prescribe an application form for a request for a compliance audit. Without a form, there are no formal processes in place to ensure that all of the MEA requirements for requests for a compliance audit are being met. For the 2014-2018 Election Compliance Audit Committee, the Office of the City Clerk and Solicitor, under the authority of Section 81.1(4) of the MEA, will implement an application form and require that every application for a compliance audit be submitted using this prescribed form, which will be available from the Office of the City Clerk and Solicitor and on Ottawa.ca.

This form will include a declaration (typically provided by a Commissioner of Oaths) confirming the applicant is an eligible elector in the City of Ottawa (eliminating the need for the complainant to provide the formal proof of identification required for voting), stating that the applicant has reasonable grounds to believe that the candidate referenced in the application has contravened a provision of the MEA relating to election campaign finances, and setting out the reasons for his/her belief as required by the MEA.

The declaration will also require the applicant to confirm his/her understanding of Council's authority, under Section 81(15) of the MEA, to recover the auditor's costs from the applicant if the auditor's report indicates there was no apparent contravention and the Committee finds there were no reasonable grounds for the application.

As staff does not believe it is in the public interest to charge a fee for an application for a compliance audit, staff is recommending that the Client Service Centre be permitted to administer the declaration without a fee. This is similar to the service that is provided by the Client Service Centre in taking nominations for office, whereby the declaration is

administered but only the statutory fee is paid and there is no additional charge for the declaration. Requests for compliance audits will also be able to be submitted through the Elections Office and directly with the City Clerk and Solicitor and the Deputy City Clerk.

RÉSUMÉ

En Ontario, les élections municipales pour les membres des conseils municipaux et des conseils scolaires sont dirigées par le greffier de chaque municipalité tous les quatre ans. Elles sont régies par la *Loi de 1996 sur les élections municipales*, un texte législatif qui indique les rôles et responsabilités de toutes les parties directement concernées par une élection. Entre autres, la Loi décrit les règles régissant le financement des campagnes électorales des candidats, y compris l'exigence de présenter au greffier municipal les états financiers demandés par le gouvernement provincial en vue de rendre compte du financement de la campagne électorale. Cette loi exige également la mise sur pied d'un comité de vérification de la conformité pour les élections, un organisme quasi judiciaire ayant pour mandat de recevoir les plaintes des électeurs concernant le financement d'une campagne électorale et d'y répondre.

En vertu de l'article 81.1 de la *Loi de 1996 sur les élections municipales*, un comité de vérification de la conformité doit obligatoirement être mis en place pour toutes les municipalités et tous les conseils scolaires. Les municipalités de l'Ontario doivent former un tel comité avant le 1^{er} octobre de l'année de l'élection, et la durée de son mandat doit être égale à celle du mandat du Conseil municipal ou du conseil scolaire qui entre en fonction après la prochaine élection ordinaire.

La mise sur pied du Comité de vérification de la conformité pour les élections était une nouvelle exigence dans le cadre du mandat du Conseil 2010-2014. En fait, elle a été rendue obligatoire par l'édiction du projet de loi omnibus 212, le 15 décembre 2009. Le 14 juillet 2010, le Conseil municipal d'Ottawa a approuvé la mise sur pied du Comité de vérification de la conformité pour les élections (« le Comité »), composé de cinq membres, pour le mandat du Conseil 2010-2014 afin de se conformer à la Loi.

Le Comité est responsable de répondre à toutes les requêtes de vérification de la conformité des candidats au Conseil municipal. L'article 81 de la *Loi de 1996 sur les élections municipales* prévoit que tout électeur admissible qui croit qu'un candidat a contrevenu aux règles peut demander une vérification de la conformité du financement

de sa campagne électorale. La requête doit être soumise au greffier de la municipalité (ou au secrétaire du conseil local s'il s'agit d'élections scolaires) pour lequel le candidat s'est présenté. Elle doit être faite par écrit, en expliquer le bien-fondé et être soumise dans les 90 jours suivant la date de dépôt des états financiers.

Pour la période 2010-2014, le Comité a reçu deux requêtes de vérification de la conformité concernant les états financiers remplis par un candidat au Conseil municipal. Après avoir entendu les parties concernées, le Comité a rejeté les deux requêtes.

Voici la ventilation des coûts totaux engagés par la Ville d'Ottawa pour le Comité de vérification de la conformité pour les élections de 2010 à 2014 :

Élément	Montant
Rétribution, indemnité journalière et frais de stationnement des membres du Comité	-16 103 \$
Conseiller juridique externe	-4 181 \$
Récupération des coûts	+8 000 \$
Total – Comité de vérification de la conformité pour les élections, de 2010 à 2014	-12 284 \$

Tous les coûts associés aux activités du Comité ont été financés à même le fonds de réserve pour les élections. Puisque le Comité a rejeté les deux requêtes de vérification de la conformité qu'il a reçues, il n'a engagé aucuns frais pour obtenir des rapports de vérification externe.

En vertu de l'article 81.1 de la *Loi de 1996 sur les élections municipales*, les conseils scolaires doivent eux aussi mettre sur pied un comité afin d'examiner les requêtes de vérification de la conformité des états financiers soumis par les candidats aux postes de commissaires de conseil scolaire.

Pour le mandat 2010-2014, le Comité de vérification de la conformité pour les élections de la Ville d'Ottawa a également été le Comité de vérification de la conformité pour les élections du Ottawa-Carleton District School Board et du Ottawa Catholic School Board. En raison de cet arrangement, les conseils scolaires ont assumé une partie des coûts

liés aux activités du Comité. Plus particulièrement, ils ont accepté les rétributions approuvées précédemment par le Conseil municipal, de sorte que les trois parties ont partagé les coûts de la rétribution annuelle de chacun des membres du Comité (ce qui explique le montant recouvré indiqué dans le tableau des coûts ci-dessus). La Ville d'Ottawa a assumé les indemnités journalières des membres, les frais juridiques et les autres frais en lien avec les requêtes de vérification de la conformité pour les candidats au Conseil municipal, alors que chaque conseil scolaire était responsable d'assumer les indemnités journalières des membres, les frais juridiques et les autres frais liés aux requêtes de vérification pour leurs élections respectives.

