

**CORPORATION OF THE TOWNSHIP OF MCKELLAR**

**BY-LAW NO. 2022-12**

**Being a By-law to authorize the establishment of the  
West Parry Sound Joint Election Compliance Audit  
Committee and to repeal By-law 2018-05**

**WHEREAS** Section 88.37(1) of the *Municipal Elections Act*, 1996, as amended (the Act), states that a council or local board shall, before October 1 of an election year, establish a committee for the purposes of the Act, and,

**WHEREAS** Section 88.37(6) of the Act states 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 the Act to implement the committee's decisions; and

**WHEREAS** the Councils of the Township of the Archipelago, the Township of Carling, the Municipality of McDougall, the Township of McKellar, the Town of Parry Sound, The Township of Seguin and the Municipality of Whitestone deemed it advisable to establish the West Parry Sound Joint Election Compliance Audit Committee and to set out the terms of reference of the committee;

**NOW THEREFORE BE IT ENACTED** as a By-law of the Council of the Corporation of the Municipality of McKellar as follows:

1. That the Council of the Corporation of the Township of McKellar adopts the Terms of Reference for the West Parry Sound Joint Election Compliance Audit Committee, attached hereto as "*West Parry Sound Joint Election Compliance Audit Committee, Terms of Reference*" to meet the requirements of Section 88.37(1) of the *Municipal Elections Act, 1996*, as amended.
2. That By-law 2018-05 is repealed; and,
3. That this By-law shall come into force and take effect upon the day of the final passing thereof.

**READ for a FIRST and SECOND TIME** this 8th day of March, 2022.



Peter Hopkins, Mayor



Ina Watkinson, Clerk

**READ a THIRD time and PASSED in OPEN COUNCIL** this 8<sup>th</sup> day of March, 2022.



Peter Hopkins, Mayor



Ina Watkinson, Clerk





## West Parry Sound Joint Election Compliance Audit Committee

### Terms of Reference

#### 1. Definitions

**Act** – means the Municipal Elections Act, 1996, as amended.

**Clerk** – The administrative staff member, generally known to be the Clerk, CAO/Clerk or Clerk-Administrator, from any municipality listed in section 2 of these Terms of Reference for which an application for a compliance audit (Schedule A) has been received and who carries out the business of the Council for his or her respective municipality.

**Committee** – the West Parry Sound Joint Election Compliance Audit Committee as established by the respective Councils of those municipalities listed in section 2 of these Terms of Reference and which have passed a By-law or resolution of participation.

**Contributor** – A resident of Ontario who makes a contribution to the election campaign of a candidate to support his/her candidacy for municipal election, which may include the candidate and his /her spouse.

**Registered Third Party** – means, in relation to an election in a municipality, an individual, corporation, or trade union that is registered under section 88.6 of the *Municipal Elections Act*.

#### 2. Name and Representation

The name of the Committee is the West Parry Sound Joint Election Compliance Audit Committee. The Committee will represent the Township of the archipelago, Township of Carling, the Municipality of McDougall, the Township of McKellar, the Town of Parry Sound, the Township of Seguin, and the Municipality of Whitestone as required under sections 88.33 through 88.37 inclusive of the Act.

#### 3. Term

The Committee shall serve their terms consistent with the terms of Council, namely November 15, 2021, onward, to consider applications originating from the 2021 and subsequent elections and any by-elections during those terms. The Committee will meet as needed with meetings to be scheduled when a compliance audit application is received and requires disposition. Within 30 days of a vacancy becoming available on the Committee, the Clerks will provide a recommendation to their respective Council regarding the vacancy.

#### 4. Mandate

- (a) The Joint Election Compliance Audit Committee is not a local board; it is an independent and impartial decision-making body with a mandate that is part of the Legislature oversight of municipal elections. Its purpose, as set out in the Act, is to make certain decisions that form part of the enforcement of election finance provisions in the Act, for which it is distanced from the municipality's power to dissolve a local board.
- (b) The Committee shall ensure that the provisions relating to election campaign finances under the Act, are not contravened, and shall follow the necessary procedures to ensure compliance when requested.
- (c) The Committee shall abide by any terms and conditions which may be set out by the respective municipality's solicitor, auditor, and/or insurer, for any business relating to a compliance audit, in accordance with the procedural By-law for the respective municipality.



