

**3. 2018-2022 ELECTION COMPLIANCE AUDIT COMMITTEE**

**COMITÉ DE VÉRIFICATION DE CONFORMITÉ POUR LES ÉLECTIONS  
2018-2022**

**COMMITTEE RECOMMENDATIONS**

**That Council:**

- 1. Approve the establishment of the 2018-2022 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 Integrity Commissioner; and**
  - c. 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 ce qui suit :**

- 1. Approuve la mise sur pied du Comité de vérification de conformité pour les élections 2018-2022, comme l'indique le présent rapport, ainsi que :**
  - a) le mandat du Comité, comme l'indique le document 1;**

- b) **la délégation du pouvoir au greffier municipal et avocat général, au vérificateur général et au commissaire à l'intégrité de nommer les membres du Comité;**
  - c) **l'exemption du Comité 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 changements proposés dans le présent rapport en ce qui concerne les pratiques et procédures administratives.**

**DOCUMENTATION/DOCUMENTATION**

1. City Clerk's report, Office of the City Clerk and Solicitor, dated 26 March 2018 (ACS2018-CCS-GEN-0008).

Rapport du Greffier municipal, Bureau du greffier municipal et de l'avocat général, daté le 26 mars 2018 (ACS2018-CCS-GEN-0008).

**Report to  
Rapport au:**

**Finance and Economic Development Committee  
Comité des finances et du développement économique  
3 April 2018 / 3 avril 2018**

**and Council  
et au Conseil  
11 April 2018 / 11 avril 2018**

**Submitted on March 26, 2018  
Soumis le 26 mars 2018**

**Submitted by  
Soumis par:**

**M. Rick O'Connor, City Clerk and Solicitor / Greffier municipal et avocat général**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2018-CCS-GEN-0008**

**SUBJECT: 2018-2022 ELECTION COMPLIANCE AUDIT COMMITTEE**

**OBJET: COMITÉ DE VÉRIFICATION DE CONFORMITÉ POUR LES ÉLECTIONS  
2018-2022**

## **REPORT RECOMMENDATIONS**

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

- 1. Approve the establishment of the 2018-2022 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 Integrity Commissioner; and**
  - c. 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 ce qui suit :**

- 1. Approuver la mise sur pied du Comité de vérification de conformité pour les élections 2018-2022, comme l'indique le présent rapport, ainsi que :**
  - a) le mandat du Comité, comme l'indique le document 1;**
  - b) la délégation du pouvoir au greffier municipal et avocat général, au vérificateur général et au commissaire à l'intégrité de nommer les membres du Comité;**
  - c) l'exemption du Comité 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. Prendre connaissance des changements proposés dans le présent rapport en ce qui concerne les pratiques et procédures administratives.**

## 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 election campaign finance rules and mandates the establishment of an Election Compliance Audit Committee (the “Committee”), an independent quasi-judicial body operating at arm’s length from the City’s administration and City Council, to receive and address complaints from electors regarding alleged contraventions of those campaign finance rules.

A compliance audit committee is mandatory for all municipalities and school boards under the MEA. 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.

The responsibilities and powers of the Election Compliance Audit Committee are largely prescribed by the MEA. Prior to legislative amendments made earlier this Term for the upcoming municipal election, the Committee’s responsibilities and powers were limited to assessing each request for a compliance audit and determining whether a compliance audit was required as well as reviewing the compliance audits conducted. The Committee is responsible for any applications for a compliance audit resulting from a regular municipal election or any by-election held during the term of council for which the Committee was appointed.

As is the case following every municipal election, the Government of Ontario reviewed the MEA and significant changes were made to the Act by way of Bill 181, the *Municipal Elections Modernization Act, 2016*. These changes were summarized in the staff report “[Bill 181, the Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996](#),” which was considered by Council on December 14, 2016. The following year, the Government made additional changes to the MEA through Bill 68, the *Modernizing Ontario’s Municipal Legislation Act, 2017*. Council considered the staff report on this matter “[Bill 68, The Modernizing Ontario’s Municipal Legislation Act, 2017](#)”

– Changes to the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, and the *Municipal Elections Act, 1996*,” on November 22, 2017.

Staff has considered the changes to the MEA, along with experiences in other municipalities, in developing recommendations related to the establishment of the 2018-2022 Election Compliance Audit Committee.

The MEA requires that City Council establish the 2018-2022 Election Compliance Audit Committee before October 1, 2018, while the City Clerk and Solicitor is required to establish the administrative practices and procedures for the Committee (Section 88.37). This report presents the recommendations related to the establishment of the Committee for Council’s approval and the changes to the Committee’s administrative practices for Council’s information.

Staff is recommending the *status quo* for a number of matters concerning the Election Compliance Audit Committee. Recent changes to the MEA require minor modifications with respect to the Committee’s prescribed composition, training and the application form/process, which are reflected in this report.

Before Bill 181, the Committee’s responsibilities and powers under the MEA were limited to assessing each request for a compliance audit, determining whether a compliance audit was required, reviewing the compliance audit and determining whether to commence legal proceedings against the candidate.

Under the amended MEA, the Committee’s mandate now also includes the following functions:

- Considering applications from electors for compliance audits of the campaign finances of registered third party advertisers, determining whether a compliance audit is required, reviewing the compliance audit and determining whether to commence legal proceedings against the registered third party;
- Considering applications from electors for compliance audits of the campaign finances of candidates and registered third party advertisers who fail to file financial statements; and
- Considering reports from the Clerk on over-contributions to candidates and registered third-party advertisers, and deciding whether to commence legal proceedings against contributors for apparent contraventions.

As was the case before Bill 181, the Committee remains responsible for applications for a compliance audit resulting from a regular municipal election or any by-election held during the term of council for which the Committee is appointed.

The MEA as amended now includes several additional, specific procedural requirements. Under his authority to establish the administrative practices and procedures of the Committee, the City Clerk and Solicitor will incorporate these mandatory changes into the Committee's Rules and Procedures.

Due to the expanded mandate of the Election Compliance Audit Committee to review apparent contraventions by contributors and registered third parties (in addition to candidates) and to electors' increasing familiarity with the compliance audit application process, staff believes the Committee's enhanced oversight may result in more applications, additional workload and ultimately increased financial pressure.

In order to ensure that the Election Compliance Audit Committee can meet the statutory timelines associated with its functions, staff are not recommending the continuation of the City's cost-sharing agreement with school boards for the 2018-2022 Term of Council.

