

March 25, 2013

Dear Mayor and Members of Council

Re: Administrative Inquiry Regarding Election Finance Rules

On March 1, 2013, I received an administrative inquiry from Councillor Adam Vaughan expressing concern about a recent decision of the Compliance Audit Committee (the Committee) and asking whether the decision set any precedent for future campaign financing rules in the City of Toronto. Councillor Vaughan also asked for clarification of these rules prior to the 2014 municipal election.

The Committee does not make law regarding election campaign financing nor do their decisions establish any legal precedents. Campaign financing rules for municipal elections are set out in sections 66 to 82 of the *Municipal Elections Act, 1996* (the *Act*), which govern elections throughout the Province of Ontario.

The rules governing campaign spending and fundraising can be found in the Ministry of Municipal Affairs and Housing's *Municipal Elections Guide* at <http://www.mah.gov.on.ca/AssetFactory.aspx?did=7269>. Specifically, a person cannot spend money, accept contributions or fundraise before filing a nomination paper with the City Clerk.

Under the *Act* electors (as defined in the *Act*) have the primary responsibility for oversight of candidate compliance with campaign spending rules. Section 81(4) allows electors, who believe on reasonable grounds that a candidate has contravened a provision of the *Act* relating to election campaign finances, to apply in writing setting out the reasons for requesting a compliance audit, within the timeframes set out in section 81(3).

The Committee must consider the reasons provided by the elector in their application for a compliance audit and decide if the Committee will grant or reject the request for an audit. Its decision can be appealed to the Ontario Court of Justice. If the Committee decides to appoint an auditor, such auditor must promptly conduct an audit of the candidate's election campaign finances to determine whether the candidate has complied with the provisions of the *Act*. The auditor must prepare a report outlining any apparent contravention by the candidate (section 81(9)). On completion of the audit, the auditor's report is submitted to the Committee for consideration and within 30 days of receiving it, the Committee may decide to commence a legal proceeding against a candidate, or not.

The Committee's decision to order a compliance audit is based on whether the applicant has established reasonable grounds. The courts have stated that "where the statute requires a 'belief on reasonable grounds,' the test to be applied is that of an objective belief based on compelling and credible information which raises the 'reasonable probability' of a breach of the statute." (*Lyras v. Heaps* [2008] OCJ 4243)

To date, there have been no requests for a judicial review of the Committee's decisions following receipt of the auditor's reports about candidates' 2010 campaign finances. Table 1 illustrates the increase in the number of applications received and outcome of the applications for the previous five elections.

A request of an elector to the Committee for an audit of a candidate's finances is not the only way campaign finances may be reviewed. The *Act* also permits an individual to lay a charge or commence other legal action with respect to an alleged contravention relating to election campaign finances (section 81(17)). While this potentially creates a situation where a candidate may have to explain their election finances on multiple occasions, the section also addresses a situation where an elector feels the Committee has not made a reasonable decision under the circumstances. To date no such actions have been commenced regarding any matters that came before the Committee from the 2010 financial filings.

Over the years, City Council has requested the Ministry to review and amend the financing rules in the *MEA*. A list of the requested amendments can be found at: <http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-25427.pdf>

Together with Clerks across Ontario and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), I have requested the Ministry review the campaign financing rules in the *MEA* with a view to strengthening and clarifying them. Since the 2010 election, the Ministry has not responded to further requests to amend the municipal election campaign financing rules.

For the 2014 election, I will be inviting a provincial representative to speak to candidates about the campaign financing rules. Information about the campaign financing rules and the electors' important responsibilities for oversight of these matters will also be included in elector education materials and meetings.

Yours truly,

Ulli S. Watkiss
City Clerk

Table 1 – History of Compliance Audit Applications

Election	Compliance Audit Applications received	Outcome of Applications
1997	1	Council granted the application, appointed an auditor and commenced legal proceedings against the candidate.
2000	4	Council rejected all 4 applications.
2003	1	The CAC rejected the application.
2006	5	<p>The CAC rejected 3 applications, prompting an appeal by one applicant to the Ontario Court of Justice. Subsequently, that case was appealed to the Ontario Court of Appeal and was dismissed.</p> <p>2 compliance audits were granted. Following review of the auditor's report, the CAC decided to commence legal proceedings against the two candidates. One candidate was fined by the courts. The other candidate could not be located.</p>
2010	21	<p>3 applications were withdrawn. The CAC rejected 9 applications and granted 9 applications against 7 candidates (in two instances, there were two applications against one candidate).</p> <p>Of the 9 applications granted against 7 candidates, 3 candidates appealed the CAC's decision to the Ontario Court of Justice (with 2 appeals withdrawn).</p> <p>After receiving the auditor's report, the CAC decided to commence 1 legal proceeding against a candidate for the apparent contravention. The CAC decided against commencing legal proceedings against 6 candidates.</p> <p>As of March 2013, there is 1 auditor's report outstanding, due to court proceedings and subsequent appeals by the candidate.</p>