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<b>Report To:</b>	General Government Committee		
<b>Date of Meeting:</b>	March 5, 2018		
<b>Report Number:</b>	CLD-009-18	<b>Resolution:</b>	GG-150-18
<b>File Number:</b>		<b>By-law Number:</b>	2018-024
<b>Report Subject:</b>	<b>2018 Municipal Elections - Compliance Audit Committee Terms of Reference</b>		

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### Recommendations:

1. That Report CLD-009-18 be received;
2. That the members of the 2014-2018 Municipality of Clarington's Compliance Audit Committee be thanked;
3. That the draft by-law attached to Report CLD-009-18, as Attachment 1, to update the Terms of Reference for the Municipality of Clarington's Compliance Audit Committee, be approved;
4. That the Municipality of Clarington's Compliance Audit Committee Rules of Procedure be received for information; and
5. That Staff be directed to initiate recruitment for the appointment of the three members of the 2018-2022 Municipality of Clarington's Compliance Audit Committee.

## Report Overview

Recent changes to the *Municipal Elections Act, 1996*, require that Council amend the terms of reference for the next Compliance Audit Committee term. This report outlines the recommended changes to the Terms of Reference and provides the updated Rules of Procedure for the Compliance Audit Committee arising out of changes to the Act. As well, the current term of Clarington's existing Compliance Audit Committee will end as of November 30, 2018 and this report is intended to seek direction to proceed to advertise to recruit applications for Council's consideration.

## 1. Background

### Legislation

- 1.1 The *Municipal Elections Act, 1996, as amended*, (the MEA) requires that every municipality appoint a compliance audit committee prior to October 1 of an election year.
- 1.2 The Committee has the full authority provided by Sections 88.33 to 88.37 of 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. As 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 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.

1.3 Changes to the MEA are detailed in Sections 88.33 to 88.37 of the MEA and address matters such as,

- The increased responsibility for the Compliance Audit Committee to consider applications requesting a compliance audit pertaining to registered third party contraventions,
- timing for meeting notice,
- Permitting deliberations to be conducted in private,
- Requiring the Committee to provide written reasons for granting or rejecting an application and decisions arising out of a review of the Auditor's report, to the candidate, the Clerk and the applicant,
- Requiring the Clerk to review candidate and registered third party financial statements, to prepare a report of candidates or registered third parties exceeding contributions, and to forward the report to the Compliance Audit Committee, and
- Committee eligibility restrictions to include any person who is registered as a third party advertising

## **2. Proposed Changes**

### Terms of Reference

- 2.1 Council established the Terms of Reference for the Municipal Election Compliance Audit Committee for the 2014-2018 term by passing By-law 2014-049 in May, 2014, arising from Report CLD-013-14.
- 2.2 As a result of the changes to the MEA, staff are recommending several amendments to Clarington's Compliance Audit Committee Terms of Reference such that the Terms are in line with the MEA. Attachment 2 is a redline version of the proposed Terms of Reference.

### Rules of Procedure

- 2.3 The Act requires the Municipal Clerk to establish administrative practices and procedures for the Committee to carry out their duties.

2.4 Attachment 3 to this report are the Clerk's draft updated Rules of Procedure, which has been drafted based on the proposed amendments to the Terms of Reference presented in this report for Council's information.

### **3. Current Committee**

3.1 The current Committee exists of three appointed members: Joe Brown, Paul Jones, and Howard Smith, whose term ends November 30, 2018.

3.2 There have been no requests for a compliance audit submitted to the Clarington Municipal Election Audit Compliance Committee at the time of writing of this report.

### **4. Financial Implications**

#### Costs

4.1 The Municipality is responsible for any costs resulting from the review of applications submitted to the Clarington Municipal Election Compliance Audit Committee. These costs include:

- Committee members' retainer (recommended \$400/member [an increase from \$200, but in line with other municipalities within the Region]),
- Committee members' per diem \$350 for each committee meeting [changed from flat rate of \$250 to be consistent with other municipalities within the Region],
- Committee member mileage (recommended rate as per Municipality's prevailing standard rate),
- Committee member training \$200 (usually coordinated with Durham Region municipalities),
- Auditor's costs to perform an audit,
- Costs related to the Committee's operations and activities (i.e. copying, postage, etc.),
- legal costs related to an appeal to the Ontario Court of Justice with respect to a decision of the Committee, and

- legal costs to undertake legal action against the candidate for violations of the elections finance provisions of the MEA.

