

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee
From: Michael Schulthess, City Clerk
Subject: Municipal Compliance Audit Committee
Date: August 22, 2022

Recommendation

That, on the recommendation of the City Clerk, the following actions be taken with respect to the 2022 Municipal Election Compliance Audit Committee:

- a) the attached proposed by-law (Appendix “A”) BE INTRODUCED at the Municipal Council meeting to be held on September 6, 2022 to establish a Municipal Compliance Audit Committee for the 2022 Municipal Election in accordance with section 88.37 of the *Municipal Elections Act, 1996*, as amended;
- b) the attached proposed by-law (Appendix “B”) BE INTRODUCED at the Municipal Council meeting to be held on September 6, 2022 to approve the appointments to the Municipal Election Compliance Audit Committee for the 2022 Municipal Election in accordance with section 88.37 of the *Municipal Elections Act, 1996*, as amended; and,
- c) the Elections Reserve BE APPROVED as the source of funding for the annual operating costs related to the Municipal Compliance Audit Committee for the 2022 Municipal Election.

Linkage to the Corporate Strategic Plan

The Municipal Election Compliance Audit Committee responds directly to Council’s 2019 to 2023 Strategic Plan for the City of London objective to be “trusted, open, and accountable in service of our community” by increasing opportunities for residents to be informed and participate in local government.

Analysis

1.0 Background Information

1.1 Previous Reports on this Matter

Corporate Services Committee – February 4, 2014
Corporate Services Committee – February 20, 2018

1.2 Background

In accordance with the *Municipal Elections Act, 1996* (the “Act”), as amended, s.88.37 (1), the municipality must establish a Compliance Audit Committee before October 1 in an election year. The Municipal Election Compliance Audit Committee (2018-2022) was appointed by Council in 2018 to consider any applications for compliance audits for the 2018 municipal election and any subsequent by-elections during the 2018-2022 term of Council. A new Compliance Audit Committee must be established for the next term of Council.

2.0 Discussion and Considerations

2.1 Legislation

Section 88.37 of the Act pertaining to compliance audit applications, requires all municipalities and local boards to establish compliance audit committees (the

“Committee”) on or before October 1 in the year of an election. The powers and functions of the Committee are provided under the Act. All candidates running in the 2022 municipal election for the offices of mayor, ward councillor and school board trustee must file a financial statement on a prescribed form detailing the contributions received and expenses incurred during their election campaign. If a candidate’s campaign contributions or expenses total more than \$10,000, the candidate must have an auditor review their financial statement and provide an auditor’s report. Third party advertisers must register with the City and like candidates, all third party advertisers must file a financial statement on a prescribed form detailing the contributions received and expenses incurred during their advertising campaign and an auditor’s report if their campaign contributions or expenses total more than \$10,000. An elector who is entitled to vote in the municipal election may apply for a compliance audit of the candidate or registered third party advertiser’s campaign finances. Additionally, the City Clerk must review the contributions made to a candidate or third party advertiser’s campaign and forward a report to the Committee identifying any contributor whose contributions appear to exceed the maximum contribution limits prescribed by the Act, and the amount of the excess contributions.

The following summarizes the requirements as set out in section 88.37 of the Act:

- mandatory appointment by all municipalities;
- minimum of three, maximum of seven members;
- the committee shall not include members of Council or local board, employees or officers of the municipality 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;
- appointed by October 1st of election year;
- serves a term concurrent with the term of office of the Council that takes office following the next regular election; and,
- Clerk has specific responsibility for the committee.

2.2 Application and Audit Process

An eligible elector who believes that a candidate or registered third party advertiser has contravened the election campaign finance rules under the Act may apply for a compliance audit of their campaign finances.

To apply for a compliance audit of a councillor candidate, mayoral candidate, or registered third party advertiser an eligible elector must complete the Compliance Audit Application form and submit the form and any supporting documents to the City Clerk’s Office by the required deadline. The application must be made in writing to the City Clerk and include the reasons for the elector’s belief that the candidate has contravened the Act.

