

TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Nicole Cooper, Director of Legislative and Information Services/Clerk

SUBJECT: **Appointments to the 2018-2022 Election Campaign Finance Compliance Audit Committee, and Amendments to Terms of Reference**

WARD(S): All

DATE OF MEETING: November 13, 2017

REFERENCE: GGC Report re: Compliance Audit Committee – May 8, 2017 By-law 039-2017 - to establish the 2018-2022 Compliance Audit Committee and its Terms of Reference

RECOMMENDATION:

1. That the following individuals be appointed to the 2018-2022 Election Candidate Campaign Finance Compliance Audit Committee:

Margot Poepjes
Shaun Patrick Young
Amanda Downs
Areeb Khan (*alternate member*)

2. That the amended Terms of Reference for the 2018-2022 Election Candidate Campaign Finance Compliance Audit Committee be approved by Council By-law at its meeting of November 20, 2017.

BACKGROUND:

Under the *Municipal Elections Act* (MEA), Municipal Councils are required to establish a Compliance Audit Committee (CAC) no later than October 1 of an Election year. A by-law to establish this committee, as well as its Terms of Reference, were adopted by Council in May of this year.

The May 8, 2017 staff report brought before GGC outlined significant changes to the Compliance Audit regime, which have broadened the mandate and responsibilities of CACs; new responsibilities include considering compliance audit requests for Registered Third Party Advertisers, and considering reported instances of over-contributions by campaign donors. Importantly, these committees will now be required to issue written reasons for their decisions, which could become important in the event of an appeal, and would assist the courts in reviewing decisions of CACs.

Given the expanded complexity of this Committee's role, it is all the more important that the Town retain highly qualified individuals with the necessary competencies and expertise to fulfill the committee's mandate.

In addition to proposing appointees to the CAC, this report also recommends an amendment to the Committee's previously approved Terms of Reference, necessitated by a recent court decision from August 2017 and a subsequent change to the *MEA*.

DISCUSSION:

Recruitment and Recommended Appointees

Staff undertook a fulsome recruitment process for the 2018-2022 CAC, accepting applications from September 5th to September 29th. Public notification of this opportunity included advertisement through the Town's website, social media channels, and the Community Page in the Ajax News Advertiser.

Recruitment advertisements indicated the following requirements to applicants:

- 18 years of age or older;
- Impartial and neutral with respect to their ability to fulfill their duties;
- Preference given to persons with applicable experience and expertise in the following areas: accounting and auditing; law and law enforcement; academics from related fields such as political science or local government administration, or other individuals with knowledge of the campaign finance rules under the *Municipal Elections Act*; and
- Preference given to candidates who reside in the Town of Ajax.

Generally, the applications received were of impressive quality with a number of highly qualified local residents applying for positions on the committee.

Interviews were conducted the week of October 16, 2017 with an interview panel consisting of representation from the LIS and Finance departments. Based on the applications and interviews, the following four individuals are being recommended for appointment, all of whom are residents of Ajax.

- **Margot Poepjes**, a returning member, is a lawyer with her own practice. She has a law degree from the University of Ottawa, an Honors degree in Politics & Economics from Trent University, and is currently a Director for a non-profit corporation. Ms. Poepjes has extensive experience in both compliance and collaborative resolution processes.
- **Shaun Patrick Young**, a returning member, has taught Canadian government and politics and related topics at a number of Ontario universities. Mr. Young is a widely published academic, holding a PhD in Political Science, as well as a Master's degree in Applied and Professional Ethics. His professional experience also includes a long career with the Ministry of Municipal Affairs and Housing where he played a key role in drafting the new *Municipal Act, 2001*, and the *Municipal Statute Law Amendment Act* in 2006.
- **Amanda Downs** has spent much of her career as a Senior Manager with one of the largest accounting firms in the world, specializing in forensic and investigative accounting, with extensive experience investigating financial crime and corruption, and ensuring compliance with legal and regulatory requirements. She is qualified as a Chartered Accountant in the UK.

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- **Areeb Khan** (alternate member) is a Certified Management Accountant, holding a Bachelor of Commerce from UOIT, and currently working as a Senior Financial Analyst for a leading Legal Research organization.