- 4.2 Costs for advertising the vacancies will be included as part of the normal advertisement process.
- 4.3 Any costs incurred for a compliance audit during the Term of Council would be charged to the Municipal Election reserve. These costs are difficult to estimate although, because they depend entirely on the unforeseen volume of applications.

## **5. Formation of Next Committee**

- 5.1 Following the adoption of a new Terms of Reference, Staff will begin recruitment for the appointment of the next Committee for the term 2018-2022. Staff will advertise in the local paper, and on the municipal website, detailing the selection criteria. Additionally, staff will contact the Institution of Chartered Accountants of Ontario; the Law Society of Upper Canada; Durham Regional Police Services; and UOIT.
- 5.2 The following selection criteria are recommended:
- a) Demonstrated knowledge and understanding of municipal election campaign financing rules;
  - b) Experience in accounting and audit, law, law enforcement and academics from related fields;
  - c) Proven analytical and decision- making skills;
  - d) Experience working on committees, task forces or similar settings;
  - e) Demonstrated knowledge of quasi-judicial proceedings;
  - f) Availability and willingness to attend meetings; and
  - g) Excellent oral and written communication skills
- 5.3 At the close of the application period, that all applications be forwarded to Council for consideration, selection, and appointment effective December 1, 2018.

## **6. Concurrence**

Not Applicable

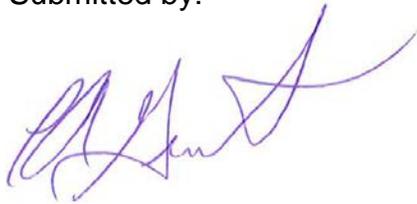
## 7. Conclusion

- 7.1 In order to fulfil the requirements of the MEA, it is recommended that the proposed changes to the Terms of Reference be approved and that the draft by-law be approved by Council.

## 8. Strategic Plan Application

Not applicable.

Submitted by:



C. Anne Greentree, B.A., CMO,  
Municipal Clerk

Reviewed by:



Andrew C. Allison, B. Comm, LL.B  
CAO

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jgallagher@clarington.net

Attachments:

Attachment 1 – By-law to update the Terms of Reference

Attachment 2 – Redline Version of Terms of Reference

Attachment 3 – Updated Clerk's Rules of Procedure

There are no interested parties to be notified of Council's decision.

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**The Corporation of the Municipality of Clarington**

By-law Number 2018-XXX

Being a By-law to establish a Clarington Municipal Election Compliance Audit  
Committee for the 2018-2012 Term.

Whereas section 88.37(2) of the *Municipal Elections Act, 1996*, as amended, (the Act) requires the Council to establish a Compliance Audit Committee, before October 1, 2018, for the purposes of Section 88.33 to Section 88.37 of the Act; and

Whereas the Municipality of Clarington is committed to ensuring a consistent, open and transparent process for receiving and processing compliance audit applications and for receiving and reviewing any Clerk's Reports regarding contributor contraventions.

Now Therefore the Council of the Corporation of the Municipality of Clarington hereby enacts as follows:

1. The Clarington Municipal Election Compliance Audit Committee, consisting of three members, be established, as per the Terms of Reference attached to and forming part of this by-law as Attachment 1.
2. The Clarington Municipal Election Compliance Audit Committee shall carry out its mandate and duties in accordance with the Rules of Procedure as established by the Municipal Clerk.
3. By-law 2014-049 is hereby repealed.

By-Law passed in open session this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Adrian Foster, Mayor

\_\_\_\_\_  
C. Anne Greentree, Municipal Clerk

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**MUNICIPALITY OF CLARINGTON**  
**Municipal Election**  
**Compliance Audit Committee**  
**Terms of Reference**

## **1 Legislative Requirement**

Section 88.37 of the *Municipal Elections Act, 1996*, (the Act) as amended requires Council to establish a compliance audit committee before October 1 of an election year, for the purposes of the Act.

## **2 Mandate**

The powers and functions of the Committee are set out in the MEA, as follows:

1. Review any applications of a compliance audit of any candidate who ran for election to the Municipality of Clarington Council, if the application was received in accordance with the legislative requirement, **even if the candidate has not filed a financial statement under section 88.25 of the MEA.**
2. **Review any applications of a compliance audit of a Registered Third party for an election in the Municipality of Clarington.**
3. 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.
4. If the application is granted, the Committee shall appoint an auditor licensed under the *Public Accounting Act, 2004*, or other prescribed person, to conduct a compliance audit of the candidate's/**Registered Third Party's** election campaign finances.
5. The Committee will review the auditor's report within 30 days and may, if the report concludes that the candidate/**registered third party** appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention.
6. **Review any Clerk's Report of Over Contribution under Sections 88.34 or 88.36 to decide whether to commence a legal proceeding against a contributor for an apparent contravention.**

### 3 Term

The Committee shall be established before October 1 of an election year. The Term of Office for the Committee is the same as the Term of Office of Council (December 1 of a regular election year to November 30, of the next regular election year), **and shall therefore service in the instance of any by-election that may take place during that time.**

### 4 Composition

The Committee shall consist of three (3) members appointed by Council.