Le Comité de vérification de la conformité pour les élections 2010-2014 était le premier comité de ce type à la Ville d'Ottawa. Le personnel municipal a pris connaissance des pratiques exemplaires dans les autres municipalités et a consulté les conseils scolaires et le conseiller juridique du Comité pour élaborer des recommandations en lien avec la mise sur pied du Comité de vérification de la conformité pour les élections pour 2014-2018.

La *Loi de 1996 sur les élections municipales* prévoit que le Conseil municipal doit mettre sur pied un comité de vérification de la conformité pour les élections 2014-2018, et donne au greffier municipal et chef du contentieux le pouvoir exclusif de déterminer les pratiques et les procédures administratives du Comité [paragraphe 81.1 (4)]. Le présent rapport soumet à l'approbation du Conseil les recommandations relatives à la mise sur pied du Comité, et lui transmet à titre d'information une liste des changements apportés à l'ensemble des pratiques administratives.

**Comité de vérification de la conformité pour les élections 2014-2018 :
Recommandations visant à maintenir le *statu quo***

Le personnel recommande que le *statu quo* soit maintenu pour plusieurs aspects du Comité de vérification de la conformité pour les élections. Certains de ces aspects sont régis par la loi; d'ailleurs, les mandats du Comité doivent refléter les exigences de la *Loi de 1996 sur les élections municipales*.

Responsabilités et pouvoirs

Conformément à la *Loi de 1996 sur les élections municipales*, les responsabilités et pouvoirs du Comité de vérification de la conformité pour les élections se bornent à déterminer si une vérification de la conformité est nécessaire et à examiner les vérifications de conformité qui sont effectuées. La Loi prévoit que le Comité est responsable de répondre à toute requête de vérification de la conformité présentée à la suite d'une élection municipale ordinaire ou d'une élection complémentaire tenue lors du mandat du Conseil pour lequel il a été mis sur pied. Les pouvoirs et responsabilités du Comité en vertu de la *Loi de 1996 sur les élections municipales* comprennent :

- une première évaluation visant à déterminer si la requête de vérification de la conformité doit être approuvée ou rejetée;
- le choix d'un vérificateur, si la requête est approuvée;
- la réception du rapport de vérification de la conformité du vérificateur;
- l'examen du rapport du vérificateur :
 - si le rapport conclut que le candidat semble avoir contrevenu à une disposition de la Loi, le Comité doit décider s'il faut introduire une instance contre le candidat;
 - si le rapport conclut que le candidat ne semble pas avoir contrevenu à une disposition de la Loi, le Comité doit établir si la requête se fonde sur des motifs raisonnables ou non.

En matière de reddition de comptes, le Comité doit transmettre au Conseil :

- une copie de la requête de vérification de la conformité [par. 81 (4)];

- une copie du rapport du vérificateur [par. 81 (10)];
- un rapport présentant ses conclusions et recommandations à la lumière du rapport du vérificateur.

Le Comité doit examiner les requêtes de vérification de la conformité dans les 30 jours suivant leur réception. La Loi prévoit un échéancier de 30 jours semblable pour l'examen du rapport d'un vérificateur.

Composition

En vertu du paragraphe 81.1 (2) de la Loi, le Comité de vérification de la conformité pour les élections doit être composé d'au moins trois et d'au plus sept membres. Les membres du Comité ne peuvent être des employés ou des fonctionnaires de la municipalité ou du conseil local, des membres du Conseil municipal ou du conseil local, ni des candidats à l'élection.

Le personnel recommande que le Comité 2014-2018 soit composé de cinq membres, le quorum étant de trois. Tout comme pour le Comité 2010-2014, au moins deux de ces membres devront être bilingues.

Collaboration avec les conseils scolaires locaux

Le Ottawa-Carleton District School Board et le Ottawa Catholic School Board ont confirmé leur désir d'avoir recours au Comité de vérification de la conformité pour les élections de la Ville d'Ottawa pour 2014-2018. Une fois la mise sur pied et la composition du Comité 2014-2018 approuvées par le Conseil, le personnel préparera une entente de partage des coûts de la rétribution annuelle et des autres coûts en lien avec les élections du Conseil municipal et des membres du conseil scolaire.

Frais, indemnité journalière et autres coûts

Le personnel recommande qu'aucuns frais ne soient imposés pour la soumission d'une requête de vérification de la conformité. Il recommande en outre que les membres du Comité 2014-2018 reçoivent la même rétribution et la même indemnité journalière que leurs homologues du Comité 2010-2014, c'est-à-dire une somme annuelle de 600 \$ versée à titre d'acompte ainsi qu'un montant de 175 \$ l'heure jusqu'à concurrence de 1 250 \$ par jour. En outre, le Comité se verra assigner son propre conseiller juridique indépendant, conformément aux pratiques normalisées de la Ville par rapport à ses

organismes quasi judiciaires (p. ex. : Comité de dérogation, Comité d'appel en matière de permis et de normes de biens-fonds). Le personnel a l'intention de demander au conseiller juridique actuel du Comité de vérification de la conformité pour les élections s'il désire poursuivre son rôle pour le nouveau mandat afin d'assurer la continuité.

Changements proposés au Comité de vérification de la conformité pour les élections 2014-2018

Conformément à l'approche de la Ville d'Ottawa visant l'amélioration continue en matière de gouvernance, et à la lumière de l'expérience acquise lors du mandat du tout premier Comité de vérification de la conformité pour les élections d'Ottawa, le personnel recommande certains changements aux pratiques actuelles, lesquels s'appuient sur les pratiques exemplaires et les résultats des consultations menées auprès des conseils scolaires et du conseiller juridique du Comité.

