

The Corporation of the City of Kenora

By-law Number 128 – 2018

A By-law to establish a Joint Elections Compliance Audit Committee for the 2018-2022 Term of Council for the Cities of Dryden and Kenora; the Municipalities of Machin, Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace and Pickle Lake

Whereas the *Municipal Elections Act, 1996* requires municipalities to appoint Compliance Audit Committee to deal with matters regarding election campaign finances before October 1 of an election year, and for the term of the Council; and

Whereas the regional Clerk's have determined that it is in the best interest of the municipalities to establish a joint Committee to deal with these matters; and

Whereas the Council of the City of Kenora deems it necessary and expedient to establish a Joint Elections Compliance Audit Committee for this purpose;

Now Therefore the Council of the Corporation of the City of Kenora hereby enacts as follows:

1. That a Joint Committee to be known as the Joint Elections Compliance Audit Committee for the Cities of Dryden and Kenora; the Municipalities of Machin, Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace and Pickle Lake is hereby established to deal with matters provided for in the *Municipal Elections Act, 1996*;
2. That the Elections Compliance Audit Committee shall consist of five individuals which are hereby appointed as part of this Bylaw and any combination of at least three (3) shall be selected and shall constitute the Committee for purposes of reviewing compliance audit requests in accordance with the Terms of Reference attached to and forming part of this by-law as Appendix "A";
3. That the City Clerk shall establish administrative practices and procedures for the Elections Compliance Audit Committee;
3. That this By-law shall come into force and take effect upon third and final reading thereof.

By-Law Read a First and Second Time this 25th day of September, 2018

By-Law Read a Third and Final Time this 25th day of September, 2018

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather Kasprick, City Clerk

Schedule "A"
By-law Number 128 – 2018

**Joint Elections Compliance Audit Committee for the 2018-2022 Term of
Council for the Cities of Dryden and Kenora; the Municipalities of Machin,
Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace and
Pickle Lake**

Definitions

"**Act**" means the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended from time to time.

"**Applicant**" means the individual who submitted the application requesting a Compliance Audit.

"**Application**" means a request received by the Clerk of Participating Community pursuant to Section 88.33(1) of the Act.

"**Auditor**" means a person appointed by the Committee, licensed under the *Public Accounting Act, 2004*, to conduct a Compliance Audit of a Candidate's election campaign finances pursuant to Section 88.33(10) of the Act.

"**Auditor's Report**" means a report prepared by an auditor for the Committee pursuant to Section 88.33(12) of the Act.

"**Candidate**" means the candidate whose election campaign finances are the subject of an application for a Compliance Audit.

"**Clerk**" means, as the context provides, the Clerk of any of the Participating Communities or his or her designate.

"**Committee**" means the Joint Compliance Audit Committee established pursuant to Section 88.37(1) of the Act.

"**Committee Member**" means any member appointed to the Joint Compliance Audit Committee.

"**Compliance Audit**" means an audit of a Candidate's election campaign finances conducted by an Auditor appointed by the Committee.

"**Council**" means, as the context provides, the Council of any of the Participating Communities.

"**Meeting**" means a meeting of the Committee.

"**Municipal Conflict of Interest Act**" means the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended from time to time.

"**Municipality**" means a Participating Community.

"**Participating Communities**" means all or some of the following municipalities participating in the joint compliance audit committee process: The Cities of Dryden and Kenora; the

Municipalities of Machin, Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace and Pickle Lake.

"Pecuniary Interest" means a direct or indirect interest within the meaning of the Municipal Conflict of Interest Act.

"Selection Committee" means the committee, composed of the Clerks of the Participating Communities that will choose the members of the Committee.

"Registered Third Party" means an individual resident in Ontario, a corporation carrying on business in Ontario or trade union who has filed with the clerk of the municipality responsible for conducting an election a notice of registration to be a registered third party for the election pursuant to Section 88.6 of the Act.