An eligible elector may apply for a compliance audit of the candidate or registered third party’s election campaign finances so long as the Application is made within 90 days after the latest of:

- a) the filing date under section 88.30 of the Act;
- b) the date the candidate or registered third party filed a financial statement, if the statement was filed within 30 days after the applicable filing date under the Act;
- c) the supplementary filing date, if any, under section 88.30 of the Act;
- d) the date on which the candidate’s extension, if any, under subsection 88.23(6) of the Act expires, or

- e) the date on which the registered third party's extension, if any, under subsection 88.27(3) of the Act expires.

In relation to the 2022 Municipal Election, the City Clerk must receive the compliance audit application by the following dates:

- a) For the initial financial filing deadline of March 31, 2023, the City Clerk must receive the compliance audit application form by June 29, 2023.
- b) For the supplementary financial filing deadline of September 29, 2023, the City Clerk must receive the compliance audit application form by December 28, 2023.
- c) For financial statements filed during the 30-day grace period or a court-ordered extension, the City Clerk must receive the compliance audit application within 90 days of the extension filing date.

In addition to the compliance audit process, any person may pursue their own legal action in relation to the election. A prosecution related to the 2022 municipal election must be commenced on or before November 14, 2026.

If the committee grants a Compliance Audit application, it will appoint an auditor to conduct a compliance audit of the applicable campaign finances. The auditor is entitled to have access to all the financial records related to the associated campaign. The auditor will produce a report, which the candidate or registered third party is entitled to receive.

The compliance audit committee will meet to consider the auditor's report. If the report concludes that there is an apparent contravention of the Act the committee will decide whether to commence legal action.

The City Clerk does not accept compliance audit applications for school board trustee candidates; these must be submitted to the relevant school board.

2.3 Contributions

The Act requires the City Clerk to review the contributions reported on the financial statements of candidates and third party advertisers filed in accordance with section 88.25 and 88.29, respectively, to determine if any contributor appears to have exceeded the prescribed contribution limits. The City Clerk must prepare a separate report for each contributor who appears to have exceeded a contribution limit. In the case of a candidate for municipal council or a third party advertiser, the City Clerk must submit the report to the Committee. In the case of a candidate for school board trustee, the City Clerk submits the report to the secretary of the local board. The Committee holds a meeting to consider the City Clerk's report and decides whether to commence a legal proceeding against the contributor for the apparent contravention.

The meeting(s) of the Committee shall be open to the public and reasonable notice of the meeting(s) shall be given to the contributor, the City Clerk or secretary of the local board, the candidate, contributor, third party advertiser and the public.

2.4 The Committee

The new Committee must be appointed by September 30, 2022, as prescribed by the Act. To avoid conflict of interest, care must be taken to ensure that any auditors or accountants appointed to the Committee do not audit or prepare the financial statements of any candidate running for office in the election for which the Committee is established or any third party advertiser registered in the municipality in the election for which the Committee is established. Accordingly, it is the recommendation of Civic Administration that any auditor or accountant appointed to the Committee would have to agree in writing to not undertake the audits or preparation of the financial statements of any candidate running in or any third party advertiser registered in the City of London in

the 2022 municipal election. Failure to adhere to this requirement would result in the individual being ineligible or removed from the Committee.

The proposed terms of reference, attached as Schedule 1 to Appendix “A”, provide for a 2022 Municipal Election Compliance Audit Committee composed of three (3) members.

It is important that the 2022 Municipal Election Compliance Audit Committee members possess an in-depth knowledge of the campaign finance rules of the Act so that they can make independent decisions on the merits of the applications. A Committee composed of professionals such as auditors, accountants, lawyers, academics and other individuals having a familiarity with municipal election campaign financing rules is recommended.

2.5 Appointments to the Committee

Municipal Council, at its meeting of March 6, 2018, appointed Dan Ross, Andrew Wright and Christene Scrimgeour to the Municipal Elections Compliance Audit Committee established for the 2018 Municipal Election. The Civic Administration is recommending that the same three members be appointed to the Municipal Elections Compliance Audit Committee (the “Committee”) being established for the 2022 Municipal Election.