Recrutement des membres du Comité

À l'instar de la constitution du Comité de vérification de la conformité pour les élections 2010-2014, le personnel recommande que le recrutement des membres lui soit entièrement délégué, de sorte que les nominations ne relèvent pas de personnes susceptibles de faire l'objet d'une requête de vérification de la conformité. Le recrutement des membres du Comité de vérification de la conformité pour les élections 2010-2014 avait été confié au greffier municipal et chef du contentieux, à la greffière municipale adjointe et à la trésorière municipale. Pour le Comité 2014-2018, le personnel recommande que le recrutement des membres soit confié au greffier municipal et chef du contentieux, à la greffière municipale adjointe et au vérificateur général.

Reconnaissant qu'un bassin de candidats plus vaste permettrait la nomination de membres de haut calibre, le personnel diffusera à l'Université Carleton et à l'Université d'Ottawa la possibilité de nommer au sein du Comité des professeurs possédant une expérience pertinente.

Selon l'article 2.5 de la politique de nomination des citoyens membres des comités consultatifs, des conseils, des groupes de travail, des conseils externes, des commissions et des autorités administratives de la Ville, un citoyen membre ne peut siéger qu'à un comité consultatif, conseil, groupe de travail, commission ou autorité

administrative de la Ville à la fois. Le personnel recommande que le Comité de vérification de la conformité pour les élections soit exempté de cette obligation.

Formation des membres du Comité

En plus d'une formation sur la nature quasi judiciaire du Comité, les membres recevront une formation détaillée sur les procédures du Comité.

Règles de procédure et mandat

Le personnel a modifié les règles de procédure et le mandat du Comité pour qu'ils reflètent mieux les règles de la « justice naturelle » selon lesquelles le requérant et le candidat ont tous deux le droit de présenter une preuve complète. Les deux documents précisent maintenant que les membres du Comité doivent être présents pendant toute la durée d'une audience. Le personnel a donc ajouté aux règles de procédure un article sur les ajournements permettant qu'une audience soit reportée à l'occasion. Le personnel reconnaît que les membres du Comité peuvent, pour des raisons indépendantes de leur travail dans le cadre du Comité, devoir s'absenter pendant une partie d'une réunion. De même, il peut arriver qu'un empêchement de dernière minute contraigne un membre à manquer une réunion prévue. La disposition sur les ajournements ajoutée par le personnel vise à tenir compte de ces réalités ainsi que du fait que les membres doivent être présents pour toute la durée d'une audience.

Formulaire de requête de vérification de la conformité

La *Loi de 1996 sur les élections municipales* exige que toute requête de vérification de la conformité concernant le financement d'une campagne électorale soit présentée par un électeur admissible (plutôt que par n'importe quel résident). Une telle requête doit être présentée par écrit au greffier de la municipalité locale et décrire pourquoi le requérant croit qu'il faut réaliser une vérification de la conformité. La Loi fixe également un délai maximal pour la présentation d'une requête. En outre, le paragraphe 81(15) de la Loi habilite le Conseil à recouvrer les frais du vérificateur de l'auteur de la demande si le rapport du vérificateur n'indique aucune contravention apparente et que le Comité conclut que la demande ne se fondait pas sur un motif raisonnable.

Lors du mandat 20102014 du Comité de vérification de la conformité pour les élections, le greffier municipal et chef du contentieux n'avait prescrit aucun formulaire de requête

de vérification de la conformité. Il n'y avait donc aucun processus officiel en place pour veiller au respect des exigences de la *Loi de 1996 sur les élections municipales* relativement aux requêtes de vérification de la conformité. Pour le mandat 2014-2018, le bureau du greffier municipal et chef du contentieux, en vertu du paragraphe 81.1 (4) de la Loi, mettra en place un formulaire à remplir pour toute requête de vérification de la conformité, que les résidents pourront se procurer auprès du bureau du greffier municipal et chef du contentieux et sur ottawa.ca.

Ce formulaire comprendra une déclaration (le plus souvent fournie par un commissaire à l'assermentation) confirmant que le requérant a qualité d'électeur dans la ville d'Ottawa (il ne lui sera donc plus nécessaire de présenter une preuve d'identité officielle), indiquant que le requérant a des motifs raisonnables de croire que le candidat visé a contrevenu à une des dispositions sur le financement des campagnes électorales de la *Loi de 1996 sur les élections municipales*, et exposant les motifs en question conformément à la Loi.

La déclaration devra également confirmer que le requérant comprend que le Conseil a le droit, en vertu du paragraphe 81 (15) de la Loi, de recouvrer les frais du vérificateur de l'auteur de la demande si le rapport du vérificateur n'indique aucune contravention apparente et que le Comité conclut que la demande ne se fondait pas sur un motif raisonnable.

Comme le personnel ne croit pas dans l'intérêt public d'exiger des frais pour la présentation de requêtes de vérification de la conformité, il recommande que les centres du service à la clientèle puissent administrer les déclarations sans frais. Ce service serait semblable à celui offert par les centres pour les déclarations de candidature, c'est-à-dire que les centres administreraient les déclarations, mais que seuls des frais réglementaires seraient exigés (aucuns frais supplémentaires pour la déclaration). Les requêtes de vérification de la conformité pourront être présentées par l'intermédiaire du Bureau des élections ou directement au greffier municipal et chef du contentieux ou à la greffière municipale adjointe.

BACKGROUND

Municipal elections for members of councils and school boards are conducted by the clerk of the local municipality every four years. Municipal elections in Ontario are governed by the *Municipal Elections Act, 1996* (the “MEA”), a piece of legislation that is prescriptive about the roles and responsibilities of each party in an election. Among other matters, the MEA outlines specific elections campaign finance rules for candidates, including the requirement to file provincially prescribed financial statements with the City Clerk outlining campaign finance activities. The MEA also mandates the establishment of a quasi-judicial body, an Election Compliance Audit Committee (the “Committee”), to receive and address complaints from electors about a campaign’s election finances.

Under Section 81 of the MEA, any eligible elector who believes that a candidate has contravened these rules may apply for a compliance audit of the candidate’s election campaign finances. The application must be submitted to the City Clerk of the municipality or the secretary of the school board for which the candidate was nominated for office. The application must be in writing, include the reasons for the application, and be made within 90 days after the filing date for financial statements.