Establishment

The Joint Compliance Audit Committee ("The Committee") is established by the Cities of Dryden and Kenora; the Municipalities of Machin, Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace, and Pickle Lake (collectively the "Participating Communities"), pursuant to the requirements of section 88.37 of the *Municipal Elections Act*, 1996, S.O. 1996, c.32, as amended, ("the Act").

Governance and Guidance

The Committee shall be governed by:

- This Terms of Reference
- The Municipal Elections Act, 1996, as amended
- The Municipal Act, 2001, as amended
- The Municipal Conflict of Interest Act
- The Municipal Freedom of Information & Protection of Privacy Act
- The Municipal Procedure Bylaw
- The Municipal Purchasing and Procurement Bylaw
- The Administrative Practices and Procedures which form "Appendix A" to this Terms of Reference
- Any other applicable legislation
- Any other applicable bylaws or policies of the Participating Communities

Mandate

The powers and functions of the Committee are set out in Section 88.33 to 88.37 of the Act. The Committee will perform the functions relating to the compliance audit application process as outlined in the Act. These functions are generally described as:

1. Within 30 days of receipt of an application requesting a compliance audit, the Committee shall consider the compliance audit application and decide whether it should be granted or rejected;
2. If the application is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidates' election campaign finances;
3. The Committee will review the auditor's report within 30 days of receipt and decide whether legal proceedings should be commenced;

4. If the auditor's report indicates that there were no apparent contraventions and if there appears there were no reasonable grounds for the application, the Committee shall advise Council accordingly; and
5. Within 30 days after receipt of a report from any participating municipality's Clerk of any apparent over-contributions to candidates or third-parties ("report of the Clerk"), the Committee shall consider the Clerk's report and decide whether legal proceedings should be commenced.
6. After reviewing the report, the Contributor and the Clerk will be given the decision of the Committee, and brief written reasons for the decision.

Term

The term of office is from December 1, 2018 to November 14, 2022 to deal with applications from the 2018 election and any by-elections during the 2018-2022 Council term.

Municipal Support

In accordance with Sec. 88.37(6) of the Act, the Clerk 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.

The Clerk, or designate, of the Participating Community, will act as the secretary to the Committee and the main contact between the Committee and Council and will forward documents and reports to Council in accordance with the Act.

Remuneration

Remuneration for Committee Members will include an annual \$500 retainer for each year of the four (4) year term. Attendance at meetings will be remunerated at a rate of \$50.00 per hour, per Committee Member per meeting. All Participating Communities shall jointly share in the cost of the annual retainer fees. For each required meeting of the Committee, the Participating Community which requires the services of the Committee shall be responsible for reimbursing the Committee Members participating in that Community's application(s) for a Compliance Audit.

Composition

The Committee shall be composed of five (5) Members. Members shall be appointed by consensus the participating communities.

Membership will be drawn from the following groups:

- A. Accounting and audit – accountants and auditors with experience in preparing auditing the financial statements of municipal candidates;
- B. Professionals who in the courses of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and/or
- C. Other individuals with knowledge of the campaign financing rules of the Act.

Municipal employees, Members of Council and any candidate in the 2018 municipal election or in any by-election during the 2018-2022 term of Council for any Participating Community are ineligible to be appointed as a Members of the Committee pursuant to subsection 88.37 (2) of

the *Act*. Should an appointed member subsequently accept employment with any of the member municipalities/school boards, their appointment will be terminated.

Membership Selection

Members will be selected based on the following:

1. Demonstrated knowledge and understanding of municipal election campaign financing rules;
2. Proven analytical and decision-making skills;
3. Experience working in a committee, task force or similar setting;
4. Availability and willingness to attend meetings; and
5. Excellent oral and written communication skills.

The following persons are not eligible for appointment or to serve on the Committee:

1. Employees of any of the participating communities;
2. Members of Council of any of the participating communities;
3. Council candidates for the 2018 Municipal Election and any by-election(s) held during the 2018-2022 Council term of office; or
4. Any persons who are Registered Third Parties in the participating communities.

Members will be required to participate in an orientation session as a condition of appointment.