Finally, the MEA, as amended by Bill 181, has removed the ability for Council to recover the costs of a compliance audit from an applicant in those instances where a compliance audit report indicates there were no apparent contraventions and an election compliance audit committee finds there were no reasonable grounds for the application.

## **RÉSUMÉ**

En Ontario, les élections municipales pour les membres des conseils municipaux et des conseils scolaires sont tenues par le secrétaire de chaque municipalité locale tous les quatre ans. Elles sont régies par la *Loi de 1996 sur les élections municipales*, une loi normative qui énonce les rôles et responsabilités de chaque partie directement concernée par une élection.

Entre autres choses, cette loi fixe les règles de financement des campagnes électorales et prévoit la création d'un comité de vérification de conformité pour les élections (le « comité »), un organisme quasi judiciaire qui fonctionne indépendamment de

l'administration municipale et du conseil de la ville. Ce comité reçoit et traite les plaintes des électeurs en cas de contravention apparente des règles de financement.

Selon la *Loi de 1996 sur les élections municipales*, toutes les municipalités et tous les conseils scolaires de l'Ontario doivent être dotés d'un comité de vérification de conformité, lequel doit être formé par chaque municipalité avant le 1<sup>er</sup> octobre d'une année d'élection. Le mandat de ce comité est le même que celui du conseil municipal ou du conseil scolaire qui entre en fonction à l'issue de l'élection ordinaire suivante.

Les responsabilités et les pouvoirs des comités de vérification de conformité sont établis en grande partie dans la *Loi de 1996 sur les élections municipales*. Avant les récentes modifications législatives introduites en vue des élections municipales à venir, les comités avaient pour seules fonctions d'évaluer les demandes de vérification de conformité, de déterminer dans chaque cas si une vérification était nécessaire, et d'examiner les vérifications effectuées. En effet, chaque comité est responsable des demandes de vérification de conformité présentées à la suite d'une élection ordinaire ou d'une élection partielle tenue durant le mandat du conseil municipal pour lequel il a été formé.

Après chaque scrutin municipal, le gouvernement de l'Ontario revoit la *Loi de 1996 sur les élections municipales*. Cet exercice a par ailleurs donné lieu à d'importantes modifications législatives introduites par le projet de loi 181, *Loi de 2016 sur la modernisation des élections municipales*. À Ottawa, le personnel municipal fournissait le résumé de ces modifications dans son rapport intitulé [Projet de loi 181, Loi de 2016 sur la modernisation des élections municipales – Modifications à la Loi de 1996 sur les élections municipales](#), dont le Conseil municipal a pris connaissance le 14 décembre 2016. L'année suivante, le gouvernement apportait d'autres modifications à la Loi, cette fois par le projet de loi 68, *Loi de 2017 sur la modernisation de la législation municipale ontarienne*. Le rapport du personnel municipal d'Ottawa qui s'est ensuivi, intitulé [Projet de loi 68, Loi de 2017 sur la modernisation de la législation municipale ontarienne; modifications à la Loi de 2001 sur les municipalités, à la Loi sur les conflits d'intérêts municipaux et à la Loi de 1996 sur les élections municipales](#), a été examiné par le Conseil le 22 novembre 2017.

Ainsi, après s'être penché sur les modifications apportées à la *Loi de 1996 sur les élections municipales* et sur les expériences vécues par les autres municipalités, le

personnel de la Ville a formulé des recommandations concernant la création de son Comité de vérification de conformité pour les élections 2018-2022.

Selon la *Loi de 1996 sur les élections municipales*, le Comité de vérification de conformité pour les élections 2018-2022 doit être formé par le Conseil municipal avant le 1<sup>er</sup> octobre 2018, et les pratiques et procédures administratives de ce comité doivent être établies par le greffier municipal et avocat général (article 88.37). Le présent rapport contient les recommandations, soumises à l'approbation du Conseil, qui se rapportent à la mise sur pied du Comité, ainsi que la liste des changements apportés aux pratiques administratives du Comité, fournie à titre indicatif.

Le personnel recommande notamment que le statu quo soit maintenu pour certains aspects du Comité. Par ailleurs, de récentes modifications apportées à la Loi obligent la Ville à faire des changements mineurs à la composition de son Comité, à la formation ainsi qu'au formulaire et au processus de demande, comme l'indique le rapport.

Avant l'adoption du projet de loi 181, sous le régime de la *Loi de 1996 sur les élections municipales*, les comités de vérification de conformité avaient pour seules fonctions d'évaluer les demandes de vérification de conformité, de déterminer dans chaque cas si une vérification était nécessaire, d'examiner les vérifications effectuées, et de décider d'introduire ou non une instance contre le candidat visé.

Sous le régime de la Loi modifiée, les fonctions des comités comprennent maintenant les suivantes :

- Évaluer les demandes de vérification de conformité présentées par les électeurs concernant le financement de campagnes de tiers inscrits, déterminer dans chaque cas si une vérification est nécessaire, examiner les vérifications effectuées, et décider dans chaque cas d'introduire ou non une instance contre le tiers inscrit.
- Évaluer les demandes de vérification de conformité présentées par les électeurs concernant le financement de campagnes de candidats ou de tiers inscrits qui n'ont pas déposé d'état financier.
- Examiner les rapports du secrétaire sur les contributions excédentaires reçues par des candidats et des tiers inscrits dans le cadre de leur

campagne, et décider d'introduire ou non une instance contre les donateurs pour les contraventions apparentes.

Comme c'était le cas avant l'adoption du projet de loi 181, chaque comité demeure responsable des demandes de vérification de conformité présentées à la suite d'une élection ordinaire ou partielle tenue durant le mandat du conseil municipal pour lequel il a été mis sur pied.

S'ajoutent à cela plusieurs autres exigences procédurales qui ont été incorporées à la version modifiée de la *Loi de 1996 sur les élections municipales*. En vertu de son pouvoir d'établir les pratiques et procédures administratives du comité, le secrétaire d'une municipalité intégrera ces changements obligatoires dans les règles et procédures du comité.

Étant donné le renforcement des fonctions de surveillance des comités de vérification de conformité – elles englobent maintenant les contraventions apparentes des donateurs et des tiers inscrits en plus de celles des candidats –, et comme les électeurs connaissent de mieux en mieux le processus de demande de vérification de conformité, le personnel municipal d'Ottawa croit que le nombre de demandes pourrait augmenter, de même que la charge de travail et, ultimement, la pression financière.