Pursuant to Section 17 of the MEA, a person is considered to be an eligible elector for an election held in a municipality if, on voting day, s/he:

- a) resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant
- b) is a Canadian citizen
- c) is at least 18 years old; and
- d) is not prohibited from voting under Subsection (3) or otherwise by law.

Section 17(3) further defines persons prohibited from voting as:

- a) A person who is serving a sentence of imprisonment in a penal or correctional institution;
- b) A corporation;

- c) A person acting as an executor or trustee or in any other representative capacity, except as a voting proxy. Under Section 44 (1) of the Act, both the proxy and the individual who appoints the proxy must both be entitled to be electors in the local municipality; or
- d) A person who was convicted of a corrupt practice described in subsection 90(3) of the Act (including giving, or promising to give, favourable consideration, money, or employment in exchange for a vote or the non-exercise of a vote), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

Under Section 81.1 of the MEA, a compliance audit committee is mandatory for all municipalities and school boards. Ontario municipalities are required, before October 1 of an election year, to establish an independent committee for the purposes of reviewing and making decisions on applications for compliance audits. Pursuant to Section 81.1 of the MEA, the term of office of the Committee is the same as the term of office of the council or school board that takes office following the next regular election.

Prior to the 2010 Municipal Election, Council had the option to either receive and review applications for compliance audits itself, or delegate the responsibility to a separate committee for consideration. In the years following amalgamation, the City received two applications for compliance audits, for the 2000 Municipal Election and the 2003 Municipal Election respectively. In both instances, Council opted to deal with the complaints directly.

Bill 212 (*Good Government Act, 2009*), enacted on December 15, 2009, was an omnibus bill that introduced the new Section 81.1 to the MEA making compliance audit committees mandatory for all municipalities and local boards.

Ottawa's 2010-2014 Election Compliance Audit Committee

In accordance with the new legislative requirement, City Council approved the establishment of a five-member Election Compliance Audit Committee for the 2010-2014 term of Council on July 14, 2010, as well as the terms of reference for the Committee. Council established that at least two of the members must be bilingual.

Committee Member Recruitment

Upon Council approval, staff conducted a recruitment process. Staff placed advertisements on the City's website, in local daily newspapers, as well as on the Institute of Chartered Accountants of Ontario's website. The hiring panel consisted of the City Clerk and Solicitor, the Deputy City Clerk and the City Treasurer. Five candidates were selected, two of whom were bilingual.

The advertisements for the recruitment incorporated the legislative requirements for membership as follows: eligible Committee members could not be employees or officers of the City, Members of Council, or candidates of the municipal election for which the Committee was established. Additionally, individuals appointed to the Committee were not permitted to audit or prepare financial statements, or have any other formal relationship with any candidate running for office on City Council in the 2010 Municipal Election. Advertisements targeted auditors, accountants, lawyers, or other individuals with knowledge of the campaign financing rules of the MEA. Finally, advertisements also listed previous experience on committees or tribunals as valuable, while stipulating that training would be provided.

Pursuant to Section 81.1 of the MEA, school boards must also establish a Committee for the purpose of considering applications for compliance audits of financial statements submitted by candidates for school board trustee positions. During the recruitment process for the 2010-2014 Committee members, the Ottawa-Carleton District School Board and the Ottawa Catholic School Board approached City staff regarding the opportunity to partner for the purpose of appointing the City of Ottawa's Election Compliance Audit Committee as those Boards' Election Compliance Audit Committee. The City agreed and reached an agreement with the two school boards to share the costs of the Committee such that the annual retainer expenses were evenly shared, while each entity paid for the costs related to their compliance audit requests.

For a summary of Committee decisions on applications received concerning School Board Trustee candidates, see Document 2 – Compliance Audit Applications, School Boards – 2010-2014 Summary.

Committee Member Training

2010-2014 Committee Members received a 1-hour training session, delivered by the City Clerk and Solicitor and the Deputy City Clerk. The session took place on April 18,

2011, and was followed by the first Committee meeting. Training focused on such matters as Terms of Reference for the Committee and Members' responsibilities, governance basics, the role of the City Clerk and Solicitor, procedural basics including the proper management of meetings, conflicts of interest and complying with the *Municipal Conflict of Interest Act*, and reasonable apprehension of bias.

Committee Operations

The 2010-2014 Committee received two applications for a compliance audit concerning the financial statements filed by a candidate for City Council. The first request was received by the City Clerk and Solicitor on April 4, 2011.

At its meetings of April 18 and May 3, 2011, the Committee considered whether to grant or reject the request for a compliance audit. The Committee heard from four individuals: the applicant, a representative of the candidate in question, and two other persons with connections to the event that was the subject of the application. At its meeting of May 3, 2011, the Committee decided to reject the application for a compliance audit of the election finances of the candidate for City Council.

During the course of its April 18, 2011 meeting, the Committee inappropriately moved *in camera* to consider a request by the candidate's counsel for deferral of the item due to a lack of opportunity for counsel to prepare for the hearing. After resuming in open session, the Committee adjourned. Shortly after the meeting, a closed meeting complaint was filed with the City's Meetings Investigator and an investigation was conducted. The investigator's report (ACS2011-CMR-LEG-0017) was submitted to Ottawa City Council at its meeting of June 22, 2011 and received by the Election Compliance Audit Committee at its meeting of July 19, 2011. The investigator's report summarized the procedure followed by the Committee at its April 18 meeting and recommended that the Committee receive further guidance on the principles of open meetings. The Meetings Investigator recommended the Committee's Rules of Procedure be revised to include the requirement for rising and reporting following an *in camera* meeting. Staff provided the Chair and Vice-Chair of the Committee with additional training on April 27, 2011 and, following Council's endorsement of the investigator's procedural recommendations, staff revised the Rules of Procedure to include a process for rising and reporting following an *in camera* session. While the process is not required under the *Municipal Act, 2001*, City Council's *Procedure By-law* includes it as a best practice. The process requires that the Committee Chair provide

the public with a summary of what was discussed in closed session, as well as a confirmation that no motions were passed in closed session other than procedural motions or directions to staff.

