

NIAGARA COMPLIANCE AUDIT COMMITTEE

Procedures for the Niagara Compliance Audit Committee 2022 Municipal & School Board Elections



1. Background

- 1.1 In accordance with Section 88.37 of the *Municipal Elections Act, 1996*, as amended, (the “Act”), a Joint Compliance Audit Committee has been established by The Regional Municipality of Niagara , the Area Municipalities, the District School Board of Niagara and the Niagara Catholic District School Board (Joint Area Participants) and named the “Niagara Compliance Audit Committee”.
- 1.2 The Terms of Reference for the Committee were approved by each of the Joint Area Participants.

2. Authority

- 2.1 Section 88.37(6) of the *Act* provides that the clerk of the municipality or the secretary of the local board, as the case may be, shall establish administrative practices and procedures for the committee and shall carry out any other duties required under this *Act* to implement the committee’s decisions.

3. Definitions

As used in these procedures, the following terms shall have the meanings indicated:

“Applicant” means an elector as defined under Section 88.33(1) of the *Act*, who applies for a compliance audit of a candidate’s election campaign finances;

“Application” means an application accepted by the Clerk of the responding municipality pursuant to s. 88.33(2) of the *Act*;

“Candidate” means the candidate whose election campaign finances are the subject of an application for a compliance audit, and includes a registered third party advertiser;

“Clerk” means the Municipal Clerk of the responding municipality or designate;

“Chair” means the Compliance Audit Committee Chair for the purposes of chairing a meeting and not to include any other authority.

“Committee” means three (3) to five (5) members sitting as the Niagara Compliance Audit Committee;

“Council” means the Council of the responding municipality;

“Municipality” means the responding municipality or school board;

“Registered Third Party Advertiser” means the Registered Third Party whose campaign finances are the subject of an application for a compliance audit;

“Report” means the Report prepared by the Clerk of the participating body (municipality or school board), which identifies each Contributor to a Candidate or Third Party Advertiser who appears to have contravened any of the contribution limits under the *Act*.

“Responding Municipality” means one of the Joint Area Participants as set out under Section 1.1 herein who responds to the receipt of an application;

“Secretary” means the Clerk of the responding municipality or designate or the Secretary of the responding school board or designate.

4. Rules

4.1 The rules in these Procedures shall be observed in all meetings of the Committee.

4.2 For the purpose of reference to the School Boards, modifications to certain terms used herein shall have a corresponding meaning to the Board, i.e. Council/Board, Clerk/Secretary, responding municipality / responding board.

- 4.3 If these rules do not provide for a matter of procedure that arises, the procedure shall be determined by the Chair in consultation with the Clerk having regard to the responding municipality's Council Rules of Procedure.

5. Meetings

- 5.1 The Committee shall meet at the request of the Clerk.
- 5.2 The Clerk shall summon a meeting of the Committee when the Clerk considers it necessary, when required by the *Act* and when requested to do so in writing by a majority of the Committee members.
- 5.3 Meetings should be held at the offices of the responding municipality or such other location as the Clerk deems appropriate. If electronic or virtual participation is required, this can be arranged by the host municipality. The Clerk or secretary may implement procedures to carry out this process and accordingly, advise all parties of such and follow all public notice requirements.
- 5.4 Meetings shall commence at a time and date to be set by the Clerk, and shall adjourn by vote of the Committee.
- 5.5 The Committee shall conduct its meetings in public, subject to a resolution passed by the Committee to meet in a closed session for a purpose authorized by Section 239 of the *Municipal Act, 2001*, as amended, and subject to Section 88.33 (5.1) of the *Act* which permits the Committee to deliberate in private.
- 5.6 A majority of the Committee members constitutes a quorum at meetings of the Committee.
- 5.7 The Applicant, the Candidate or their respective agents and, where applicable, the auditor, shall be given an opportunity to address the Committee.
- 5.8 Committee members shall comply with the *Municipal Conflict of Interest Act*, as amended, and shall disclose any pecuniary interest to the Clerk and absent him/herself from meetings for the duration of the consideration of the Application, discussion and voting with respect to the Application. The Clerk of the responding municipality shall select another member to replace him/her on the Committee.
- 5.9 The Clerk shall act as the Secretary to the Committee.

6. Meeting Chair

- 6.1 At the first meeting of the Committee, the Clerk shall call the meeting to order and the first order of business shall be the selection of the Chair. The Committee shall select a Chair from its members.
- 6.2 When the Chair of the Committee is absent or is otherwise unable to act, the Committee may appoint another member as Acting Chair. While presiding, the Acting Chair shall have all the powers of the Chair.
- 6.3 If the Chair of the Committee resigns as a member of the Committee or resigns as the Chair of the Committee, the Committee shall appoint another member as Chair for the balance of the term of Council and until a successor is appointed.
- 6.4 The Chair is the liaison between the members and the Clerk on matters of procedure, practice and process.
- 6.5 The Chair shall enforce the observance of order and decorum among the Committee members and the public at all meetings.