Pour que le Comité de vérification de conformité pour les élections d'Ottawa puisse respecter les délais qui lui sont impartis par la Loi, le personnel ne recommande pas le renouvellement, pour le mandat du Conseil 2018-2022, de l'entente de partage des coûts conclue entre la Ville et les conseils scolaires.

Enfin, la *Loi de 1996 sur les élections municipales*, dans sa version modifiée par le projet de loi 181, retire aux conseils municipaux le pouvoir de recouvrer auprès d'un demandeur les dépenses engagées pour une vérification de conformité lorsque le rapport de vérification ne conclut à aucune contravention apparente et que le comité détermine que la demande n'est fondée sur aucun motif raisonnable.

## **BACKGROUND**

Municipal elections for members of councils and trustees of school boards are conducted by the clerk of the local municipality every four years. In Ontario, these elections 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 election campaign finance rules for candidates, those registered as “third party advertisers” for the election, and those who make contributions to candidates and such third parties. These rules include the requirement that candidates and registered third party advertisers file provincially prescribed financial statements with the City Clerk outlining campaign finance activities.

### ***Election Compliance Audit Committee – Legislative History***

The MEA came into effect for the 1997 municipal elections as part of a series of reforms to legislation governing municipalities. The Act is reviewed by the Provincial Government after every municipal election.

Prior to the 2010 municipal elections, municipal councils had the option to either receive and review applications for compliance audits themselves, or delegate that responsibility to a separate committee for consideration. In the years following amalgamation, the City of Ottawa received two applications for compliance audits, for the 2000 municipal elections and the 2003 municipal elections 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 a new section to the MEA making compliance audit committees mandatory for all municipalities and school boards. A quasi-judicial body, the original statutory mandate of the Election Compliance Audit Committee was to receive and address complaints from electors about a campaign’s election finances.

On July 14, 2010, Ottawa City Council approved the establishment of a five-member Committee for the 2010-2014 Term of Council in compliance with the legislation. The term for the City’s first Election Compliance Audit Committee began on December 1, 2010, and expired on November 30, 2014.

On June 11, 2014, Council approved the establishment of a five-member Committee for the 2014-2018 Term of Council. The term for the City of Ottawa’s second Election Compliance Audit Committee began on December 1, 2014, and will expire on November 30, 2018.

The most recent legislative review of the MEA occurred during the current Term of Council and resulted in a large number of changes that will be in force for the 2018

Municipal Election. Bill 181, the *Municipal Elections Modernization Act, 2016*, received Royal Assent on June 9, 2016.

Bill 181 made approximately 65 pages of amendments to the MEA (which itself was approximately 76 pages). The changes affected most parts of the legislation, including: campaign finance; third-party advertising; accessibility; compliance and enforcement; ranked ballots; and the election calendar. These changes were detailed in the staff report titled, "[Bill 181, the Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996](#)," which was considered by Council on December 14, 2016. Specific to compliance and enforcement, the Bill has expanded the compliance audit processes and oversight of the election compliance audit committee.

More recently, Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, which received Royal Assent on May 30, 2017, made a few additional changes to the MEA, including raising the contribution limit to a single candidate or registered third party to \$1,200 and introducing a new self-funding formula and limit for municipal council candidates. These amendments were described in the report entitled "[Bill 68, The Modernizing Ontario's Municipal Legislation Act, 2017 – Changes to the Municipal Act, 2001, the Municipal Conflict of Interest Act, and the Municipal Elections Act, 1996](#)," considered by Council on November 22, 2017.

On November 14, 2017, Bill 154, the *Cutting Unnecessary Red Tape Act, 2017*, received Royal Assent and made changes to over 125 pieces of legislation, including the MEA. Bill 154 amended the MEA to provide election compliance audit committees with the discretionary authority to deliberate on their decisions in private. This new discretionary authority, as well as all new areas of responsibility for the Committee brought by Bill 181, will be discussed in this report.

### **2014-2018 ECAC Activity - Summary**

On June 11, 2014, City Council approved the establishment of the five-member 2014-2018 Election Compliance Audit Committee.

#### *Committee Member Recruitment*

Consistent with the process established for the 2010-2014 Committee, Council delegated the recruitment and selection of Committee Members to staff to ensure that appointments were not made by those who could later be the subject of a compliance

audit request. A selection panel was established comprised of the City Clerk and Solicitor, the Deputy City Clerk and the Auditor General.

Recruitment was targeted towards relevant organizations and professional bodies such as the Chartered Professional Accountants of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), and the Law Society of Upper Canada. The 2014-2018 recruitment was further expanded to include local post-secondary institutions in an effort to reach faculty who possessed relevant background and experience.

During the appointment process, the Selection Panel discussed the possibility that the Committee may have to hold simultaneous hearings to address applications regarding a school board trustee candidate for both boards and/or to address an application regarding a candidate for City Council. The Selection Panel recommended the addition of a sixth, “alternate” member of the Committee, which would allow the Committee to divide, if necessary, into two bodies of three members each (quorum for the Committee), enabling each body to address separate applications within the legislated timelines. Council subsequently adopted a motion to add the sixth member and delegated staff the authority to amend the Committee’s Terms of Reference accordingly.

Following interviews with interested applicants, the Selection Panel appointed six individuals to the 2014-2018 Election Compliance Audit Committee – five members and one alternate. Soon thereafter, one of the Committee Members tendered his resignation and the open position was filled by the appointed alternate.

### *Committee Operations*

Prior to receiving any applications, the 2014-2018 Election Compliance Audit Committee received a full day training session on the general role and statutory mandate of the Committee as well as specific training on quasi-judicial procedures.

The 2014-2018 Committee received six applications for compliance audits concerning the financial statements filed by candidates for City Council. The first three of the applications were received on June 15, 2015, and the following three applications were received on June 22, 2015.

On July 10, 2015, and July 15, 2015, the Committee met to consider the six applications for compliance audits. The Committee granted two applications for compliance audits and rejected the four remaining applications.

Following a competitive procurement process, on July 28, 2015, the Committee appointed Raymond Chabot Grant Thornton (“RCGT”) to undertake the compliance audits. The City Clerk and Solicitor received the final compliance audit reports from RCGT on November 30, 2015, and forwarded the reports to the Committee members the same day.

The Committee met on December 14, 2015, to consider the compliance audit reports. In the first case, the Committee decided not to proceed with legal action against the candidate. In addition, the ECAC moved to accept that, as there were reasonable grounds for the application, no action was to be taken to seek reimbursement from the applicant for the cost of the compliance audit. In the second case, the Committee moved to commence legal proceedings against the candidate for apparent contraventions of the MEA outlined in the Auditor’s report.