Staff received the second application for a compliance audit on June 23, 2011. The Committee met on July 19, 2011, at which time it heard from the applicant. The Committee decided to reject the application for a compliance audit of the election finances of the candidate for City Council.

Total Committee Costs, 2010-2014

Section 81.1(5) of the MEA requires the municipality to pay all of the costs related to the Committee's operation and activities. As indicated above, the cost of the Election Compliance Audit Committee was shared between the Ottawa-Carleton District School Board, the Ottawa Catholic School Board and the City of Ottawa. Both Boards agreed to the honorarium and per diem that had previously been approved by City Council (\$600 annual retainer and \$175 an hour to a maximum of \$1250 a day). As part of this agreement, the three parties shared the annual honorarium for each Committee Member. The City of Ottawa retained responsibility for the per diem for those applications concerning a candidate for City Council, while the respective school board was responsible for the costs of any audit applications arising from their elections.

The following table summarizes the costs associated with Committee Members, 2010-2014:

Member	Total Honorarium (\$600/year)	Per Diem: 1- hour training session	Per Diem: 3 meetings (total 2 hours 50 minutes)	Chair and Vice- Chair meetings (2 hours)	Parking	Total per Member
Christian Asselin	\$2,400	\$175	\$496	\$0	\$18	\$3,089
Michael Brown	\$2,400	\$175	\$496	\$350	\$0	\$3,421
Claudine Girault	\$2,400	\$175	\$496	\$350	\$24	\$3,445
Jason Huang	\$2,400	\$175	\$496	\$0	\$0	\$3,071
Peter O'Callaghan	\$2,400	\$175	\$496	\$0	\$6	\$3,077
<i>Subtotal</i>	\$12,000	\$875	\$980	\$700	\$48	\$16,103
<i>Subtotal – Committee Member cost</i>						\$16,103

It is common practice that a quasi-judicial body have access to independent legal counsel to assist them in their deliberations and to ensure that the body remains arms-length from the City's administration. In addition to costs associated with Committee Members, the City also paid a total of \$4,181 for external Legal Counsel, (under the City of Ottawa's blended rate structure).

The City invoices the Ottawa-Carleton District School Board and the Ottawa Catholic School Board annually \$1000 each for 1/3 of the total honorarium for the Committee Members. Over the four-year term, the City recovered a total of \$8,000 from the Boards.

The total costs for the 2010-2014 Election Compliance Audit Committee are summarized as follows:

Item	Cost
Committee Members' honorarium, per diem and parking	-\$16,103
External Legal Counsel	-\$4,181
Costs Recovered	+\$8,000
Total cost – ECAC, 2010-14:	\$12,284

All costs related to the Committee's operation and activities were funded from the Election Reserve. As the Committee did not grant either of the two requests it received for a compliance audit, the Committee did not incur any costs associated with obtaining external audit reports.

The City of Toronto's 2010-2014 Election Compliance Audit Committee

As the City of Ottawa had only two requests for compliance audits in 2010, staff reviewed the experiences of other municipalities to see what might be improved for the 2014-2018 Committee and to have a sense of the costs that might be involved with the conduct of a compliance audit. As the 2010-2014 City of Toronto Election Compliance Audit Committee considered 21 applications against 15 candidates and ordered seven compliance audits, this information provided a useful benchmark for looking at best practices and at the potential costs of conducting a compliance audit.

Toronto established a three-member Compliance Audit Committee (Toronto's "Committee") for the 2010-2014 term and approved a per diem of \$350 for attendance at meetings by Members of Toronto's Committee. City of Toronto staff sought auditors, accountants, lawyers, academics and other individuals specializing in campaign finance for the Committee. The City of Toronto City Clerk's Office and the Auditor General's Office developed selection criteria, which provided a detailed outline for approaching the Institute of Chartered Accountants of Ontario, the Law Society of Upper Canada and local universities to solicit interest from their members or faculty.

As indicated above, for the 2010 municipal election, the City of Toronto's Committee considered 21 applications against 15 candidates and ordered seven compliance audits. In a July 17, 2013 report to Toronto's Committee, the City Clerk reported that the total cost for conducting the seven compliance audits ordered was \$491,129.97. That

figure did not include outstanding costs for the audit of candidate Peter Li Preti, or the costs associated with the prosecution of Giorgio Mammoliti. All costs related to the compliance audits of candidates' election campaign finances were funded from the Election Reserve. The *MEA* requires the municipality to pay the auditor's costs of performing the audit [Section 81(13)], and requires Council to pay all costs in relation to the committee's operation and activities [Section 81.1(5)]. These costs were, as stated by Toronto's City Clerk, obligatory rather than discretionary.

As outlined earlier, the *Municipal Elections Act, 1996* requires City Council to establish the independent Election Compliance Audit Committee to review applications from eligible electors for a compliance audit. It is the responsibility of the Election Compliance Audit Committee (the "Committee") to assess the validity of each application and, where a compliance audit has been granted, to review the results of the compliance audit. The 2014-2018 Election Compliance Audit Committee must be in place by October 1, 2014.

DISCUSSION

As outlined earlier, the *Municipal Elections Act, 1996* requires City Council to establish the independent Election Compliance Audit Committee to review applications from eligible electors for a compliance audit. It is the responsibility of the Election Compliance Audit Committee (the "Committee") to assess the validity of each application and, where a compliance audit has been granted, to review the results of the compliance audit. The 2014-2018 Election Compliance Audit Committee must be in place by October 1, 2014.