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

- Employees or officers of the Municipality of Clarington
- Members of Council
- Any candidates in the election for which the Committee is established
- **Any persons who are registered third parties in the Municipality of Clarington in the election for which the Committee is established.**

Should an appointed Member accept employment with the Municipality or register as a candidate/**third party** with the Municipality, their appointment will be terminated.

All Committee Members must agree in writing that they will not work/volunteer for any candidate/**registered third party**, provide advice to, prepare or audit the election financial statements of any candidate for office/**registered third party** on the Municipality of Clarington's Council or become a candidate/**registered third party** in the 2018 Municipal Elections and any by-elections during Council's term.

### 5 Chair

At the first meeting of the Committee, the Municipal 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 among its membership.

### 6 Proposed Meeting Schedule

The Committee shall meet as needed with meetings to be scheduled by the Municipal Clerk, in consultation with the Chair, when a compliance audit application is received.

### 7 Staffing and Functional Relationship

**Where the Committee needs to provide advice or information to Council, it shall do so through the General Government Committee.**

**The Municipal 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.

Staff from the Municipal Clerk's Department shall provide administrative support to the Committee.

## 8 Meetings

Meetings of the Committee shall be open to the public, but the committee may deliberate in private. ~~Meetings of the Committee shall be conducted in accordance with the open meeting requirements of the provisions in the *Municipal Act, 2001*, as amended.~~ The Clarington website will be used to communicate the meeting notices, agendas, and minutes. Reasonable notice for meetings, as determined by the Municipal Clerk, will be given.

Committee meetings shall generally be held in the Clarington Municipal Administrative Centre, although meetings may occasionally be held elsewhere in the Municipality of Clarington if deemed necessary or appropriate by the Chair, and at the agreement of the Committee members.

Meetings shall generally be held during the regular business hours of the Municipality of Clarington.

## 9 Costs and Remuneration

The Municipality of Clarington is responsible for all costs in relation to the Committee's operation and activities.

Remuneration to appointed members will be as follows:

- ~~\$200-400~~/member – Retainer fee (includes compensation for review of any background materials)
- ~~\$250-\$350~~– for each committee meeting, plus mileage
- ~~\$200~~ – for attendance at training

## **10 Membership Selection**

The recruitment process shall include an advertisement in the local paper, and on the municipal website detailing the selection criteria. Additionally, staff will contact the Institution of Chartered Accountants of Ontario, the Law Society of Upper Canada, Durham Regional Police Services, and UOIT.

All applicants will be required to complete an application form outlining their qualifications and experience.

All applications will be forwarded to Council for consideration and appointment.

### **10.1 Selection Criteria**

The following criteria will be considered when appointing members:

- Demonstrated knowledge and understanding of municipal election campaign financing rules;
- Proven analytical and decision-making skills;
- Experience working on committees, task forces or similar settings;
- **Experience in accounting and audit, law, law enforcement and academics from related fields;**
- Demonstrated knowledge of quasi-judicial proceedings;
- Availability and willingness to attend meetings; and
- Excellent oral and written communication skills.

## **11 Conflict Of Interest**

Members of the Committee must abide by the *Municipal Conflict of Interest Act*. Members shall not use their status on the Committee for personal or political gain. Committee members shall have regard for the Corporate Policy addressing the use of corporate resources during an election year.

## **12 Completion Criteria**

The mandate of the Clarington Municipal Election Compliance Audit Committee will be considered complete at the end of each four-year term of Council, at which time, a successor committee shall be appointed.

**Municipality of Clarington  
Municipal Election Compliance Audit Committee  
Rules of Procedure**

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## **1. Background**

- 1.1 At its meeting of XXX, 2018, the Municipality of Clarington passed By-law 2018-XXX thereby establishing the Municipality of Clarington Municipal Election Compliance Audit Committee for the 2018-2022 Term, consisting of three members in accordance with Sec. 88.37(2) of the *Municipal Elections Act, 1996*, as amended.
- 1.2 In accordance with Sec. 88.37(6), these Rules of Procedure have been established by the Municipal Clerk of the Municipality of Clarington to ensure that the Clarington Municipal Election Compliance Audit Committee may be able to fulfill its duties and responsibilities in a fair, open and responsible manner.