All recommended nominees have confirmed that they do not intend to run for municipal office in Ajax in the 2018 Municipal Election, nor to contribute to the campaign of a registered candidate or third party advertiser, and are committed to informing the Town Clerk in writing promptly should they become ineligible to serve on the committee due to a conflict of interest or other extenuating circumstance.

Adjustment to Committee Terms of Reference

In August of 2017, a division court judge in Hamilton ruled that Election Compliance Audit Committees are not local boards under the *Municipal Act*. The ruling established that CACs are therefore not subject to the Section 239 Open & Closed meeting provisions within *the Municipal Act*, nor subject to closed meeting investigations by the Ontario Ombudsman. However, as a result of Bill 68 changes, the *Municipal Elections Act* requires that CAC meetings be held in public, creating a conflict between the legislation and case law. As a result, the Province has now tabled legislation that will codify the right of CACs to deliberate in private. Ajax's CAC Terms of Reference need to be amended accordingly. The revised Terms of Reference are included as ATT-1 (the operative change is included in the last paragraph of Section 6), and are recommended to be approved by By-law at the next Council meeting.

FINANCIAL IMPLICATIONS:

Appointed members are paid a \$200 honorarium for the term of their appointment. In addition, members are entitled to payment of \$100 for each Committee meeting lasting four hours or less, and \$200 for each Committee meeting lasting greater than four hours.

While the Town's Compliance Audit Committee has not had reason to meet in the past, its newly expanded mandate and responsibilities will likely require it to convene at least two times in 2019; costs are therefore expected to be modestly higher than in past elections, in the range of \$1600-\$2000 if there is no complaint and audit activity. These costs will be budgeted for within the Elections Operating Budget.

COMMUNICATION ISSUES:

As indicated, this public service opportunity was advertised for the month of September through the town's standard communication channels.

At the appropriate time, Election Staff will ensure that registered candidates, third party advertisers, and contributors are made aware of the compliance audit committee's role, and the consequences of non-compliance with the campaign finance provisions within the *Municipal Elections Act*.

CONCLUSION:

As the above named individuals meet the qualifications and criteria established by the Town, staff are recommending that they be appointed as the Compliance Audit Committee for the 2018-2022 term of Council. Staff are confident that these individuals demonstrate the competency and experience necessary to ensure that any application for compliance audit before the Committee is considered reasonably and without prejudice.

ATT-1 – Bylaw XX-2017 To Establish the 2018-2022 Compliance Audit Committee &
Establish its Terms of Reference

Nicole Cooper
Director of Legislative and Information Services /Clerk

THE CORPORATION OF THE TOWN OF AJAX

BY-LAW NUMBER XX-2017

Being a By-law to establish a 2018-2022 Election Compliance Audit Committee

WHEREAS section 88.37(1) of the *Municipal Elections Act, 2006*, as amended, requires Council to establish a Compliance Audit Committee to address applications requesting a review of a candidate's campaign finances;

NOW THEREFORE the Council of the Corporation of the Town of Ajax enacts as follows:

1. That a 2018-2022 Election Compliance Audit Committee be established under the provisions of the *Municipal Elections Act, 1996*, as amended;
2. That the attached Terms of Reference shall guide the structure and responsibilities of the 2018-2022 Election Compliance Audit Committee; and
3. That, in accordance with the *Municipal Elections Act, 1996*, as amended, the 2018-2022 Election Compliance Audit Committee shall serve a term that is concurrent with the term of office of the Council elected in 2018, and shall therefore serve in the instance of any by-election that may take place during that time.
4. By-laws 123-2006, 005-2008, 016-2014, 039-2017 are hereby repealed.

READ a first and second time this
Twentieth day of November, 2017.

READ a third time and passed this
Twentieth day of November, 2017.