All three applicants meet the membership criteria identified in the terms of reference for the Committee, which are as follows:

The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- (b) academic – college or university professors with expertise in political science or local government administration;
- (c) legal profession with experience in municipal law, municipal election law or administrative law;
- (d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and
- (e) other individuals with knowledge of the campaign financing rules of the Act.

Members of Council, employees or officers of the municipality or local board, any person who are registered third parties in the municipality in the election for which the committee is established or any persons who are candidates in the election for which the committee is established are not eligible to be appointed to the Committee, pursuant to clause 88.37(2) of the Act.

All three individuals have expressed interest in being appointed to the Committee for the 2022 Municipal Election. The applicants have submitted a summary of their qualifications which are attached as Appendix “C” to this report, for the information of Municipal Council.

2.6 Penalties

The compliance audit committee does not have any authority to set penalties. Only the court can decide if a candidate, contributor or registered third party contravened the Act and, if so, which penalties should apply.

A person who does not want to or who is not able to apply for a compliance audit may decide to commence legal action on their own. A prosecution related to the 2022 election must be commenced before November 15, 2026.

If a person is convicted of an offence, they may be subject to the following penalties:

- a fine of up to \$25,000
- ineligibility to vote or run in the next general election
- up to six months in prison
- forfeiture of elected office, if the judge finds that they committed the offence knowingly

If a corporation or trade union is convicted of committing an offence, they may be subject to a fine of up to \$50,000, and ineligibility to register to be a third party advertiser until after the next regular election.

If a candidate or registered third party is convicted of exceeding the spending limit, they may also be fined the amount by which they exceeded the limit.

3.0 Financial Impact

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

- Committee members' honorarium, per member, per meeting
- auditor's costs to perform an audit
- costs related to the Committee's operations and activities
- legal costs related to an appeal to the Ontario Court of Justice with respect to a decision of the Committee
- legal costs to undertake legal action against the candidate for violations of the elections finance provisions of the Act.

Factors involved in determining the Committee's costs include the number of compliance audit applications that are received, the number of meetings that are required to be held, and the complexity of the audits that need to be conducted. It is therefore difficult to pre-determine the costs that will result from the establishment of the Committee's process, as the number of applications to be submitted are unknown in advance. The Elections Reserve has been identified as the source of financing for the operational expenses of the Committee.

The Civic Administration recommends compensation for members of the Municipal Election Compliance Audit Committee (2022–2026) to be \$200 per meeting attended, including any orientation meeting(s) that may be held, with no additional compensation for mileage.

Conclusion

The City Clerk recommends that the attached proposed by-laws be introduced at the Municipal Council meeting to be held on September 6, 2022.

Prepared by: Jeannie Raycroft, Manager, Elections, Strategic Integration & Policy
Submitted by: Sarah Corman, Deputy City Clerk
Recommended by: Michael Schulthess, City Clerk

APPENDIX “A”

Bill No.
2022

By-law No.

A by-law to establish the 2022 Municipal Election Compliance Audit Committee in accordance with Section 88.37 of the *Municipal Elections Act, 1996*, as amended.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001*, as amended, provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS section 88.37 of the *Municipal Elections Act, 1996*, as amended, requires council to establish a compliance audit committee;

AND WHEREAS this by-law and the Terms of Reference attached hereto as Schedule 1 comply with Section 270 of the *Municipal Act, 2001*, as amended, and Council Policy By-law A.-6151-17, with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions and the manner in which the municipality will try to ensure that its actions are transparent to the public;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The attached Terms of Reference (Schedule 1) to establish the 2022 Municipal Election Compliance Audit Committee be adopted.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 6, 2022.

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading – September 6, 2022
Second Reading – September 6, 2022
Third Reading – September 6, 2022

Schedule 1

TERMS OF REFERENCE

2022 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE

1.2 Name

The name of the Committee is the “2022 Municipal Election Compliance Audit Committee”.

1.3 Term of the Committee

The term of the Committee shall be from November 15, 2022 to November 14, 2026.