## **2. Definitions**

- 2.1 As used in this procedure, the following terms shall have the meanings indicated:
  - a. Application – An application accepted by the Municipal Clerk pursuant to S. 88.33, 88.35 or of the *Municipal Elections Act, 1996*.
  - b. Candidate – The Candidate whose election campaign finances are the subject of an application for a compliance audit.
  - c. Chair – The Clarington Municipal Election Compliance Audit Committee Chair selected under s. 6 of these Rules of Procedure.
  - d. Clerk's Report of Over Contribution – A report, prepared by the Municipal Clerk, under Section 88.34 or 88.36 of the *Municipal Elections Act, 1996*.
  - e. Committee – Clarington Municipal Election Compliance Audit Committee.
  - f. Council – The Council of the Municipality of Clarington.
  - g. MEA – The *Municipal Elections Act, 1996*, as amended.

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- h. Registered Third Party - means an individual, corporation or trade union that is registered with a local municipality under s. 88.6 of the *Municipal Elections Act, 1996* whose election campaign finances are the subject of an application for a compliance audit.
- i. Secretary – The Municipal Clerk, or designate for the Municipality of Clarington.

**3. Rules**

- 3.1 The rules in this procedure shall be observed in all meetings of the Committee.

**4. Matters not dealt with in the rules of procedures**

- 4.1 If these rules do not provide for a matter of procedure that arises during a meeting, the practice shall be determined by the Chair and the Chair may do whatever is necessary and permitted by law to enable the Committee to effectively and completely adjudicate on the matter before it.

**5. Meetings**

- 5.1 The Committee shall meet at the request of the Secretary, having given reasonable notice.
- 5.2 The Secretary shall summon a meeting of the Committee when requested to do so in writing by a majority of the Committee members.
- 5.3 Meetings of the Committee shall be held at Municipal Offices or such other location, as the Secretary deems appropriate.
- 5.4 Committee meetings shall commence at a time and date to be set by the Secretary, and shall be adjourned on a vote of the Committee.
- 5.5 Attendance of all Committee members constitutes a quorum at meetings of the Committee.
- 5.6 Meetings of the Committee shall, subject to the exceptions found in the *Municipal Act, 2001, as amended*, be open to the public, but Committee deliberations may be in private.

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- 5.7 The applicant, the Candidate and, where applicable, the auditor shall be given an opportunity to address the Committee.
- 5.8 Addresses to the Committee shall be no more than five minutes in length.
- 5.9 Where the Committee desires to deliberate in closed session, they shall do so only by resolution.
- 5.10 Minutes of a closed session of the Committee shall be recorded by the Secretary.
- 5.11 Upon rising from closed session, the Chair shall report on any resolutions passed in closed session, without disclosing the specific details of the closed session deliberations.

**6. Committee Chair**

- 6.1 At the first meeting of the Committee, the Municipal 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 among its membership.
- 6.2 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.
- 6.3 The Chair is the liaison between the members and the Secretary of the Committee on matters of policy and process.
- 6.4 The Chair shall enforce the observance of order and decorum among the Committee members and the public at all meetings.

**7. Delegation by Committee Secretary**

- 7.1 The Secretary of the Committee may delegate administrative responsibilities to a Deputy Secretary.

**8. Agenda**

- 8.1 Before each meeting the Secretary shall provide an agenda to each member of the Committee.

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- 8.2 The agenda shall include a copy of any reports by the Clerk regarding over contributions to a Candidate/Registered Third Party, and any written submissions made by the applicant or the Candidate/Registered Third Party.
- 8.3 The first matter of business on each agenda shall be the declaration of any conflict of interest.
- 8.4 A copy of the agenda shall also be published on the Municipality of Clarington website.

**9. Lack of Quorum**

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

**10. Committee Procedures**

Order of Business

- 10.1 The Order of Business for the Agenda shall be as follows:

- Meeting Called to Order
- Disclosure of Pecuniary Interest
- Adoption of Minutes
- Matters of Business
  - Opening Statement
  - Delegation – Applicant (In the case of a review of an over contribution, under Section 88.34 or 88.36 of the MEA, this would list read “Report from Clerk of Over Contribution to Candidate X” or “Report from Clerk of Over Contribution to Registered Third Party”)
  - Delegation – Candidate/Registered Third Party, Agent, Witness
- Committee Deliberation
- Adjournment

- 10.2 Where the agenda includes consideration of more than one Application, each application will be dealt with by the Committee in its entirety before consideration of the next Application.