7. Delegation by Clerk

- 7.1 The Clerk may delegate administrative responsibilities as deemed necessary.

8. Disclosure

- 8.1 The Applicant and Candidate shall have the opportunity to submit any and all documentation to the Clerk at least seven (7) days prior to the meeting for distribution to the parties in advance of the hearing. The Candidate may respond to the Application in writing and same shall be submitted to the Clerk at least four (4) days prior to the meeting for circulation with the agenda.

9. Agenda

- 9.1 At least three (3) days before the meeting date, the Clerk shall circulate, via email, the agenda including a copy of the Application, the Candidate's financial statements, materials and any written submissions, to the Committee, Applicant, Candidate, and auditor, where applicable.

- 9.2 The agenda shall be made available to the public in accordance with Section 12. The agenda will include a copy of the Application (including reasons given) or Report.
- 9.3 In the case of an Application, the Candidate or Third Party Advertiser will be requested to respond to the Application in writing. The written response must be submitted to the Clerk or Secretary a minimum of four (4) days prior to the Meeting at which the Application will be considered.
- 9.4 The Clerk or Secretary will distribute to Committee Members before or during a Meeting any written submissions, including those of a Candidate or Third Party Advertiser, in relation to an Application, Report, or other item on the agenda.
- 9.5 The first order of business on the agenda (after the selection of the Chair) shall be the declaration of conflict of interest by any member of the Committee.
- 9.6 If a party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice in relation to the Meeting or subsequent Meetings at which the Application or Report is considered.
- 9.7 A meeting may be canceled by the Clerk or Secretary when sufficient Members cannot attend, when a meeting is no longer required, or in the event of an emergency as determined by the Clerk or Secretary.
- 9.8 The Clerk or Secretary will give notice of Meeting cancellations or postponements by providing notice to Members electronically as soon as possible prior to the scheduled Meeting and by posting a notice on the participating body's website and at the entrance to the location where the Meeting is/was to be held. In the event of an emergency, cancellation notice will be provided as soon as possible in a manner deemed appropriate by the Clerk or Secretary
- 9.9 The Clerk or Secretary may provide earlier or additional forms of notice, as he or she deems appropriate.

10. Lack of Quorum

- 10.1 If no quorum is present fifteen minutes after the time fixed for a meeting, or the resumption of a meeting after an adjournment, or should a quorum at a meeting be lost for a period of fifteen consecutive minutes, the Clerk shall record the names of the members present and the meeting shall stand adjourned until the next regular meeting day scheduled by the Clerk.

11. Committee Procedures

11.1 Opening Statement by the Chair:

The Chair shall inform the parties of the agenda, process and procedures for the meeting by reading an opening statement.

11.2 Motions

Following the opening statement and before considering the substance of agenda items, the Committee members may make preliminary motions, including motions to change the order of business or to defer an agenda item, with respect to any business properly before the Committee.

11.3 A seconder is not required for moving of a motion.

11.4 Committee Business

Prior to consideration of an item on the Committee agenda, the Chair shall identify for those present, the agenda item to be considered.

11.5 More Than One Application

Where the Agenda includes consideration of more than one Application, each Application shall be considered by the Committee in its entirety before consideration of the next Application.

11.6 Introduction and Recording of Applicant and Candidate

Prior to consideration of an Application, the Chair shall request the Candidate and the Applicant or their agents, if present, to identify themselves and to provide their names and mailing addresses to the Clerk during the meeting.

11.7 Consideration of Agenda Items

Prior to consideration of an item on the Committee agenda, the Chair will identify for those present the agenda item to be considered.

(1) Applications

- i) Any persons present for the item who have registered with the Clerk or Secretary, including the Applicant, Candidate or Third Party Advertiser, may speak to the item for up to five (5) minutes.
- ii) Once all of those who have registered have been given an opportunity to speak as permitted by this section, the Committee Members will each have an opportunity to speak to the item for a maximum of five (5) minutes. Members may then ask questions

regarding the matter, deliberate (publicly or in private session), make motions and vote on the item.

(2) Reports

- i) The Clerk will address the Committee and provide a summary of his or her Report and its conclusions.
- ii) The Contributor, Candidate or Third Party Advertiser, their agents or any person present at the Meeting may not ask questions of the Clerk or the Committee, regarding the Report.
- iii) Following the Clerk's summary, Committee members will each have an opportunity to speak to the item for a maximum of five (5) minutes. Members may then ask questions regarding the matter, deliberate (publicly or in private session), make motions and vote on the item.