For the 2018-2022 term of Council the Committee shall be comprised of the following five members: **Mary MacKenzie, Angela Madussi, Brenda Cooke, Sheila Hintz and Bill Naturkach**. Any combination of at least three members shall be selected by the Participating Community and shall constitute the Committee for the purposes of reviewing compliance audit requests in accordance with the Terms of Reference and the Administrative Practices and Procedures. The Participating Community has the discretion to use all five members should they so choose, but a minimum of three.

Member Guarantee

A Committee Member must agree in writing that s/he will not work for or provide advice to any candidate running for municipal office in any of the Participating Communities. Failure to provide such documentation will result in the individual being removed from the Committee.

Chair

The Committee members will select a Chair from amongst its members at the first meeting that a compliance audit application is received. When the Chair is absent at any meeting the Committee shall appoint another member as Acting Chair and while presiding, the Acting Chair shall have all the powers of the Chair.

Duties of the Chair

The Chair shall:

1. Call the Committee meeting to order when there is Quorum, preside over Committee discussion, facilitate Committee business, follow meeting procedures, identify the order of proceedings and speakers and rule in points of order;
2. Participate as an active member;

3. Encourage participation by all members;
4. Act as a liaison between the members and the Clerks of the Participating Communities on matters of policy and process; and
5. Enforce the observance of order and decorum among the Committee members and the public at all meetings.

Meetings

The Committee shall meet as required in order to process compliance audit requests in the timeframes set out by the Municipal Elections Act and in accordance with the Administrative Practices and Procedures.

The Clerk shall call a meeting of the committee when he/she receives an application for a Compliance Audit and where he/she prepared a report under Section 88.33(5). The Applicant and the Candidate or their representative will be provided with an opportunity to address the Committee and provide written submissions.

Meeting dates, start times and locations shall be set by the Clerk. The agenda and minutes shall be maintained by the Clerk of the participating community.

Committee meetings will be open to the public but the Committee may deliberate in private (in camera or closed session), as noted in Section 88.33(5.1) of the Act. No votes may be taken in Closed Session.

Once the Committee has the information and advice it requires, the Chair and the Clerk shall decide upon a date and time for the meeting at which a decision on the application will be made.

The Clerk shall provide notice of the meeting, as per the Special Meeting notice requirements set out in Council's Procedure By-Law. In addition, Notice shall be provided to the Committee, the Applicant, the Candidate, and the Auditor, if applicable.

All meetings of the Committee shall be held in a location determined by the Participating Community Clerk.

It is expected that the Members will arrive at the meeting prepared to report their individual findings as a result of prior examination of the application and supporting documents and, as a Committee, will decide on the application for a compliance audit, i.e. either grant or reject the application.

The Committee meeting shall commence in Open Session and if necessary, may move in-camera to discuss the application in accordance with the Municipal Act.

The Applicant, the Candidate and, where applicable, the Auditor may be given an opportunity to address the Committee. Addresses to the Committee shall be no more than five minutes in length. The Committee may also ask questions of the Applicant, the Candidate, and the Auditor, as applicable.

Following discussions of the application and documentation if in-camera, the Committee shall return to the Open Session and, by resolution, decide whether to grant the application or reject it.

The decision of the Committee may be appealed to the Ontario Court of Justice within 15 days after the decision is made and the court may make any decision the Committee could have made. (Section 88.33(9))

Meeting Attendance

Any member of the Committee who misses three (3) consecutive meetings without being excused by the Committee, may be removed from the Committee. The Committee must make recommendations by a report to the Participating Communities' Clerks for the removal of any Member.

Quorum

Quorum for meetings shall consist of a majority of the members of the Committee. If no quorum is not present fifteen (15) minutes after the time appointed for a meeting, the Clerk shall record the names of the members present at the meeting and the meeting shall stand adjourned until the date of the next meeting. Members are required to report their absence to the Clerk prior to the meeting date.

Records

The records of Committee meetings shall be retained and preserved by the Participating Community's Clerk in accordance with that community's Records Retention policy.