The Committee delegated the authority to the City Clerk and Solicitor to retain external, independent legal counsel for the purpose of the legal proceedings. Following a competitive procurement process, an independent Prosecutor was retained. The Prosecutor reviewed the case and chose not to pursue a prosecution against the candidate. In a memo issued to all Members of Council through the City Clerk, the Prosecutor found that, while there were apparent contraventions of the MEA, those contraventions were insignificant, and prosecution to obtain a potentially low value fine was not in the public interest. As such, the Prosecutor advised that it would not be commencing a prosecution of the candidate.

#### *Committee Costs (2014-2018)*

The MEA requires the municipality pay for all of the costs related to the Committee’s operation and activities. The 2014-2018 Committee was the first of the City’s election compliance audit committees to grant compliance audits and to commence legal proceedings against a candidate.

For the 2014-2018 Term of Council, the cost of the 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 \$1,250 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 school boards are invoiced on an annual basis for 1/3 of the total annual honorarium for the Committee Members.

In addition to costs associated with Committee Members, the City also paid for external legal counsel (assigned to the Committee to assist Members in carrying out their quasi-judicial duties), the services of an independent Auditor (to conduct the compliance audits) and an independent Prosecutor (to review the case and decide whether to proceed with prosecution).

The total costs for the 2014-2018 Election Compliance Audit Committee are summarized in the following table:

<b>Item</b>	<b>Cost</b>
Committee Members' honorarium, <i>per diem</i> and parking	-\$27,398
Committee costs (simultaneous translation, hospitality)	-\$11,706
External Legal Counsel	-\$42,268
Auditor	-\$15,714
Prosecutor	-\$4,378
Costs Recovered from Two School Boards	+\$8,000
<b>Total cost – ECAC (2014-2018)</b>	<b>\$93,464</b>

Prior to Bill 181, there was the potential for Council to recover the costs of a compliance audit provided the compliance audit confirmed there were no apparent contraventions of the MEA and the Committee found that there were no reasonable grounds for the application. In the case of the application which resulted in a compliance audit but not

legal proceedings, the Committee decided there were reasonable grounds for the application and ruled that no reimbursement would be sought from the applicant.

### ***Municipal Experiences across the Province (2014-2018)***

Across Ontario, it appears that some municipalities experienced a significant increase in applications for election compliance audits. Various municipalities received one or more applications for the first time since election compliance audit committees became mandatory under the MEA.

Additionally, some jurisdictions' experience during the 2014-2018 Term either appears to have influenced changes to the MEA, or identifies significant matters that may affect operations of compliance audit committees in the 2018-2022 Term.

#### *City of Hamilton*

The City of Hamilton's Election Compliance Audit Committee received sixteen applications for compliance audits relating to the campaigns of fourteen different candidates. The Committee did not grant a compliance audit for any of the sixteen applications.

One applicant, who filed eight of the sixteen applications, appealed the Committee's decision on five applications to the Ontario Court of Justice. The appeal was ultimately denied because the formal application was not filed within the prescribed 15-day window.

Further, two applications revealed that two candidates had failed to file the required auditor's report for campaigns raising more than \$10,000. As a result, the City issued notice of default and both candidates are automatically ineligible to run in the next municipal election.

In addition to the volume of applications filed, Hamilton's experience during the 2014-2018 Term also appears to have influenced changes to the MEA under Bill 181 and Bill 154. As will be discussed later in this report, Hamilton's Election Compliance Audit Committee was the subject of an Ontario Ombudsman's closed meeting investigation. The matter escalated to a Divisional Court ruling that the Committee is not subject to the open meeting provisions in the *Municipal Act, 2001* and not within the authority of the Ontario Ombudsman as local meetings investigator.

*Township of Springwater*

In January 2018, the Divisional Court released a decision in *French v. Township of Springwater* on actions taken by the Compliance Audit Committee of the Township of Springwater. The decision is noteworthy for the actions it considers to be within the power of a compliance audit committee.

The decision was the result of an application by a candidate in the 2014 municipal election who sought judicial review of an October 2015 decision of the Township's Compliance Audit Committee. In 2015, after having received an application for a compliance audit of the candidate's campaign finances, the Committee ordered a compliance audit and appointed an auditor. The language of the MEA expressly provides for this process.

The Compliance Audit Committee, however, then decided not to act on the audit it received. Instead, concerned about the appearance of impartiality and thoroughness of the first audit, the Committee decided to appoint a new auditor to conduct a second, and what the Committee referred to as a "forensic", audit.

The MEA does not expressly provide for the option to order a second audit, should a compliance audit committee be dissatisfied with the first, and it was this point on which the question of the Compliance Audit Committee's jurisdiction rested. The candidate submitted that the Compliance Audit Committee had acted outside of its jurisdiction by refusing to consider the first audit report, and lacked the jurisdiction to order a second, forensic audit.

The Divisional Court dismissed the application, concluding that the Compliance Audit Committee was acting within its own statute, and was exercising its core functions, when it ordered a second audit.

The Court's decision also ruled on administrative issues raised in the course of the hearing, including the importance of ensuring that, in engaging an auditor, the municipality appoints an identified, licensed individual, and not simply an auditing firm. The City Clerk and Solicitor will make note of this matter going forward.

*City of Guelph*

The Guelph Election Compliance Audit Committee received one application for a compliance audit which focused on the issue of clarifying the rules around third party

advertising. In addition to questioning a donation from an organization called GrassRoots Guelph, the applicant called into question an advertising campaign run by the grassroots organization. The applicant argued that the candidate benefitted from the advertising campaign, which included newspaper ads endorsing a slate of candidates for Guelph City Council including the candidate, and should have claimed the benefit as a contribution or expense.

The Committee granted the application and ordered a compliance audit. The Auditor's report ultimately discovered minor errors but found the candidate had complied with the MEA with respect to the issues raised in the application regarding the donation and third party advertising.

During the course of the compliance audit process in Guelph, the Ministry of Municipal Affairs was conducting its review of the *Municipal Elections Act, 1996*. The issue of third party advertising was included in the legislative review and Bill 181 ultimately introduced new provisions to regulate third party advertising. These amendments included broadening the authority of the election compliance audit committee to include receiving and considering applications concerning third party advertisers.

## **DISCUSSION**

As outlined earlier, the *Municipal Elections Act, 1996*, requires City Council establish the independent Election Compliance Audit Committee to review applications for a compliance audit from eligible electors.