Mayor

D-Clerk

Appendix A to By-law XX-2017
2018-2022 COMPLIANCE AUDIT COMMITTEE FOR THE TOWN OF AJAX

Terms of Reference

1. Mandate

The 2018-2022 Municipal Election Compliance Audit Committee (the “Committee”) has the full authority provided by Sections 88.33 to 88.37 of the *Municipal Elections Act, 1996*, as amended (the “*MEA*”), to address applications requesting an audit of a candidate’s or third party advertiser’s election campaign finances and to consider reports from the Clerk citing apparent instances of over-contribution to municipal campaigns. Per the *MEA*, this authority includes but is not limited to the following:

- review applications for a compliance audit and grant or reject audit requests within thirty (30) days of receipt
- where an audit is granted, appoint an auditor and review the audit report
- following the audit, decide whether legal proceedings shall be commenced
- within 30 days after receiving report(s) from the Clerk under Sections 88.34 and 88.36 (dealing with apparent campaign contributions in excess of permitted limits), the compliance audit committee shall meet to consider the report(s) and decide whether to commence a legal proceeding against a contributor for an apparent contravention, if applicable.

2. Functional Relationships

Where the Committee needs to provide advice or information to Town Council, it shall do so through the General Government Committee. The Town Clerk or designate will be the main point of contact for members of the Committee, will act as the main contact between the Committee and Council, and will report on Committee activity as required to the appropriate individuals, Council and the public. Notwithstanding these relationships, the Committee has full authority to render decisions properly within its mandate independently and without requirement for Council approval.

3. Committee Membership

The Committee shall consist of three (3) Members appointed by the Council of the Town of Ajax, and one (1) alternate member. The Town Clerk will recruit and recommend three (3) qualified individuals and one (1) alternate individual for appointment to the Committee. The alternate will be called upon only in the event that one of the three main members is unable to serve and/or attend meetings during the period of appointment.

Committee Members must have the ability to understand and apply the election campaign finance provisions of the *MEA* and should be considered impartial with respect to their ability to fulfill their responsibilities. Preference shall be given to candidates that have applicable experience in accounting and audit, law, law enforcement and academics from related fields.

Under the *MEA*, members of Council, election candidates and registered third party advertisers, as well as Town staff are prohibited from being appointed to the Committee.

In addition, a Committee Member may not be a contributor, or provider of any election-related services to a registered candidate or third party advertiser in the 2018 Ajax municipal election or any subsequent by-election including but not limited to accounting, legal, auditing, marketing or

Appendix A to By-law XX-2017
2018-2022 COMPLIANCE AUDIT COMMITTEE FOR THE TOWN OF AJAX

Terms of Reference

campaign services.

Remuneration to appointed members will be as follows:

- \$200 following appointment as a retainer, and for ongoing review of background material
- \$100 for each Committee meeting lasting four hours or less
- \$200 for each Committee meeting lasting greater than four hours

4. Term

The 2018-2022 Election Compliance Audit Committee shall serve a term that is concurrent with the term of office of the Council elected in 2018, and shall therefore serve in the instance of any by-election that may take place during that time.

5. Chair

A Chair will be determined by way of majority vote at the Committee's first meeting.

6. Meetings

A meeting of the Committee shall be held within 30 days of the Committee receiving a report from the Clerk under Sections 88.34 and 88.36 of the *MEA*, in order to consider the report which will cite apparent instances of over-contribution to municipal campaigns.

Additional meetings may be called in the event that an application for a compliance audit has been received. The date and time of the meeting will be determined by the Town Clerk and communicated directly to the Committee members. All time frames outlined in the *MEA* and regulations will be adhered to. Committee activity will be determined primarily by the number and complexity of applications for compliance audits that may be received, and the findings of the Clerk's report on over-contributions. The frequency and duration of Committee meetings will be determined by the Committee in consultation with the Town Clerk.

Administrative support including the preparation/distribution of an agenda shall be provided by the Clerk or a designate. Minutes of each meeting shall outline the general deliberations and specific actions and recommendations that result.

Meetings shall be held in accordance with the approved *Administrative Practices and Procedures for the Ajax Compliance Audit Committee*, and shall generally be open to the public; however, the committee may deliberate in private.. Notices, agendas and minutes will be published on the Town website and made available in alternate formats upon request.

7. Costs

The Town of Ajax is responsible for the following costs:

- General costs associated with the Committee's operations and activities;
- The cost of the Auditor for any audit that takes place;
- The cost of external legal counsel for the Committee