



## REPORT FOR ACTION

## Lessons Learned: Third Party Advertising in the 2018 Municipal Election

**Date:** April 11, 2019  
**To:** Executive Committee  
**From:** City Clerk and City Solicitor  
**Wards:** All

### SUMMARY

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This report responds to City Council's request for the City Clerk and City Solicitor to report back after the 2018 municipal election on lessons learned related to new third party advertising rules under the Municipal Elections Act, 1996 (MEA).

Prior to the 2018 municipal election, third party advertising in Ontario municipal elections could take place without any regulation or limits with respect to accepting contributions or spending money. Effective April 1, 2018, amendments to the MEA set out rules for third party advertising in municipal elections. Among other requirements, individuals, corporations and trade unions were required to register with the City Clerk in order to accept contributions or spend money on advertisements to support, promote or oppose a municipal candidate during an election period.

City Council had authorized the City Solicitor to retain an external law firm for related investigations, legal proceedings and enforcement recommendations pertaining to third party advertising. Accordingly, the City Clerk, City Solicitor and City Manager implemented a procedure to support voluntary compliance and escalate complex third party advertising complaints to the external law firm. It served as a compliance mechanism in addition to existing statutory measures (i.e. Compliance Audit Committee for campaign finance matters; Municipal Licensing and Standards for election sign bylaw infractions). For the 2018 municipal election, a total of twelve third party advertisers registered with the City Clerk and eight formal complaints were received.

The three key lessons learned during the 2018 municipal election include that: (1) the City Clerk's education and awareness efforts supported voluntary compliance by registered third party advertisers; (2) external legal counsel provided expertise and impartial investigation and recommendations for compliance; and (3) a few legislative amendments may assist with clarifying enforcement.

### RECOMMENDATIONS

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The City Clerk and the City Solicitor recommend that:

1. City Council receive this report for information.

## **FINANCIAL IMPACT**

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For the 2018 municipal election, City Council authorized the City Solicitor to retain external legal counsel for registered third party advertising enforcement, estimated at \$200,000 for which funding was available in City Clerk's 2018 Operating Budget.

Approximately \$15,000 has been spent to date, as there was limited uptake in third party advertising during the election period in Toronto. Total expenditures will likely increase due to ongoing investigations. Funding for these investigations is available in City Clerk's 2019 Approved Operating Budget.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting on October 2, 3 and 4, 2017, City Council adopted item EX27.4 Third Party Advertising Enforcement under the Municipal Elections Act, 1996 authorizing the City Solicitor to retain an external law firm to conduct investigations and commence legal proceedings with respect to third party advertising issues and complaints, and directed the City Clerk and City Solicitor to report back on lessons learned after the election.

<https://www.toronto.ca/legdocs/mmis/2017/ex/bgrd/backgroundfile-106825.pdf>

## **ISSUE BACKGROUND**

Amendments to the MEA set out a framework to regulate third party advertising in Ontario's municipal elections. While third party advertising has been regulated in federal and provincial elections across Canada for several years, the October 22, 2018 election marked the first time such rules applied in Ontario municipalities. Prior to the 2018 municipal election, third party advertising in Ontario municipal elections could take place without any regulation or limits with respect to accepting contributions or spending money.

Under the new rules, individuals, trade unions and corporations must be registered as third party advertisers with the City Clerk in order to accept contributions or spend money on advertising to promote, support or oppose a municipal candidate (or a "yes" or "no" answer to a question on the ballot) during the election period. Registered third party advertisers must also identify themselves on advertisements, meet spending and contribution limits, and file statements reflecting their campaign finances. The MEA provides municipalities with powers to require the removal or discontinuance of non-compliant campaign advertisements.

Issues based advertising, such as supporting or opposing a particular policy issue, are not considered third party advertising under the MEA.

## COMMENTS

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For the 2018 municipal election, the City of Toronto had the highest number of registered third party advertisers among Ontario municipalities, with twelve in total (6 corporations, 5 individuals and 1 trade union registrant). This was followed by the City of Brampton (9 registrants in total), the City of Hamilton (8 registrants in total), and the City of Burlington (6 registrants in total).

Third party advertising registration was fairly limited in Toronto's 2018 municipal election so lessons learned was based on a small sample. However, the compliance framework and procedure involving the City Clerk's Office, City Solicitor's Office and City Manager's Office seemed to work well. Retaining external counsel to provide expertise and impartial investigations was beneficial. Legislative changes to the MEA may assist to strengthen enforcement in some areas. The lessons learned are discussed in more detail below.

A similar approach to third party advertising enforcement for the 2022 general election should be implemented. The City Clerk and City Solicitor will report to City Council prior to the 2022 general election for authority to retain external counsel for third party advertising investigations as well as reporting further on any legislative amendments made to the MEA in this area.

### **1. Education and Awareness Efforts Supported Voluntary Compliance**

The City's compliance framework rested on two pillars: (a) education and awareness; and (b) a complaints escalation procedure.

#### *a. Education and awareness*

As the impartial administrator of the election, the City Clerk supported voluntary compliance through initiatives such as:

- working with Greater Toronto Area municipalities to coordinate standardized administration of third party advertising;
- sending letters to over 50 publishers and broadcasters about the legal requirements for running campaign advertisements;
- hosting three information sessions for prospective third party advertisers;
- providing information to candidates about the new requirements;
- regularly communicating information on the Election Services website; and
- overseeing a dedicated e-mail account and phone line for responses to inquiries.

#### *b. Complaints Escalation Procedure*

The City Clerk's Office, the City Solicitor's Office, and the City Manager's Office oversaw a standardized approach to third party advertising complaints, with escalation to the external law firm for investigation as required.

A total of eight formal third party advertising complaints were received during the election period. Where the complaint was deemed to be about non-compliant third party advertising, the City Clerk provided information about their legal requirements and two groups subsequently registered. Where it was determined the complaint did not contravene the MEA, no enforcement actions were taken. In the case of a complaint related to anonymous advertising, the matter was forwarded to the City Manager who escalated the matter to the external law firm for further investigation.

It is important to note that as of April 1, 2019, eligible electors can apply for a compliance audit of a registered third party advertiser's campaign finances. The results of any such compliance audit may inform other complaints and/or lessons learned.

## **2. External Legal Counsel Provided Expertise and Impartial Investigations**

Non-compliant third party advertising was escalated to the City Manager's Office and City Solicitor's Office for review and referral to the external legal counsel for investigation and recommendations as required.

This approach worked well and enabled the Clerk to remain a neutral election administrator, while ensuring an impartial investigation was undertaken where appropriate.

## **3. Minor Legislative Amendments may Clarify Enforcement**

In administering the third party advertising provisions during the 2018 municipal election, the City Clerk has identified a few areas where legislative amendments may assist to strengthen enforcement capabilities for non-compliant third party advertising. These include making anonymous advertising an offence under the MEA's election advertising rules and consideration of establishing a minimum spending threshold before requiring registration with the City Clerk.

The City Clerk will discuss these suggested legislative amendments with the Ministry of Municipal Affairs and Housing in advance of the 2022 regular election.

## **CONTACT**

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## **SIGNATURE**

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Ulli S. Watkiss  
City Clerk

Wendy Walberg  
City Solicitor