Under the MEA, as amended by Bill 181, any eligible elector who believes that a candidate or registered third party advertiser has contravened the campaign finance rules in the statute may apply for a compliance audit of that party's election campaign finances. Applications related to candidates for City Council and third party advertisers must be made to the Clerk of the municipality. Applications relating to candidates for school board trustee must be made to the secretary of the applicable school board. 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 or within 90 days of the new 30-day grace period for filing a financial statement under the MEA.

Under 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.

The MEA requires that the Election Compliance Audit Committee be established and in place prior to October 1 in a municipal election year. 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.

### **STATUS QUO RECOMMENDATIONS: 2018-2022 ECAC**

Staff is recommending the *status quo* for a number of matters concerning the Election Compliance Audit Committee. The recent changes to the MEA require minor modification to some of these aspects, which are reflected in this report.

#### ***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.

Bill 181 made minor changes to the composition of the Committee. Specifically, members of the Committee must not be (Bill 181 amendment emphasized below):

- Employees or officers of the municipality or local board;
- Members of the council or local board;
- Any persons who are candidates in the election for which the committee is established; or
- Any persons who are registered third parties in the municipality in the election for which the committee is established.

The MEA also now provides the Minister of Municipal Affairs with the authority to prescribe additional qualifications and eligibility requirements for Committee members. No regulation has been issued at this time.

In order to ensure that the Committee is able to meet all the legislated timeframes outlined in the MEA, and consistent with the practice for the 2010-2014 and 2014-2018 Committees, staff recommends a five-member committee with three being quorum. At least two of these members will be bilingual.

During the recruitment process for the 2014-2018 Election Compliance Audit Committee, the Selection Panel recommended Council approve the addition of an “alternate” in the event one or both of the school boards required the Committee at the

same time as the City. In the end, a member of the Committee resigned shortly after his appointment and the alternate was appointed as a permanent member of the Committee.

Despite adding the “alternate” during the 2014-2018 appointment process, staff recommends maintaining the five-member composition of the Committee in light of the termination of the cost-sharing agreement with the two local school boards, as described later in this report.

### ***Committee Member Recruitment***

Given the specialized nature of the Committee’s work, staff believes that Members should possess knowledge of municipal 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 is 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.

Recruitment will continue to be targeted towards relevant organizations and professional bodies such as the Chartered Professional Accountants of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario, and the Law Society of Upper Canada.

As part of recruitment for the 2014-2018 Committee, staff approached senior administrative staff of post-secondary institutions including the University of Ottawa, Carleton University, Algonquin College and La Cité collégiale requesting they circulate information regarding the appointment opportunity to their faculty. While staff did not receive any applications from the post-secondary institutions, staff believe that a wider pool of candidates may allow for the appointment of Committee Members of the highest calibre. For that reason, as a part of recruitment for the 2018-2022 Committee staff will again 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, especially 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 (e.g. being a member of a campaign team or a contributor) with:

- any candidate running for office on City Council; or
- any registered third party advertiser in the City of Ottawa.

An individual who fails to adhere to these requirements would no longer be able to sit as a member of the Committee.

As has been past practice, staff is recommending that Council delegate the selection of the members of the Committee to a selection panel comprised of the City Clerk and Solicitor, the Auditor General and the Integrity Commissioner 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.

Finally, Section 2.5 of the City's 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 2018-2022 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 October 1, 2018.

### ***Committee Member Training***

Specific training will be mandatory for all Committee Members. Building on the enhanced training of the 2014-2018 Committee, Members will be trained on the expanded responsibilities and powers of the Committee and the Committee's quasi-judicial procedures in order to prepare them for their role on the Committee. Members will also receive specific training with respect to the Committee's Rules of Procedure, which will be revised to reflect the change to Committee processes introduced by Bill 181 and Bill 154, as discussed later in this report.

As the work of the Committee could begin by the end of March 2019, Members of the Committee will receive training in the first quarter of 2019 to ensure the Committee is prepared in advance of a compliance audit application or report on an apparent over-contribution.

### ***Application Form***

For the 2014-2018 Election Compliance Audit Committee, the Office of the City Clerk and Solicitor, under the authority of the MEA, implemented an application form and required that every application for a compliance audit be submitted using this prescribed form. The form was available from the Office of the City Clerk and Solicitor and on Ottawa.ca.

This form includes 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 also required the applicant to confirm his/her understanding of Council's authority, under the MEA, to recover the auditor's costs from the applicant if the auditor's report indicated there was no apparent contravention and the Committee found there were no reasonable grounds for the application.

As will be discussed later in this report, the MEA, as amended, now provides that an elector may apply for a compliance audit of a registered third party advertiser who the elector believes has contravened the election finance rules. Further, Council's authority to recover the cost of a compliance audit, under specific circumstances, has been removed from the MEA. The City Clerk and Solicitor will amend the application form to reflect these changes.

Applicants will not be able to file compliance audit applications at Client Service Centres. Given the potential for an increase in applications and in order to assess each application appropriately and promptly, the filing of compliance audit applications will

now be limited to the Election Office (1221 Cyrville Road) and with the City Clerk and Solicitor (110 Laurier Avenue West).

### **MANDATORY AND PROPOSED CHANGES FOR THE 2018-2022 ECAC**

To reflect the expansion of and amendments to the responsibilities, powers and processes of the Election Compliance Audit Committee brought by Bill 181 and Bill 154, staff have updated the Committee's Terms of Reference (Document 1).

#### ***Expanded Powers and Responsibilities***

For the 2010-2014 and 2014-2018 Municipal Elections, the responsibilities and powers of the Committee were restricted to assessing each request for a compliance audit of a candidate's campaign finances, determining whether a compliance audit was required, reviewing the compliance audit and determining whether to commence legal proceedings against the candidate.

The Committee was responsible for addressing any applications for compliance audits resulting from the regular municipal election or any by-election held during the term of council for which the Committee was appointed.

Specifically, the powers and responsibilities set out for the Committee in the MEA included:

- Receiving applications from eligible electors in the City of Ottawa for compliance audits of the financial statements of candidates for City Council;
- Considering each application to determine whether a compliance audit should be undertaken;
- Appointing an auditor, if the Committee grants the compliance audit;
- Receiving the compliance audit from the auditor;
- Reviewing the auditor's report and:
  - If the report concluded that the candidate appeared to have contravened the MEA, the Committee decided whether legal proceedings should be commenced against the candidate; or

- If the report concluded that the candidate did not appear to have contravened the MEA, making a finding as to whether there were reasonable grounds for the application.