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Municipal Election Compliance Audit Committee  
Rules of Procedure**

10.3 Questions to Delegations

10.4 The Committee may, through the Committee Chair, ask questions of the applicant, Candidate/Registered Third Party or any other delegation speaking to an Application.

10.5 Rules of Debate

- (1) Order of Speaking - 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) Questions - 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 Municipality of Clarington; and
  - (d) of any other person addressing the Committee pursuant to these Rules of Procedure, or
  - (e) for the purpose of obtaining information relating to the matter then under discussion.
- (3) Voting:
  - (a) Every Committee member present at a meeting of the Committee when a question is put shall vote on the question, unless prohibited by statute, in which case the fact of the prohibition shall be recorded in the minutes of the meeting.
  - (b) The matter put to a vote shall be in the form of a motion addressing the matter then under consideration.
  - (c) In the case of a tie vote, the motion or question shall be deemed to have been lost.

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- (4) Motions:
- (a) All motions must be introduced by a mover and seconder before the Chair may put the question or motion on the floor for consideration. If no member seconds the motion, the motion shall not be on the floor for consideration and therefore it shall not be recorded in the minutes.
  - (b) Any Committee member may propose a motion on the matter then under consideration which the Clerk shall record in writing.
  - (c) After a motion is properly moved and seconded, it shall be deemed to be in the possession of the Committee, but may be withdrawn by the mover at any time before decision.
  - (d) 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.

## **11. Notice**

- 11.1 Public notice shall constitute posting the Agenda on the Municipal Website.
- 11.2 The Secretary shall give reasonable notice of a Committee meeting to the Committee by way of email, telephone or in writing by mail, as deemed appropriate.
- 11.3 Where an Application will be considered at a meeting, the Secretary shall give reasonable notice in writing, by mail, and by telephone to the applicant and Candidate/Registered Third Party 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 written notice shall include the content of the Application. The Candidate/Registered Third Party may respond to the Application in writing. A written response shall be submitted to the Secretary a minimum of two days prior to the Committee meeting at which the Application will be considered.

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- 11.4 The Secretary will forward notice of the Committee's decision, including brief written reasons, to the applicant, and the Candidate/Registered Third party/Contributor at the mailing address provided to the Secretary as required by this procedure.

**12. Committee decisions under *MEA***

Applications

- 12.1 In accordance with s. 88.33(7) and s. 88.35(4) of the *MEA*, within 30 days of receipt of the Application, the Committee will decide whether to grant or reject the Application.
- 12.2 If the Committee decides to grant the Application it shall, by resolution, appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the Candidate's/Registered Third Party's election campaign finances.
- 12.3 At the request of the Committee, the Secretary may assist the Committee in locating and contacting available auditors to undertake the audit.
- 12.4 In accordance with s. 88.33(17) of the *MEA*, within 30 days of receipt of an auditor's report, if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, the committee shall decide whether to commence a legal proceeding against the candidate / Registered Third Party the apparent contravention of a provision of the *MEA* relating to election campaign finances.
- 12.5 In accordance with s. 88.33(18) of the *MEA*, the decision of the Committee following consideration of the auditor's report, shall be made in writing, including brief written reasons for the decision, and forwarded, by the Secretary (i.e. the Clerk), to the Candidate, and the Applicant.

Clerk's Reports

- 12.6 In accordance with s. 88.34(8) of the *MEA*, within 30 days of receipt of the Clerk's Report of Over Contribution to a Candidate, the Committee will decide whether to commence a legal proceeding against a contributor for an apparent contravention.

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- 12.7 In accordance with s. 88.36(5) of the *MEA*, within 30 days of receipt of the Clerk's Report of Over Contribution to a Registered Third Party, the Committee will decide whether to commence a legal proceeding against a contributor for an apparent contravention.

**13. Grant Exceptions from Procedures**

- 13.1 The Committee may waive any rule of procedure in this procedure, as it considers appropriate, to ensure that the real questions in issue are determined in a just manner.

**14. Minutes**

- 14.1 The Secretary 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.
- 14.2 The Committee members shall each review and sign the minutes, to confirm that the minutes reflect the Committee's actions.