Terms of Reference (Document 1)

Responsibilities and Powers

The responsibilities and powers of the Election Compliance Audit Committee are largely prescribed by the *MEA*. As noted above, the Committee's responsibilities and powers are restricted to assessing each request for a compliance audit and determining whether a compliance audit is required as well as reviewing the compliance audits that are conducted. The Committee is responsible for any applications for a compliance audit resulting from the regular municipal election or any by-election held during the term of Council for which the Committee was appointed. The powers and responsibilities outlined for the Committee in the *MEA* include:

- Initial consideration of the application to determine whether the compliance audit should be granted or rejected;
- Appointment of an auditor, if the compliance audit is granted;
- Receiving the compliance audit report from the auditor;
- Reviewing the auditor's report and:
 - If the report finds a contravention did occur, deciding whether legal proceedings should be commenced against the candidate; or
 - If the report finds that no contravention occurred, making a finding as to whether there were reasonable grounds for the application.

In the event that the auditor's report does not find a contravention and the Committee determines that there were no reasonable grounds for the application, City Council is entitled to recover the auditor's costs from the applicant.

In terms of reporting, Council shall receive:

- A copy of the application for a compliance audit [ss.81(4)];
- A copy of the auditor's report [ss.81(10)]; and
- A report from the Committee outlining its findings and recommendations as a result of the auditor's report.

The Committee must review an application for a compliance audit within 30 days of its receipt. A similar 30-day legislated timeframe exists for reviewing a report from an auditor.

The City Clerk and Solicitor is establishing the administrative practice that applications for a compliance audit will be dealt with in a similar fashion to requests for information under the *Municipal Freedom of Information and Protection of Privacy Act* and requests for investigations of closed meetings. The process will be as follows:

1. An application for a Compliance Audit will be submitted to the City Clerk and Solicitor, either directly, at the Elections Office or at a Client Service Centre. Complainants will be required to use the specified application form, available from

the Office of the City Clerk and Solicitor and on Ottawa.ca, and will be permitted to attach supporting documentation.

2. The application will be logged and forwarded to the Election Compliance Audit Committee and City Council in accordance with the legislation. An initial collection of relevant information (i.e. financial statements) would take place in order to assist the Election Compliance Audit Committee in assessing the validity of the application.
3. The Election Compliance Audit Committee will then review the application and any supporting documentation and determine whether the application should be granted or rejected.
4. In the event that the Election Compliance Audit Committee decides to grant the application, the Committee will then proceed in appointing an auditor to undertake an audit of the election campaign finances of the candidate in question.
5. Upon receipt of the auditor's report, the Election Compliance Audit Committee will review the report and:
 - a. If the report finds a contravention did occur, decide whether legal proceedings should be commenced against the candidate; or
 - b. If the report finds that no contravention occurred, decide whether there were reasonable grounds for the application.
6. Following its review, the Committee will prepare a report to City Council with its findings and recommendations (including a copy of the auditor's report).
7. The Committee will provide notice of its intent to submit a report to City Council one meeting in advance.

The Ottawa-Carleton District School Board and the Ottawa Catholic School Board have confirmed their interest in continuing to share an Election Compliance Audit Committee with the City of Ottawa for the 2014-2018 term. Upon Council's approval of the establishment and composition of the 2014-2018 Committee, staff will finalize an agreement regarding cost-sharing for annual honorarium and division of costs arising from City Council and school board elections. Staff will be pursuing the same agreement with the school boards that was in place for the 2010-2014 Committee, wherein each Member receives a \$600 annual retainer and a per diem of \$175 per

hour, to a maximum of \$1250 per day. The three parties to the agreement will share the annual honorarium for each Committee Member, while each party retains responsibility for the per diem and other costs for those applications concerning their respective candidates.

Committee Composition

The MEA requires that the Committee must be established prior to October 1 of the municipal election year and serve for the same four year term of office as the Council for which it was appointed.

The MEA also requires that the Committee must have no fewer than three members and no more than seven members.

Members of the Committee must not be:

- a. Employees or officers of the municipality;
- b. Members of Council; or
- c. Any person who is a candidate in the election for which the Committee is established.

In order to ensure that the Committee is able to meet all the legislated timeframes outlined in the MEA, staff is recommending a five-member committee, with three being quorum.

In order to permit the partnership with the school boards, staff will further provide that Committee Members will not be employees or officers of a local school board or current trustees.

Rules of Procedure

The recommended Rules of Procedure for the 2014-2018 Election Compliance Audit Committee include updated language to provide greater clarity to Members regarding their duties, to include the duties of the Clerk or designate, and to provide greater specificity with respect to the rules, regulations, and Members' conduct during Committee meetings.

Based on the rules of “natural justice”, both parties (applicant and candidate) are entitled to present evidence. Accordingly, the Committee’s Terms of Reference and Rules of Procedure have been amended to stipulate that Members of the Committee must be present throughout a hearing. A Member of the Committee who arrives after a hearing has commenced will not be permitted to join the proceedings in progress.

Committee Member Recruitment

Given the specialized nature of the Committee’s work, staff believes that Members should possess knowledge of campaign finance rules and accounting principles. Ideal candidates would have practical experience in administering elections, with a specific focus on municipal election finance. It would also be valuable for members to have past experience on committees or tribunals, as the Committee will be quasi-judicial in nature. Ideal candidates may include former municipal clerks or Elections Office managers, auditors, accountants, lawyers, or other individuals with knowledge of the campaign financing rules of the MEA, or its provincial or federal counterparts.

Individuals appointed to the Committee must not have audited or prepared financial statements, or have any other formal relationship with any candidate running for office on City Council or as a candidate for School Board Trustee of the Ottawa-Carleton District School Board or the Ottawa Catholic School Board.

Recruitment will be targeted towards relevant organizations and professional bodies such as the Institute of Chartered Accountants of Ontario, which offers a free service to find Chartered Accountant volunteers, the Association of Municipal Managers, Clerks and Treasurers of Ontario, and the Law Society of Upper Canada.

As part of the recruitment process for their 2010-2014 Compliance Audit Committee, City of Toronto staff approached York University, Ryerson University and the University of Toronto requesting they circulate information regarding the appointment opportunity to their faculty. While they did not receive any applications from the universities, City of Toronto staff recommend including faculty in the recruitment call. With the understanding that a wider pool of candidates may allow for the appointment of Committee Members of the highest calibre, City of Ottawa staff will ask local post-secondary institutions to circulate information regarding the appointment opportunity to faculty who possess relevant background and experience.