In the event that a compliance audit report concludes there were no apparent contraventions, Bill 181 has removed the Committee's ability to determine whether there were reasonable grounds for the application. This function was tied to the ability of Council, previously set out in the MEA, to recover the auditor's costs from the applicant if the auditor's report found there was no contravention and the Committee found there were no reasonable grounds for the application. The amendments to the MEA as a result of Bill 181 also included the removal of this cost recovery provision.

With the exception of the duty to determine whether there were reasonable grounds for the application, the mandate of the 2018-2022 Committee will include functions that had been in place for the past two Terms of Council.

The Committee's mandate will now also include new areas of responsibility:

- Considering applications from electors for compliance audits of the campaign finances of registered third party advertisers, determining whether a compliance audit is required, reviewing the compliance audit and determining whether to commence legal proceedings against the registered third party;
- Considering applications from electors for compliance audits of the campaign finances of candidates and registered third party advertisers who fail to file financial statements; and
- Considering reports from the Clerk on over-contributions to candidates and registered third-party advertisers, and deciding whether to commence legal proceedings against contributors for apparent contraventions.

As was the case before Bill 181, the Committee remains responsible for applications for a compliance audit resulting from a regular municipal election or any by-election held during the term of council for which the Committee is appointed.

#### *Applications concerning Registered Third Party Advertisers*

For the purposes of the MEA, third parties are considered to be Ontario residents, corporations and trade unions who are not candidates in an election and who incur

advertisement costs related to the promotion, support or opposition of a candidate, or take a position on a “yes” or “no” question on the ballot, in any broadcast, print, electronic, or other medium.

Under the MEA, before incurring any expense related to advertising, a third party must file a notice of registration with the City Clerk and Solicitor. Only an individual who is normally a resident in Ontario, a corporation that carries on business in Ontario, and/or a trade union that holds bargaining rights for employees in Ontario are eligible to file a notice of registration. The period for registering as a third party begins on the first day for filing nominations for candidates (May 1, 2018).

Just as it does for candidates, the MEA sets out limits for registered third parties on contributions received and expenses incurred. Registered third parties will be able to receive contributions from an individual who is normally a resident in Ontario, a corporation that carries on business in Ontario, a trade union that holds bargaining rights for employees in Ontario, and the registered third party itself. In the case of an individual who has registered as a third party, his or her spouse may contribute, subject to provisions with respect to residency. Political parties, constituency associations and registered candidates from other levels of government cannot contribute.

A contributor may not contribute more than \$1,200 to a registered third party and not more than \$5,000 to two or more third parties registered in the same municipality. Third parties have a duty to inform contributors of these two limits. The limits do not apply to contributions made by the registered third party itself and, if the registered third party is an individual, by his or her spouse. Like candidates, after the campaign period has ended, registered third parties are required to file with the City Clerk and Solicitor a financial statement and auditor’s report that will be made public on the City’s website.

The staff report “[Bill 181, the Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996](#)”, which Council considered on December 14, 2016, provides additional information on registered third parties, including the requirements the MEA places on them with respect to registration, receiving contributions, incurring expenses and the period during which they are permitted to advertise.

Bill 181 expanded the mandate of election compliance audit committees to allow an elector to submit an application for a compliance audit of the financial statements of a third party advertiser registered in the municipality. The responsibilities of the Election

Compliance Audit Committee with respect to the application parallel those for applications regarding compliance audits of candidates' finances. Specifically, the Committee will be required to:

- Receive applications from eligible electors for compliance audits of the financial statements of third party advertisers registered in the City of Ottawa;
- Consider each application to determine whether a compliance audit should be undertaken;
- Appoint an auditor, if the Committee grants the compliance audit;
- Receive the compliance audit from the auditor; and
- Review the auditor's report, and, if the report concluded that the registered third party appeared to have contravened the campaign finance rules of the MEA, decide whether to commence legal proceedings against the registered third party.

The timeline for submitting such applications, and for the Election Compliance Audit Committee's consideration of the application, is the same as that for applications for compliance audits of candidates' campaign finances. Legislated timelines for these matters are discussed later in this report.

#### *Application for Compliance Audit when no Financial Statement filed*

The MEA, as amended by Bill 181, now permits an elector to submit an application for compliance audit of a candidate's or third party's campaign finances even if the candidate or third party has not filed a financial statement with the City Clerk and Solicitor. Before the amendments to the MEA under Bill 181, a candidate who failed to submit a financial statement would be deemed in default and not subject to a potential compliance audit.

#### *Clerk's Reports on Apparent Over-Contributions*

Bill 181 introduced an entirely new function for the Clerk and for the Election Compliance Audit Committee with respect to contributors. Under the amended MEA, the City Clerk and Solicitor will be required to review the contributions reported on the financial statements submitted by candidates and registered third parties to determine

whether any contributor appears to have exceeded the contribution limits set out in the MEA.

The MEA requires the Clerk to prepare a separate report identifying each contributor who appears to have exceeded the contribution limits to one or more candidates for City Council. Where the contributor's total contributions to one candidate appear to have exceeded the legislated limit (\$1,200), the report will set out the contributions made by the contributor to the candidate. Where the contributor's total contributions to two or more candidates for office on City Council appear to have exceeded the legislated limit (\$5,000), the report will set out the contributions made by the contributor to all candidates for office on City Council.

The Clerk will also be required to prepare a separate report identifying each contributor who appears to have exceeded the contribution limits to one or more third parties registered in the City of Ottawa. Where the contributor's total contributions to a third party appear to have exceeded the legislated limit (\$1,200), the report will set out the contributions made by the contributor to that third party. Where the contributor's total contributions to two or more third parties registered in the same municipality appear to have exceeded the legislated limit (\$5,000), the report will set out the contributions made by the contributor to all registered third parties in the City of Ottawa.

The Clerk will be required to produce reports on apparent over-contributions to candidates for City Council and to registered third party advertisers "as soon as possible" following the 30-day grace period after the filing date or supplementary filing date for financial statements and auditor's reports. The Clerk is then required to forward the reports to the Election Compliance Audit Committee.

Within 30 days of receiving reports from the City Clerk and Solicitor on apparent over-contributions to candidates and third parties, the City's Election Compliance Audit Committee will be required to consider the reports and decide whether to commence a legal proceeding against a contributor.

