

Compliance Audit Committee Role and Responsibilities

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Agenda

- Context: MEA Campaign Finance Overview
- Types of matters
- Two-stage process
- Procedural fairness comments
- Penalties
- Role of Legal Services

Context: Municipal Elections Act, 1996

- Municipal Elections Act, 1996 (MEA)
 - 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

- 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

- 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

- 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.
- “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.

Role of Legal Services

- Committee will have a lawyer present at all meetings and can meet in camera if legal advice is needed
 - Assigned lawyer can assist with questions but cannot provide advice on what decision the Committee should take
- Committee can (and should) meet in camera to deliberate and the lawyer will assist as required