- (d) The Committee will perform all required functions relating to all compliance audit applications. This shall include the following:
- i. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the candidate, the applicant and the public [section 88.323(5)];
  - ii. Within 30 days of receipt of an application for compliance audit (Schedule A) from the Clerk, Committee members shall consider the application and decide whether to grant or deny the request [section 88.33(7)];
  - iii. The decision of the Committee to grant or reject the application, and brief written reasons for the decision, shall be given to the candidate, the Clerk with whom the candidate has filed his or her nomination, the secretary of the local board, if applicable, and the applicant [section 88.33(8)];
  - iv. If an applicant is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. [section 88.33(10)];
  - v. Within 10 days after receiving the audit report, the Clerk of the municipality shall forward the report to the Committee [section 88.33(14)];
  - vi. Give consideration to the auditor's report within 30 days of receiving it, to determine if legal proceedings should be commenced against the candidate [section 88.33(17)];
  - vii. The decision of the Committee under clause 4(d)vi and brief written reasons for the decision shall be given to the candidate, the Clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable and the applicant [section 88.33(18)];
- (e) The Committee will perform all functions related to receiving a report from the Clerk regarding the review of contributions to candidates as required under sections 88.34(4) or 88.34(7) of the Act. This shall include the following:
- i. Within 30 days after receiving a report from the Clerk, the Committee shall consider it and decide whether to commence a legal proceeding against a Contributor for an apparent contravention [section 88.34(8)];
  - ii. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the Contributor, the applicable candidate and the public [section 88.34(9)];
  - iii. The decision of the Committee under clause 4(e)j and brief written reasons for the decision, shall be given to the Contributor, the Clerk of the municipality or secretary of the local board, if applicable [section 88.34(11)].
- (f) The Committee will perform all functions related to receiving a report from the Clerk regarding the review of contributions submitted by a registered third party as required under section 88.36(4) of the Act. This shall include the following:
- i. Within 30 days after receiving a report from the Clerk, the Committee shall consider it and decide whether to commence a legal proceeding against a Contributor for an apparent contravention [section 88.36(5)];
  - ii. The meetings of the Committee shall be open to the public and reasonable notice shall be given to the Contributor, the registered third party and the public [section 88.36(6)];
  - iii. The decision of the Committee under clause 4(f)j and brief written reasons for the decision, shall be given to the Contributor and the Clerk of the municipality [section 88.36(7)].



## **5. Membership Composition & Selection**

The Committee will be composed of three (3) members and one (1) alternate member, 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
- (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 financial rules of the Act.

Members of Council, municipal staff, and candidates running in the election and any persons who are registered third parties in the municipality in the election for which the Committee is established are not eligible to be appointed to the Committee as stipulated in section 88.37(2) of the Act.

All applicants will be required to submit a letter outlining their qualifications and experience. The municipal Clerks (or designate) from the participating municipalities will make recommendations to the municipal councils for the appointment, by the Council resolution, of members to the Committee.

The selection process will be based upon clearly understood and equitable criteria. Members will be selected on the basis of the following:

- (a) Demonstrated knowledge and understanding of municipal election campaign financing rules;
- (b) Proven analytical and decision-making skills;
- (c) Experience working on a committee, task force or similar setting;
- (d) Availability and willingness to attend meetings;
- (e) Excellent oral and written communication skills; and
- (f) Other skills as deemed necessary.

To avoid possible conflicts of interest, care must be taken that any auditors or accountants or legal counsel appointed to the West Parry Sound Compliance Audit Committee do not audit or prepare the financial statements of any candidate running for office in the municipal election, or provide counsel to any candidate running for office. Accordingly, any auditor, accountant or legal counsel appointed to the committee will have to agree, in writing, to not undertake the audits or preparation of the financial statements of any candidates, or provide and counsel to any candidates, seeking election (Schedule B). Failure to adhere to this requirement will result in the individual being removed from the Committee.

Appointment to the committee shall be confirmed when the Council of a majority of the participating municipalities have passed resolutions appointing members to the committee.

## **6. Chair**

The Committee members will select a Chair from amongst its members at its first meeting.

## **7. Staffing and Funding**

Staff from the host municipality where an application for an audit has been filed will provide administrative support to the Committee. The Clerk or designate from the host municipality shall act as Recording Secretary for the Committee. Any responsibility not clearly identified



within the Terms of Reference shall be in accordance with sections 88.33 through 88.37 inclusive of the Act.

Each member, including the alternate, will receive an annual retainer of \$600.00. The retainer fees shall be shared equally amongst the participating municipalities. Members will receive remuneration of \$75.00 per diem for attendance at meetings, plus mileage at the rate of the host municipality upon receipt of the request for reimbursement from the committee member. Per diem and mileage are to be paid by the host municipality where the request for a Compliance Audit was filed, except in the case of the initial meeting, for which payment of those monies shall be shared equally between the participating municipalities.

Administration costs for such items as printing and mailing will be absorbed by the host municipality where a request for a compliance audit was filed.

## **8. Meetings**

The Committee shall hold one initial meetings. Subsequent and additional meetings shall be in response to application(s) for compliance audit(s), to a maximum of four (4) meetings per application, in consultation with the Clerk of the respective municipality. The alternate member shall attend all meetings, even if not required to stand in for the regular member.

Meetings shall be conducted using guidelines established in the Procedural By-law for the municipality from which an application originated. Meetings of the Committee shall be open to the public but the Committee may deliberate in private when making decisions. Should a closed session be required, all attendees who are not Committee members, or the Clerk, or individuals expressly requested by the Committee to remain, shall vacate the meeting premises. Members of the public may return to the meeting once the closed session has concluded.

The Chair shall cause notice of the meetings, including the agenda for the meetings to be provided to members of the Committee a minimum of three (3) business days prior to the date of each meeting. Quorum for meetings shall consist of a majority of the members of the Committee.

Minutes shall be recorded at each meeting and shall outline the general deliberations and resulting actions and recommendations.