The amended MEA also requires the Clerk to review the financial statements of candidates for school board trustee, and prepare separate reports on over-contributions in the same manner outlined above. This review and reporting function will be required for financial statements of all four school board Trustee candidates: Ottawa-Carleton

District School Board, Ottawa Catholic School Board, Conseil des écoles publiques de l'Est de l'Ontario, and Conseil des écoles catholiques du Centre-Est.

The City of Ottawa's Election Compliance Audit Committee, however, will not consider reports regarding apparent over-contributions to candidates for school board trustee. Instead, the MEA requires the Clerk to forward each such report to the secretary of the school board for which the relevant candidate was nominated. Each respective school board secretary is then responsible for forwarding every Clerk's report received to the board's compliance audit committee.

As discussed later in this report, in order to ensure the Committee is able to meet legislated timelines, staff are not recommending the City enter into a cost-sharing agreement with any school board for the 2018-2022 Term of Council. As a result, the new requirement for the Clerk to report on over-contributions to candidates for school board trustee will not create any added workload for the City's Election Compliance Audit Committee.

### ***Changes to Committee Processes***

In addition to the new powers for the Committee, Bill 181 and Bill 154 introduced the following key changes to Committee processes. These elements will be reflected in the Committee's Rules of Procedure.

#### *New Legislated Timelines*

Bill 181 introduced changes to the legislated deadlines for the filing of financial statements which have an impact on the timelines for compliance audit applications. Previously, the deadline for applications for compliance audit were 90 days after the latest of the following:

- The preliminary filing date;
- The supplementary filing date;
- The filing date following a return of a candidate's surplus; and
- The filing date following a campaign extension granted by the court.

The MEA now provides for a 30-day 'grace period' following the preliminary and supplementary filing dates during which a candidate or registered third party may file the required financial statements and pay a \$500 late filing fee.

The impact of the new 30-day ‘grace period’ is that the compliance audit application period has been extended in those cases where a candidate or registered third party has filed financial statements during the grace period (Section 88.33 and Section 88.35). As a result, there is the potential for varying deadlines for compliance audit applications based on the filing date for individual candidates and registered third parties.

#### *Notice*

The MEA now includes a specific requirement to provide “reasonable notice” to affected parties (e.g. applicant, candidate, registered third party, and contributor) and the public. The Election Compliance Audit Committee’s Rules of Procedure currently emulate Council’s standard practice of notice and distribution of agendas. Specifically, notice of meetings is posted on the City’s website as soon as practicable and meeting agendas are distributed a week in advance. Past practice has been to provide the applicant and the candidate with notice of the meeting once a quorum of members has been confirmed and the meeting has been scheduled.

The MEA, as amended, no longer requires that Council be circulated a copy of applications for a compliance audit or an auditor’s report, in the event a compliance audit is granted. Staff believes this change is connected to an effort to further clarify the Committee’s independent and arms-length status.

#### *Written Decisions and Reasons*

The MEA now requires compliance audit committees to provide brief written reasons for its decisions - specifically, a decision to grant or reject a compliance audit application; a decision to commence or not commence legal proceedings following receipt of an audit, and a decision to commence or not commence legal proceedings following receipt of the Clerk’s report respecting apparent contraventions of contribution limits.

Written decisions are to be forwarded to the candidate, the Clerk and the applicant.

#### *Open and Closed Proceedings*

The MEA, as amended by Bill 181 and Bill 154, now provides that meetings of the Election Compliance Audit Committee must be open to the public, though the Committee may opt to deliberate in private.

Previously, the MEA did not include any specific direction with respect to the administrative procedures of the Committee. As continues to be the case, the clerk of the municipality, or the secretary of the school board as the case may be, is responsible for establishing the administrative practices and procedures for the Committee.

The Rules of Procedure prepared for both the 2010-2014 and 2014-2018 Election Compliance Audit Committee required that the Committee respect the open meeting provisions of the *Municipal Act, 2001*, as a committee of Council.

In fact, the 2010-2014 Election Compliance Audit Committee was the subject of the [“Report of the Meetings Investigator Regarding the First Meeting of the Election Compliance Audit Committee held on April 18, 2011”](#), which was considered by Council on June 22, 2011, and the Committee’s Rules of Procedure were amended to further enhance the open meeting procedures of the Committee.

Municipalities have taken different approaches in establishing rules of procedure for election compliance audit committees. The question of whether the open meeting provisions in the *Municipal Act, 2001* apply to election compliance audit committees became an issue during the 2014-2018 Term of Council when the City of Hamilton challenged a ruling by the Ontario Ombudsman regarding closed meetings of Hamilton’s Election Compliance Audit Committee.

In July 2015, the City of Hamilton’s Election Compliance Audit Committee held a closed meeting for the purpose of deliberating on several compliance audit applications. The Ontario Ombudsman subsequently received a closed meeting complaint regarding the private deliberations.

In the course of the Ombudsman’s investigation, representatives for the City of Hamilton maintained that compliance audit committees were not “local boards” and, therefore, were not subject to the *Municipal Act, 2001*, open meeting requirements. The Ombudsman ultimately determined the election compliance audit committee fell within the definition of “local board” in the *Municipal Act, 2001*, and was subject to the open meeting requirements of that *Act*. Ultimately, the Ombudsman ruled that Hamilton’s Committee and had improperly held a closed meeting when it deliberated in closed session.

Prior to the release of the Ombudsman's report, Bill 181 received Royal Assent and amended the MEA to explicitly require that meetings of election compliance audit committees must be open to the public.

In July 2016, the Ombudsman's report was released and considered by Hamilton's City Council. During its deliberations, Council moved a motion directing staff to seek a judicial review of the matter and to engage with the Province of Ontario to pursue legislative amendments to allow election compliance audit committees to deliberate privately.

In August 2017, the Divisional Court released its decision in *Hamilton (City) v. Ombudsman of Ontario* and ruled that the Election Compliance Audit Committee is not a "local board" under the *Municipal Act, 2001*, and, therefore not subject to the open meeting requirements of the *Act*, including oversight by the Ombudsman as a local Meetings Investigator.

Shortly thereafter, Bill 154, the *Cutting Unnecessary Red Tape Act, 2017*, was introduced and, along with amendments to just over 125 pieces of legislation, included one amendment to the MEA, providing election compliance audit committees with the discretion to deliberate in private. It is worth noting that in December, 2017, the Ombudsman was granted leave to appeal the Divisional Court's decision to the Ontario Court of Appeal.

