EA1.2

# City of Toronto Compliance Audit Committee

Cory Lynch, Solicitor
City of Toronto, Legal Services
April 1, 2019

# Agenda

- Context: MEA Campaign Finance Overview
- Compliance Audit Process
- Types of matters
- Two-stage process
- Procedural fairness comments
- Penalties

# MEA

- *Municipal Elections Act, 1996*
  - Who is involved in an election?
    - Candidates
    - Third party advertisers
    - Electors
    - Contributors
    - Clerk
    - Election Compliance Audit Committee (established by s. 88.37 of the MEA)
  - What does the MEA do?
    - Regulatory scheme for the entire municipal election (and by-elections too)
    - Parts of relevance to us today – campaign finance scheme

# Types of matters that will come forward

- Applications in relation to candidate campaign elections finances and third party election finances
  - **88.33** (1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances, even if the candidate has not filed a financial statement under section 88.25.
  - See 88.35(1) for third party advertiser provisions
- Tight time frame – application in 90 days, to committee within 10 days, decision within 30 days

# Types of matters that will come forward

- Decision is to grant or reject application for an audit of the campaign finances
  - Should be looking for “reasonable grounds to order a compliance audit”
- S. 88.33(8) requires “brief written reasons for the decision”
- As of right appeal to SCJ for this decision
- At this stage it is only an audit process, no final determination has been made

# Types of matters that will come forward

- Audit report – decision on prosecution
- When complete, auditor will report back to the Committee
- Within 30 days, committee shall consider the report and:
  - 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 for the apparent contravention.
- Again “brief written reasons” are required

# Types of matters that will come forward

- Final matters relate to "over-contributions" by contributors
- Clerk will provide a report to the committee for over-contributions (ss. 88.34 and 88.36)
- In this instance, there is only one stage – a decision on whether to commence a proceeding within 30 days
  - Clerk is required to audit these matters, so there is no need to have a decision on auditing
- "brief written reasons" are required

# Procedural Fairness comments

- Courts have held that the compliance audit process falls on the lowest end of the procedural fairness requirements – ordering an audit is akin to a “search warrant” process (*Lipreti v. ECAC of Toronto*)
- *Jackson v Vaughan* also leading case
- Key to remember that this is more like a gate keeper function – if a prosecution is commenced, the candidate, third party advertiser and/or contributor will be given a full procedural hearing at that stage

# Penalties

- Ultimately, penalties if imposed by court can be severe
  - 88.23(2) Subject to subsection (7), in the case of a default described in subsection (1),
  - **(a) the candidate forfeits any office to which he or she was elected and the office is deemed to be vacant; and**
  - **(b) until the next regular election has taken place, the candidate is ineligible to be elected or appointed to any office to which this Act applies.**
  - (3) In the case of a default described in subsection (1), the clerk shall,
  - (a) notify the candidate in writing that the default has occurred;
  - (b) if the candidate was elected, notify the council or board to which he or she was elected in writing that the default has occurred; and

# Penalties

- Ultimately, penalties if imposed are severe, unless:
- 92(2) However, if the presiding judge finds that the candidate, acting in good faith, committed the offence inadvertently or because of an error in judgment, the penalties described in subsection 88.23 (2) do not apply.

# Questions?