1.4 Meetings

The Committee will meet as needed, with meetings to be scheduled by the City Clerk or their designate when a compliance audit application is received.

1.5 Mandate

The Committee is required to act in accordance with the powers and obligations set out in the *Municipal Elections Act, 1996*, as amended (the “Act”). The Committee will be required to:

- consider a compliance audit application received from an elector that a candidate or a registered third party has contravened provisions of the Act relating to election campaign finances and determine whether it should be granted or rejected;
- if the application is granted, the committee shall appoint an auditor to conduct a compliance audit;
- receive the auditor’s report;
- consider the auditor’s report and if the report concludes that the candidate or registered third party appear to have contravened a provision of the Act relating to election campaign finances, the committee may commence legal proceedings against the candidate or third party for the apparent contravention; and,
- consider the report(s) of the City Clerk identifying each contributor to a candidate for office on a council or a registered third party who appears to have contravened any of the contribution limits under section 88.9 or 88.13 of the Act and decide whether to commence a legal proceeding against a contributor for an apparent contravention.

1.6 Composition

The Committee will be composed of four (3) members, with membership drawn from the following stakeholder groups:

- a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- b) academic – college or university professors with expertise in political science or local government administration;
- c) legal profession with experience in municipal law, municipal election law or administrative law;
- d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and,
- e) other individuals with knowledge of the campaign financing rules of the Act.

Members of Council, employees or officers of the municipality or local board, any persons who are registered third parties in the municipality in the election for which the committee is established or any persons who are candidates in the election for which

the Committee is established are not eligible to be appointed to the Committee, pursuant to clause 88.37(2) of the Act.

Further, an individual shall be deemed ineligible to be a member of the Committee if they prepare the financial statements of any candidate or registered third party running for office on Municipal Council during the term for which the Committee has been established.

The following persons are ineligible for appointment:

- Employees or officers of any of the participating bodies,
- A member of council or of a local board of any of the participating bodies,
- Any persons who are candidates in an election of any of the participating bodies for which the Committee is established; or
- Any persons who are registered third parties in an election of any of the participating bodies for which the Committee is established.

Should an appointed Committee Member accept employment with any of the participating bodies or register as a candidate or a third party with any of the participating bodies, they will have been deemed to have resigned.

All Committee Members shall agree in writing that they will not work or volunteer for, or contribute to, any candidate or registered third party in any capacity in an election of any of the participating bodies.

If a person recommended or appointed to serve on the Committee is identified as having participated or contributed to a candidate's campaign or registered third party, that person shall not be eligible to be a Member with respect to a Compliance Audit Committee application within the applicable participating body where the participation or contribution to a campaign or registered third party occurred.

1.7 Conflicts

Conflicts of pecuniary interest arise when Members may financially benefit, directly or indirectly, from their membership on the Committee. Such involvements include, but are not limited to:

- Members being employed by or doing business with the Affected Party
- Members' immediate family being the Affected Party or employed by or doing business with the Affected Party
- Members' business associates being the Affected Party or employed by or doing business with the Affected Party

A conflict of interest may be an actual or perceived conflict of pecuniary interest. The same duty to disclose applies to each. The pecuniary interests of a Member's immediate family or business associate are considered to also be the pecuniary.

1.8 Appointment Process

All applicants will be required to submit a summary outlining their qualifications and experience. A Nomination Committee consisting of the City Clerk, the Deputy City Clerk and the Manager of Elections, Strategic Integration and Policy will submit a short list of candidates to Council through the Corporate Services Committee. Any vacancies which arise after November 15, 2022 shall be nominated by the Nomination Committee to Council, through the Corporate Services Committee.

Members will be selected based on the following:

- a) demonstrated knowledge and understanding of municipal election campaign financing rules and knowledge of the Act and related regulations;

- b) proven analytical and decision-making skills;
- c) experience working on a committee, administrative tribunal, task force or similar setting;
- d) availability and willingness to attend meetings; and
- e) oral and written communication skills

Members will be appointed by Municipal Council.