The new provision in the MEA has an impact on the Committee's Rules of Procedure, which require amendment. The Clerk's responsibility for establishing the administrative practices and procedures for the Committee continues and necessary changes to the Committee's Rules of Procedure will be made by the City Clerk and Solicitor.

### ***Projected Costs: 2018-2022 Election Compliance Audit Committee***

Under the MEA, the City is responsible for all costs related to the work of the Committee.

#### *Working with the School Boards*

For the past two Terms of Council, the City has partnered with the Ottawa-Carleton District School Board and the Ottawa Catholic School Board to share the Election Compliance Audit Committee. Under this partnership, each party agreed to pay 1/3 of the annual honorarium for each Committee Member and was responsible for the *per*

*diem* and other costs associated with applications concerning their respective candidates.

While the partnership has worked well for all three parties, the Committee's increased mandate and scope of responsibility creates the risk for increased demand of the Committee, particularly in the application period following the financial filing deadlines. During those peak periods, the risk exists that the Committee be required by one or both of the school boards and the City at the same time.

In order to ensure the Committee is able to meet the legislated timeframes for consideration of compliance audit applications or reports from the Clerk regarding over contributions, staff are not recommending the continuation of the partnership with the two School Boards. Staff will continue to work collaboratively with the secretaries of both Boards to share practices and experience related to the work of the election compliance audit committee.

The financial impact of not renewing the partnership with the two Boards amounts to \$8,000, representing the portion of the annual honorarium for Committee Members previously covered by the Boards.

#### *Increased Financial Pressure*

Staff cannot anticipate all costs associated with the Committee because the number of potential applications and of resulting compliance audits is unknown. The MEA requires the municipality to pay all costs associated with the Committee, including the auditor's costs of performing the audit.

Staff estimates a total cost of \$4,000 for placing advertisements to recruit Committee Members in two local dailies, one English and one French, community newspapers, as well as for circulation through the County of Carleton Law Association and the Institute of Chartered Accountants of Ontario.

As is common practice for a quasi-judicial body, independent legal counsel will be retained by the City Clerk and assigned to the Committee to assist the Committee in its deliberations. This approach will continue to ensure the Committee remains arms-length from the City's administration and Council.

As previously noted, staff is recommending that members of the Committee be paid the same honorarium and *per diem* as have been in place for the previous two Election

Compliance Audit Committees: \$600 annual retainer and \$175 an hour to a maximum of \$1,250 a day.

Finally, in addition to electors' increasing awareness of the application process and the expanded mandate and responsibilities of the Committee, Bill 181 has removed the ability for Council to recover the costs of a compliance audit from an applicant.

Previously, where an audit report indicated there were no apparent contraventions, and the Committee subsequently determined there were no reasonable grounds for the application, Council had the authority to recover the costs of the audit. During the past two terms of Council, Council has never exercised this authority as not one of the City's Election Compliance Audit Committees has ruled there were no reasonable grounds for an application after a compliance audit had been conducted.

### **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.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This report is city-wide.

### **ADVISORY COMMITTEE(S) COMMENTS**

**No comments are required.**

### **LEGAL IMPLICATIONS**

The legal implications regarding the Election Compliance Audit Committee are described throughout this report. Therefore, there are no legal impediments to implementing the recommendations in the report. More specifically, Section 88.37 of the *Municipal Elections Act, 1996*, mandates City Council to establish an Election Compliance Audit Committee for the purposes of reviewing and making decisions on applications for compliance audits.

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

## **FINANCIAL IMPLICATIONS**

The costs of the Committee's operation and activities will be funded from the Tax Stabilization Reserve.

## **ACCESSIBILITY IMPACTS**

An accessible version of the application form (Application for a Municipal Election Compliance Audit) will be developed and made available on Ottawa.ca.

## **TERM OF COUNCIL PRIORITIES**

This report has no direct impact 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

## **DISPOSITION**

Upon Council approval, staff will conduct a recruitment process for the appointment of the Election Compliance Audit Committee members. Prior to October 1, 2018, staff will provide Council with an update identifying the selected individuals.

Document 1

CITY OF OTTAWA ELECTION COMPLIANCE AUDIT COMMITTEE

**TERMS OF REFERENCE**

**MANDATE**

As prescribed by Section 88.37 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 and on reports from the City Clerk respecting apparent contraventions of contribution limits.

**RESPONSIBILITIES**

With respect to applications for compliance audit, the Election Compliance Audit Committee shall be responsible for:

1. Receiving and considering an application for a compliance audit of the campaign finances of a candidate for municipal council or a registered third-party 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; and
    - has reasonable grounds to believe that the candidate referenced in the application has contravened a provision of the *Act* relating to election campaign finances.
2. Appointing an auditor, if the compliance audit is granted;
3. Receiving the compliance audit report from the auditor;
4. Reviewing the auditor’s report and, if the report concludes that the candidate or registered third party appears to have contravened a provision of the *Act* relating

to campaign finances, deciding whether legal proceedings should be commenced against the candidate.

The Committee is required to consider and render a decision on applications for compliance audits and reports from an auditor within 30 days of receipt.

With respect to reports from the City Clerk and Solicitor regarding apparent contraventions of contribution limits, the Election Compliance Audit Committee shall be responsible for:

5. Receiving and considering report(s) from the City Clerk and Solicitor identifying each contributor to a candidate for office on council who appears to have contravened any of the contribution limits under Section 88.9 of the *Act*, and deciding whether to commence a legal proceeding against a contributor for an apparent contravention; and
6. Receiving and considering report(s) from the City Clerk and Solicitor identifying each contributor to a registered third party who appears to have contravened any of the contribution limits under Section 88.13 of the *Act*, and deciding whether to commence a legal proceeding against a contributor for an apparent contravention.

The Committee is required to consider and render a decision on reports from the City Clerk and Solicitor within 30 days of receipt.

### **MEMBERSHIP**

The Election Compliance Audit Committee will be comprised of five (5) members selected by the City Clerk and Solicitor, the Auditor General and the Integrity Commissioner. 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;
- Candidates of the municipal election for which the Committee is established; or

- Registered Third Parties in the municipality in the election for which the Committee is established.

Members must have a thorough understanding of municipal campaign finance rules (i.e. retired municipal clerks and managers of elections, 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, or have any other formal relationship with, any candidate running for office on City Council or any Registered Third Party 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, a report from an auditor, or a report from the City Clerk and Solicitor regarding apparent contraventions of contribution limits set out in the *Act*. The Committee may also meet as necessary to organize and plan its work.

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.