11.8 Rules of Debate

- (1) When two or more Committee members wish to speak, the Chair shall designate the member who first requested to speak as the member who speaks first.
- (2) A Committee member may ask a question only:
 - a) Of a member who has already spoken on the matter under discussion;
 - b) Of the Chair;
 - c) Of an official of the responding municipality; and
 - d) Of any other person addressing the Committee pursuant to these Procedures.
- (3) A Committee member may ask a question only for the purpose of obtaining information relating to the matter under discussion.
- (4) Any Committee member may propose a motion on the matter under consideration, and the Clerk shall record the motion in writing.
- (5) Every Committee member present at a meeting of the Committee when a question is put shall vote on the question, unless a member has declared a conflict of interest, which shall be recorded in the minutes of the meeting.

- i) The matter put to a vote shall be in the form of a motion addressing the matter under consideration.
 - ii) All motions must be introduced by a mover before the Chair may put the question or motion on the floor for consideration.
 - iii) After a motion is properly moved, it shall be deemed to be in the possession of the Committee, but may be withdrawn by the mover at any time before the decision.
 - iv) A motion to amend shall relate to the subject matter of the main motion, shall not be received posing a direct negative to the question, and shall be put to vote in reverse order in which the amendments are made. Only a motion to amend an amendment to the original motion shall be allowed, and any further amendments must be made to the original motion.
 - v) In the case of a tie vote, the motion shall be deemed to have been lost.
- (6) Procedural motions and precedence of motions shall be subject to consideration in accordance with the responding municipality's Council Rules of Procedure (Procedural By-law).

12. Notice

- 12.1 The Clerk shall give notice of a Committee meeting in accordance with the responding municipality's Council Rules of Procedure By-law and public notice policy.
- 12.2 The responding municipality's website shall be used to communicate meeting notices, agendas, minutes and decisions. The agenda will include a copy of the Application (including reasons given) or Report.
- 12.3 In accordance with Section 88.33(5) of the *Act*, the Clerk shall give reasonable notice to the Applicant, Candidate, and public of the time, place and purpose of a meeting and of the fact that if either party fails to attend the meeting the Committee may proceed in the party's absence and the party will not be entitled to further notice in relation to the meeting.
- The Candidate may respond in writing to the Application.
- 12.4 The notice shall include the content of the Application.

12.5 The Clerk shall forward notice of the Committee's decision and brief written reasons to the Applicant and the Candidate, at the mailing address and/or email address provided to the Clerk, and post on the website of the responding municipality.

13. Committee Decisions

13.1 In accordance with Section 88.33 (7) of the *Act*, within 30 days after receiving the Application, the Committee shall consider the application and render a decision as to whether to grant or reject the Application, or in the case of a Report, to commence a legal proceeding.

13.2 The Committee shall provide brief written reasons for the decision.

13.3 No decision of the Committee on an Application is valid unless it is agreed to by a majority of the members of the Committee that heard the application. The decision of the Committee, whether granting or refusing an Application, shall be in writing and shall set out brief reasons for the decision, and shall be signed by the members who concur in the decision. In addition to the written decision, nothing herein shall prevent the Committee from delivering an oral decision at the meeting.

13.4 If the Committee decides to grant the Application it shall appoint an auditor licenced under the *Public Accounting Act, 2004*, to conduct a compliance audit of the candidate's election campaign finances.

13.5 The Clerk or Secretary will forward reasons for the Committee's decision to the relevant parties to the mailing addresses and/or emailing addresses provided to the Clerk or Secretary as required by these Procedures.

14. Auditor

14.1 The auditor shall promptly conduct an audit of the Candidate's election campaign finances to determine whether he or she has complied with the provisions of the *Act* relating to election campaign finances and shall prepare a report outlining any apparent contravention by the Candidate.

14.2 The auditor shall submit the report to:

- (a) the Candidate;
- (b) the Clerk
- (c) the Applicant

- 14.3 Within ten (10) days after receiving the report, the Clerk shall forward the report to the Committee.
- 14.4 The powers of the auditor are set out under Section 88.33 (18) of the *Act*.

15. Auditor's Report

- 15.1 In accordance with Sections 88.33 (17) and 88.33 (18) of the Act, within 30 days of receipt of an auditor's report, the Committee shall consider the report and if the report concludes that the Candidate appears to have contravened a provision of the Act relating to election campaign finances, determine whether or not to commence legal proceedings against the Candidate for the apparent contravention.

16. Grant Exceptions to Procedures

- 16.1 The Committee may, by majority vote, waive any rule of these procedures as it considers appropriate.

17. Minutes

- 17.1 The Clerk shall prepare minutes of each meeting of the Committee and shall provide members with a copy of the minutes as soon as the minutes are available. The Clerk shall also have the minutes posted on the participating body's website.
- 17.2 The Committee members shall each review the minutes and follow up with the Clerk or Secretary as to any corrections that should be considered to confirm the minutes reflect the Committee's actions. The Clerk or Secretary, along with the Chair, shall then sign and post on the website of the responding municipality.

18. Legal Proceedings

- 18.1 The Committee, with the assistance of the Clerk, shall engage the services of legal counsel if it commences a legal proceeding against the Candidate for any apparent contravention(s).