1.9 Compensation

Members shall receive an honorarium of \$200.00 per meeting, to be funded from the Election Reserve. Administrative costs for such items as printing and mailing will be absorbed within the City Clerk's Operating Budget.

1.10 Conduct of Members

Members of the Committee shall comply and conduct themselves in accordance with the Municipal Election Compliance Audit Committee Rules of Procedure. Members shall not use their position on the Committee for any personal or political gain.

1.11 Administrative Practices and Procedures

The Terms of Reference and Municipal Election Compliance Audit Committee Rules of Procedure shall constitute the Administrative Practices and Procedures of the Committee.

Any responsibilities not clearly identified within these Terms of Reference shall be in accordance with Section 88.33 to 88.37 of the Act.

The City Clerk has the right to establish additional administrative practices and procedures for the Committee at any time and shall carry out any other duties required under the Act to implement the Committee's decisions.

1.12 Funding

Costs related to the retention of an auditor will be funded from the Election Reserve.

Costs incurred as a result of a decision of the Committee being challenged to the Superior Court of Justice shall be funded from the Election Reserve.

APPENDIX “B”

Bill No.
2022

By-law No.

A by-law to approve the appointments to the Municipal Election Compliance Audit Committee for the 2022 Municipal Election in accordance with Sections 88.37 of the *Municipal Elections Act, 1996*, as amended.

WHEREAS section 88.37 of the *Municipal Elections Act, 1996*, as amended, requires Council to establish a Compliance Audit Committee;

AND WHEREAS the Council of The Corporation of the City of London wishes to appoint Dan Ross, Andrew Wright and Christene Scrimgeour to the Municipal Election Compliance Audit Committee for the 2022 Municipal Election;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Andrew Wright, Christene Scrimgeour and Dan Ross be hereby appointed to the Municipal Election Compliance Audit Committee for the 2022 Municipal Election for the term commencing November 15, 2022 and ending November 14, 2026.
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on September 6, 2022.

Ed Holder
Mayor

Michael Schulthess
City Clerk

First reading – September 6, 2022
Second reading – September 6, 2022
Third reading – September 6, 2022

APPENDIX “C”

Andrew Wright

Andrew Wright is a London lawyer who has practiced municipal and environmental law since his call to the Bar in 1973. He is a partner with Siskinds LLP. Mr. Wright is an Acting Referee under the Drainage Act. He is also one of the City’s Hearings Officers for appeals under several City by-laws. He is a member of a number Audit Compliance Committees in Middlesex and Elgin Counties.

Christene Scrimgeour

Christene Scrimgeour is managing partner of Scrimgeour & Company CPA, Professional Corporation. The firm was established in 1998 and currently audits thirteen municipalities in Southwestern Ontario, as well as many not-for-profit organizations, registered charities and foundations. In addition, the firm provides extensive tax, accounting and advisory services.

Christene’s professional activities include teaching A.M.C.T.O. courses and delivering speeches at various municipal functions. She attends Municipal Finance Officers Association’s (MFOA) annual conference and CPA Ontario PSAB courses.

Christene is a member of CPA Ontario’s Practice Inspection Committee and past founding member of CPA Ontario’s Small Practice Committee.

Dan Ross

Dan Ross is a retired London lawyer and local business owner who has served on many community organizations, including the London Health Sciences Foundation and the Richard Ivey School of Business. He continues to be strongly engaged in various local volunteer opportunities. Mr. Ross has also served as a Commissioner on Ontario’s Health Services Restructuring Commission and as Chair of the Council Compensation Review Task Force.

In addition to his legal and business expertise, Mr. Ross has diverse skills covering such areas as Planned Giving, Stewardship, Fundraising, Annual Giving, Event Management, Philanthropy, Volunteer Management, Strategic Planning, Non-profits, Leadership, Coaching, Event Planning Community Development, Community Outreach, Grant Writing, Strategic Communications, Media Relations, Leadership Development, Public Relations, Public Speaking, Board Development, Prospect Research, Corporate Communications and Marketing Communications.