The location of the meetings shall be set by the Committee.

Financial consideration shall be as per section 7.

## **9. Conflicts of Interest**

Committee members shall be bound by the Municipal Conflict of Interest Act, 1990, as amended, with respect to financial interest, and shall disclose any possible pecuniary interest to the Recording Secretary. That member shall then remove himself or herself from that portion of the meeting at which the matter for which the possible pecuniary interest was declared is discussed.

## **10. Role of the West Parry Sound Clerks, or Designates**

The Clerks, or designates, of participating West Parry Sound municipalities will work together to promote, interview and make recommendations to Councils for appointment to the Committee.

## **11. Acceptance of Terms of References**

Appointed Committee members shall be asked to sign an acknowledgement accepting terms and conditions outlined in the above terms of References and the Act (Schedule C)





**Declaration:**

I, the undersigned applicant:

(1) Am an elector as defined under section 17(2) of the *Municipal Elections Act, 1996*, as amended, namely a person who:

- a) Resides in the \_\_\_\_\_ of \_\_\_\_\_ or is the owner or tenant of land there, or the spouse of such an owner or tenant;
  - b) is a Canadian citizen;
  - c) is at least 18 years old; and,
  - d) is not prohibited from voting under section 17(3)1 or otherwise by law;
- (2) have reasonable grounds for believing that the candidate has contravened the *Municipals Elections Act, 1996*, as amended, relating to the candidate's election campaign finances; and,
- (3) believe the facts and information submitted above to be true, and I request a compliance audit of the candidates' election campaign finances.

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_

Solemnly declare that all the statements contained in this application are true and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

Declared before me at the \_\_\_\_\_ of \_\_\_\_\_ )  
in the \_\_\_\_\_ )  
of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 20\_\_\_\_ )

\_\_\_\_\_

A Commissioner, etc.

Signature of Applicant

Date

Section 17(3) of the *Municipal Elections Act, 1996*, as amended

The following are prohibited from voting:

1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
2. A corporation.
3. A person acting as an executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
4. A person who was convicted of the corrupt practice described in subsection 90(3), 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.



## **INFORMATION GUIDE APPLICATION FOR COMPLIANCE AUDIT**

As per Section 88.33(1) of the *Municipal Elections Act, 1996*, as amended (the "Act"), an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate/third party advertiser has contravened a provision of this Act relating to election campaign finances or contributions may apply for a compliance audit of the candidate's/third party advertiser's election campaign finances. A copy of the Act can be found at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

### **Completed applications for a Compliance Audit must be submitted to the Clerk of the municipality where the candidate/third party advertiser in question conducted their campaign.**

As per Section 88.33(3), the application must be made within 90 days after the latest of:

1. The filing date under Section 88.33;
2. The date the candidate/third party advertiser filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30;
3. The candidate's/third party advertiser's supplementary filing date, if any, under section 88.30;
4. The date on which the candidate's extension, if any, under subsection 88.23(6) expires, or the date on which the third party advertiser's extension, if any, under subsection 88.27(3) expires.

Once a completed application has been submitted to the Clerk, the Clerk must forward the application to the Joint Election Compliance Audit Committee (the "Committee") within 10 days.

Within 30 days after receiving the application, the Committee shall consider the application and decide whether it should be granted or denied. The decision of the Committee and brief written reasons for the decision will be given to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant. The decision of the Committee to grant or deny the application may be appealed to the Superior Court of Justice with 15 days after the decision is made.

If the Committee decides to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's/third party advertiser's election campaign finances. The auditor shall promptly conduct such an audit and shall prepare a report outlining any apparent contravention by the candidate/third party advertiser. The auditor shall submit the report to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant.

Within 10 days of receiving the report, the Clerk shall forward the report to the Compliance Audit Committee. The Committee shall consider the report within 30 days after receiving it and may, if the report concludes that the candidate/third party advertiser appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate/third party advertiser for the apparent contravention.

The decision of the Committee and brief written reasons for the decision will be given to the candidate/third party advertiser, the Clerk of the relevant municipality and the applicant.

Notwithstanding the Joint Compliance Audit Committee process, any person may take legal action at any time with respect to an alleged contravention of a provision of the Act relating to election campaign finances or contribution limits.



**West Parry Sound Joint Election Compliance Audit Committee**

**SCHEDULE B**

Acknowledgement – Candidates’ Financial Statements

I, \_\_\_\_\_, understand that the *Municipal Elections Act, 1996*, as amended, prohibits a member of an election compliance audit committee from preparing or auditing the financial statements of any candidate running for office in a municipal election. I agree to not undertake any audits or preparation of the financial statements of any candidates, or provide any counsel to any candidates, seeking election. I understand that failure to adhere to this requirement will result in my immediate removal from the West Parry Sound Joint Election Compliance Audit Committee.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date



**West Parry Sound Joint Election Compliance Audit Committee  
SCHEDULE C**

Acceptance of Terms of Reference

I, \_\_\_\_\_, have read and understand the West Parry Sound Joint Election Compliance Audit Committee Member in accordance with my role as a Joint Election Compliance Audit Committee Member in accordance with these terms.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date