Motions & Voting

- a) A motion shall need to be formally moved before the Chair can put the question or a motion can be recorded in the minutes.
- b) A motion shall be reduced to writing and shall be signed by the Chair and Secretary.
- c) In the case of a tie vote, the motion shall be considered to have been lost.
- d) The manner of determining the vote on a motion shall be by show of hands.
- e) The Chair shall announce the result of every vote.

Declaration of Pecuniary Interest

Legislated requirements as set out in the *Municipal Conflict of Interest Act* shall apply to all Committee Members. It is the responsibility of each member to disclose any pecuniary interest prior to discussion of a particular matter. Members are encouraged to seek independent legal advice if they are unsure of whether or not they have a pecuniary interest in a matter. Staff from the Participating Communities shall not provide advice or interpretation related to declarations of pecuniary interest.

Member Conflict of Interest

To avoid conflict of interest, applicants with accounting or auditing backgrounds must agree in writing they will not offer their services to any municipal election candidates.

Selection of an Auditor

Committee members will participate in the selection of an Auditor in response to a request for proposal prepared by staff. The Auditor will be appointed by resolution of the Committee. The

engagement letter will indicate that the Auditor has been engaged by the Committee and will be prepared and executed by the Clerk, or other officer of the municipality as may be designated, on behalf of the municipality. All appointed Auditors shall be appointed by name, and not by name of the firm for which they are employed.

'Schedule B'

Bylaw Number 128-2018 Joint Audit Compliance Committee 2018-2022 Term of Council

Administrative Practices and Procedures

For the Cities of Dryden and Kenora; the Municipalities of Machin, Red Lake and Sioux Lookout; and the Townships of Ear Falls, Ignace and Pickle Lake

Purpose

These Procedures are intended to provide guidance to the Applicant, the Candidate, the Clerk, Council, and the Kenora Compliance Audit Committee with regard to a request for a compliance audit of a candidate in a Municipal Election for the a Participating Community. Reference should also be made to The Municipal Elections Act, as amended.

These Procedures are not intended to be legal advice, nor can the Clerk or Municipal Staff provide legal advice. Applicants and Candidates are advised to obtain their own legal advice with regard to the legislation and any proceedings under the legislation with regard to compliance audits and election campaign finances.

Compilation of the Manual

These Procedures are compiled from the following:

- The Municipal Elections Act, mainly Sections 88.33, 88.34, 88.35, 88.36 and 88.37
- The Municipal Elections Manual from the Association of Municipal Managers, Clerks and Treasurers of Ontario
- Elections training sessions attended by Municipal Staff
- Information from the Ministry of Municipal Affairs & Housing

Format of the Practices & Procedures

- References throughout the Manual are to *The Municipal Elections Act* unless otherwise specified and are shown in bold with the Section numbers following. Wording of the legislation may be changed slightly to apply specifically to the Participating Community or for clarity. Reference should be made to *The Municipal Elections Act* for actual wording.
- Administrative practices and procedures are designated by bullet points.
- "Notes" are included to provide clarification or additional information on the legislation or procedures.
- Where restating the legislation would have been onerous, complicated or confusing, those Sections of *The Municipal Elections Act* have been attached for reference.

Applicability

These procedures apply to the receipt of an application for a compliance audit by the Clerk for an audit of a candidate in an Election or By-election of a Participating Community. This includes an election or by-election for the offices of Mayor, and Councillors-at-Large or Ward, as applicable by the Participating Community.

These Procedures do not apply to requests for a compliance audit of a candidate in a school board election or by-election. If the Clerk receives an application for a compliance audit for a school board candidate, the application shall be forwarded forthwith to the respective school board. The appropriate school board should be contacted for its administrative practices and procedures.

Role of the Clerk

The Clerk 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. (Section 81(4))

- These duties include, but are not limited to, the following:
 - ✓ Distribute any applications for a compliance audit to the Committee members;
 - ✓ Establish dates, times and locations for meetings of the Committee, in conjunction with the Committee Members or Chair;
 - ✓ Provide notice to the parties and the public of the Committee's meetings;
 - ✓ Administrative support to the Committee;
 - ✓ Distribute copies of the Committee's decisions to the parties, as applicable;
 - ✓ Forward items for Council's information or consideration as required under the legislation and these procedures, i.e. the Application; the Audit Report; the Committee's resolutions, etc.
- The Clerk may delegate responsibilities to a designate.