Extra precaution will be taken to ensure that, in the case of auditors or accountants, individuals appointed to the Committee do not audit or prepare financial statements or have any other formal relationship with any candidate running for office on City Council (e.g. being a member of a campaign team or a contributor). An individual who fails to adhere to these requirements would no longer be eligible to sit as a member of the Committee.

Staff is recommending that Council delegate the selection of the members of the Election Compliance Audit Committee to a selection panel comprised of the City Clerk and Solicitor, the Deputy City Clerk and the Auditor General to ensure the appropriate distance between Committee Members and elected officials who may at some point be the subject of a request for a compliance audit.

Section 2.5 of the Appointment Policy for citizen members of City advisory committees, boards, task forces, external boards, commissions and authorities states that a citizen member may only serve on one committee, board, task force, commission or authority at any one time. Given that the Election Compliance Audit Committee could potentially draw from the same pool of candidates as other city bodies, such as the Committee of Adjustment, the License and Property Standards Committee and the Conservation Authorities, staff is recommending that the Election Compliance Audit Committee be exempted from Section 2.5 of the Appointment Policy.

Upon Council's approval of the establishment of the 2014-2018 Committee, staff will undertake the recruitment process. Staff will subsequently provide Council with an update indicating the membership of the Committee and any other updated procedures prior to Nomination Day.

Committee Member Training

Specific training will be mandatory for all Committee Members. The Members will be trained on quasi-judicial procedures in order to prepare them for their role on the Committee. They will also receive training with respect to the Rules of Procedure. Staff also recognizes that, given the procedural challenges the 2010-2014 Committee Members encountered, more training is required for the 2014-2018 Committee about open meetings in general, and the process for rising and reporting in particular.

Following the 2014 election, the first opportunity for filing an application for a compliance audit will be during the 90 days following the filing date for audited financial

statements (March 27, 2015). Accordingly, Members of the Election Compliance Audit Committee will receive the above-referenced training during the first quarter of 2015 in order to ensure they receive training as close as possible to when they may be required to hold their first meeting but well in advance of doing so.

Projected Costs, Election Compliance Audit Committee 2014-2018

Staff estimates a total cost of \$3,000 for placing advertisements to recruit Committee Members in two local dailies, community newspapers, as well as for circulation through the Law Society of Upper Canada and the Institute of Chartered Accountants of Ontario.

Staff is recommending that members of the Committee be paid the same honorarium and per diem as were in place for the 2010-2014 Committee: \$600 annual retainer and \$175 an hour to a maximum of \$1250 a day.

City staff cannot anticipate all costs associated with the Committee because the number of potential applications and of resulting compliance audits is unknown. The *Act* requires the municipality to pay the auditor's costs of performing the audit [Section 81(13)], and requires Council to pay all costs in relation to the committee's operation and activities [Section 81.1(5)].

Application Form

The MEA mandates that requests for a compliance audit of an election campaign's finances be made by eligible electors (as opposed to any resident of the municipality). It requires that the request be made to the clerk of the local municipality in writing and stating the reasons for the complainant's belief that a compliance audit is necessary. It establishes the timelines for a request. Additionally, it allows the Council, under Section 81(15) of the MEA, to recover the auditor's costs from the applicant if the auditor's report indicates there was no apparent contravention and the Committee finds there were no reasonable grounds for the application.

Section 81.1(4) of the *Act* authorizes the clerk of the municipality to establish any administrative practices and procedures necessary for the effective operation of the Committee. Further, section 12(1) of the *Act* provides that the clerk may provide for any matter or procedure that is not otherwise provided for in an *Act* or regulation, and, in the clerk's opinion, is necessary or desirable for conducting the election. Additionally,

section 12(2) of the *Act* gives the clerk the power to establish forms, including forms of oaths and statutory declarations, and power to require their use.

As part of a best practice review of other municipalities, staff learned that both the City of Toronto and the City of Greater Sudbury used standard forms for receiving applications for compliance audits for the 2010-2014 term. The City Clerk of the City of London has advised that the Clerk's office is introducing such a form for the 2014-2018 term in order to standardize the application process, as well as the information contained in it, and that their form will include a sworn affidavit.

For the 2010-2014 Election Compliance Audit Committee, the City Clerk and Solicitor did not prescribe an application form for a request for a compliance audit. Without a form, however, there are no formal processes in place to ensure that all of the statutory requirements for requests for a compliance audit are being met. For the 2014-2018 Election Compliance Audit Committee, the Office of the City Clerk and Solicitor, under the authority of Section 81.1(4) of the MEA, will implement an application form and require that every application for a compliance audit be submitted using this prescribed form, which will be available from the Office of the City Clerk and Solicitor and on Ottawa.ca.

This form will include a declaration (typically provided by a Commissioner of Oaths) confirming the applicant is an eligible elector in the City of Ottawa (eliminating the need for the complainant to provide the formal proof of identification required for voting), stating that the applicant has reasonable grounds to believe that the candidate referenced in the application has contravened a provision of the MEA relating to election campaign finances, and setting out the reasons for his/her belief as required by the MEA.

The declaration will also require the applicant to confirm his/her understanding of Council's authority, under Section 81(15) of the MEA, to recover the auditor's costs from the applicant if the auditor's report indicates there was no apparent contravention and the Committee finds there were no reasonable grounds for the application.

As staff does not believe it is in the public interest to charge a fee for an application for a compliance audit, staff is recommending that the Client Service Centre be permitted to administer the declaration without a fee. This is similar to the service that is provided by the Client Service Centre in taking nominations for office, whereby the declaration is

administered but only the statutory fee is paid and there is no additional charge for the declaration. Requests for compliance audits will also be able to be submitted through the Elections Office and directly with the City Clerk and Solicitor and the Deputy City Clerk.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

This report is administrative in nature and therefore no public consultation was required. In preparing this report, staff reviewed material and consulted with other Ontario municipalities including the City of Toronto, the City of London, the City of Kingston, the City of Greater Sudbury, the City of Hamilton, and the City of Mississauga. This report incorporates the best practices and “lessons learned” from these municipalities.

Representatives of the two school boards were consulted on possible changes to the composition or terms of reference of the Committee. Legal counsel to the Committee was also consulted.

COMMENTS BY THE WARD COUNCILLOR(S)

This report is city-wide.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations in the report. Under s. 81.1 of the *Municipal Elections Act, 1996*, City Council must establish and appoint an Elections Compliance Audit Committee for the purposes of reviewing and making decisions on applications for compliance audits.

RISK MANAGEMENT IMPLICATIONS

There are no legal/risk management implications associated with this report.

FINANCIAL IMPLICATIONS

The costs of the Committee’s operation and activities will be funded from the Election Reserve Fund.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

This report has no direct impacts on the City's strategic priorities or directions identified for the current Term of Council.

SUPPORTING DOCUMENTATION

Document 1 – City of Ottawa Election Compliance Audit Committee – Terms of Reference

Document 2 – Compliance Audit Applications, School Boards – 2010-2014 Summary

DISPOSITION

Upon Council approval, staff will conduct a recruitment process for the appointment of the Election Compliance Audit Committee members. Prior to September 12, 2014 (Nomination Day), staff will provide Council with an update identifying the selected individuals and confirming the process for submitting an application for a compliance audit as well as the Committee's proposed Rules of Procedure.

Document 1

CITY OF OTTAWA ELECTION COMPLIANCE AUDIT COMMITTEE

TERMS OF REFERENCE

MANDATE

As prescribed by Section 81.1 of the *Municipal Elections Act, 1996* (“the Act”), Ottawa City Council has approved the establishment of the Election Compliance Audit Committee (“the Committee”).

The Committee is responsible for reviewing and making decisions on applications for municipal election campaign finance compliance audits.

RESPONSIBILITIES

The Election Compliance Audit Committee shall be responsible for:

- Receiving and considering an application for a compliance audit and determining whether the compliance audit should be granted or rejected;
 - Applications to the Committee shall use a form prescribed by the City Clerk and be accompanied by a declaration confirming that the applicant:
 - is an eligible elector in the City of Ottawa;
 - has reasonable grounds to believe that the candidate referenced in the application has contravened a provision of the *Act* relating to election campaign finances; and
 - understands Council’s authority under section 81(15) of the *Act* with respect to cost recovery.
- Appointing an auditor, if the compliance audit is granted;
- Receiving the compliance audit report from the auditor;
- Reviewing the auditor’s report and:
 - If the report finds a contravention did occur, deciding whether legal proceedings should be commenced against the candidate; or

- If the report finds that no contravention occurred, deciding whether there were reasonable grounds for the application.

The Committee is required to review applications for compliance audits and reports from an auditor within 30 days of receipt.

REPORTING PROTOCOLS

Following its consideration of an auditor's report, the Committee shall provide a report to Council outlining its findings and any recommendation for further action. The Committee shall provide notice of its intent to submit a report to Council one meeting in advance.

MEMBERSHIP

The Election Compliance Audit Committee will be comprised of five (5) members selected by the City Clerk and Solicitor, the Deputy City Clerk and the Auditor General. At least 2 of the members shall be bilingual.

The following are not eligible to sit on the Election Compliance Audit Committee:

- Employees or officers of the City;
- Members of Council; or
- Candidates of the municipal election for which the Committee is established.

Members must have a thorough understanding of the campaign finance rules (i.e. auditors, accountants, lawyers, etc.).

Three members will be required for quorum.

An individual shall be deemed ineligible to be a member of the Committee if they prepare the financial statements of any candidate running for office on City Council during the term for which the Committee has been established.

MEETINGS

The Election Compliance Audit Committee will meet as necessary for the purposes of reviewing an application for a compliance audit or a report from an auditor. The Committee may also meet as necessary to organize and plan its work.

Meetings of the Election Compliance Audit Committee shall be held in accordance with the open meeting provisions of the *Municipal Act, 2001* (Section 239). Meeting notices and agendas will be communicated through the City's website.

The Chair and Vice-Chair shall be elected at the Committee's first meeting.

Because the rules of "natural justice" require that both parties (applicant and candidate) have the opportunity to fully present evidence, Members of the Committee must be present throughout a hearing. A member of the Committee who arrives after a hearing has commenced will not be permitted to join the proceedings in progress.

TERM

Members of the Election Compliance Audit Committee shall serve the same term of office as the Council that takes office following a regular municipal election. Each new Committee shall be appointed by October 1 of a regular municipal election year.

Document 2 - REVISED

Compliance Audit Applications, School Boards – 2010-2014 Summary

The 2010-2014 Election Compliance Audit Committee (“the Committee”) received two applications for compliance audits concerning financial statements submitted by candidates for School Board Trustee. Both applications related to candidates for School Board Trustee, Ottawa-Carleton District School Board (“the Board”).

The Committee considered both applications at its meeting of July 5, 2011. The first application for a compliance audit involved the campaign finances of five candidates. With the consent of the applicant, the Committee severed the application into five parts, allowing for each candidate to be dealt with in a separate application. Of those five, the Committee granted one applications and rejected four. The second application for a compliance audit involved the campaign finances of one candidate. After consideration, the Committee granted the application.

The Committee appointed an independent auditor to review the financial statements of both candidates for whom it had granted applications for compliance audits. The Compliance Auditor’s reports found both candidates to be in contravention of various election finance provisions of the *Municipal Elections Act, 1996*.

At its meeting of December 1, 2011, the Committee rejected a motion to commence legal proceedings against one candidate, and rendered a decision to initiate legal proceedings against the other.

The Board retained a legal advisor who undertook a detailed review of the evidence and advised against prosecuting the candidate for offences noted. The Board accepted the advice of the prosecutor.