Other Resources

Staff and other resources shall be available to the Committee, through the Clerk. Costs shall be the responsibility of the Municipality.

Records

Records resulting from the Committee's operation and activities with regard to compliance audit requests for candidates in a Participating Communities Elections and By- elections shall be retained and preserved by the applicable Municipality in accordance with the Municipality's record retention by-law or practices.

Application for Compliance Audit

• Who can apply?

An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances. (Section 81(1)).

• To who is the application submitted and what must be included?

An application for a compliance audit shall be made to the Clerk of the Participating Community for which the candidate was nominated for office; and it shall be in writing and shall set out the reasons for the elector's belief. (Section 88.37(2))

NOTE: The application must include reasons why the elector "believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances." The Committee will consider these reasons in its deliberations.

- **When must the application be submitted?**

The application must be made within 90 days after the latest of the following dates:

- (a) the filing date under Section 88.30
- (b) the date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30.
- (c) the candidate's supplementary filing date, if any, under section 88.30
- (d) the date on which the candidate's extension, if any, under Subsection 88.23 (6) expires. 2016, c.15, s. 63, part.

Please refer to the *Municipal Elections Act*, or contact the Clerk for specific dates.

Process

Within 10 days after receiving an application, the Clerk shall forward the application to the Compliance Audit Committee. (Section 88.33(4))

Within 30 days after the Committee has received the application, the Committee shall consider the application and decide whether it should be granted or rejected. (Section 88.33(7))

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 filed his or her nomination and the applicant. (Section 88.33(8))

The Committee, though the Chair, shall advise the Clerk, as soon as possible, if clarification, additional information or additional resources are required.

The Clerk shall provide clarification and respond to the Chair as quickly as possible. If needed, the Clerk shall gather additional information, if available and able to be released to the Committee, and shall e-mail it to the Committee Members. If additional resources are required, the Clerk shall discuss with the Chair to determine the best way to obtain those resources in the most cost-effective and timely manner.

Auditor, Audit, and Audit Report

If the application is granted, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. (Section 88.33(10))

The appointment shall be made by resolution of the Committee at the meeting at which it grants the application.

NOTE: The Committee may appoint the Municipal auditor, if he/she wishes to act in this matter, or another auditor, to conduct the audit. Only auditors licensed under the Public

Accounting Act, 2004 or prescribed persons are eligible to be appointed under subsection (10). 2016, c.15, s.63, part. (88.33(11))

NOTE: When appointing an auditor, the Committee shall have regard to contracting with an auditor who has experience in municipal election finances and/or compliance audits, or municipal finances in general and has the ability (time and skills resources) to complete the audit. The Committee may contact the Canadian Institute of Chartered Accountants for assistance, if required.

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 (Audit Report) outlining any apparent contravention by the candidate. (Section 88.33(12))

See Sections 88.33, and 88.34 of the Act for full guidelines.

Costs

The Council of the Participating Community shall pay all costs in relation to the Committee's operation and activities with regard to compliance audit requests for candidates as well as the Auditors costs in the Municipal Elections or By-elections. (Section 88.33(16))

Errors/Omissions

The accidental omission to give notice of any meeting of the Committee to its members, or the non-receipt of any notice by any member, or any error in any notice that does not affect its substance, does not invalidate any resolution passed or any proceedings taken at the meeting. Any members of the Committee may at any time waive notice of any meeting.

Clerk's Decision "Final"

With respect to matters pertaining to administrative practices and procedures for the compliance audit committee, the Clerk's decision is final (except where prohibited by legislation).

Changes to Administrative Practices and Procedures

These administrative practices and procedures are subject to change at the discretion of the Clerk.

See The Municipal Elections Act, as amended, in full for complete details.

