

**Subject: Election compliance audit application of the campaign finances of
Third Party Advertiser Horizon Ottawa from the 2022 Municipal
Elections**

File Number: ACS2023-OCC-GEN-0011

Report to Election Compliance Audit Committee on 31 July 2023

**Submitted on July 24, 2023 by M. Rick, O'Connor, City Clerk, Office of the City
Clerk**

**Contact Person: Michèle Rochette, Manager, Municipal Elections & French
Language Services, Office of the City Clerk**

613-580-2424 ext. 21453, michele.rochette@ottawa.ca

Ward: Citywide

**Objet : Demande de vérification de conformité du financement de la
campagne électorale du tiers annonceur Horizon Ottawa dans le
cadre des élections municipales de 2022**

Dossier : ACS2023-OCC-GEN-0011

Rapport au Comité de vérification de la conformité pour les élections municipales

le 31 juillet 2023

Soumis le 24 juillet 2023 par M. Rick O'Connor, Greffier municipal

**Personne ressource : Michèle Rochette, Gestionnaire, Élections municipales et
Services en français**

613-580-2424, poste 21453, michele.rochette@ottawa.ca

Quartier : À l'échelle de la ville

REPORT RECOMMENDATION(S)

**That the Election Compliance Audit Committee consider the election compliance
audit application of the campaign finances of Third Party Advertiser Horizon
Ottawa from the 2022 Municipal Elections and decide if a compliance audit should
be granted or rejected.**

RECOMMANDATION(S) DU RAPPORT

Que le Comité de vérification de conformité des élections examine la demande de vérification de conformité du financement de la campagne électorale de l'annonceur tiers Horizon Ottawa dans le cadre des élections municipales de 2022 et décide si la demande de vérification de conformité doit être approuvée ou rejetée.

BACKGROUND

On Wednesday, March 23, 2022, City Council approved the staff report titled "[Update on the 2022 Municipal Elections and Amendments to Election-Related By-laws and Policies](#)" which included recommendations to establish the 2022-2026 Election Compliance Audit Committee (the "Committee"), pursuant to Section 88.37 of the *Municipal Elections Act, 1996* (the "MEA"). The 2022-2026 Committee's term of office began on Tuesday, November 15, 2022, and will end on Saturday, November 14, 2026.

The Committee is an independent, statutory body whose responsibilities and powers are largely prescribed by the MEA. The Committee is responsible for reviewing and making decisions on applications for municipal election campaign finance compliance audits, and on reports from the City Clerk regarding apparent contraventions of contribution limits prescribed by the MEA, resulting from the regular municipal election or any by-election held during the term of office for the City Council for which the Committee was appointed.

Subsections 88.33(1) and 88.35(1) of the MEA state that any eligible elector who believes that a candidate or registered third party advertiser has contravened the campaign finance rules in the statute may apply for a compliance audit of that party's election campaign finances, even if they have not filed a financial statement.

Under Section 17 of the MEA, a person is considered to be an "eligible elector" for an election held in the City of Ottawa if, on Voting Day, they:

- a) reside in the City of Ottawa, is the owner or tenant of land there, or the spouse of such owner or tenant;
- b) are a Canadian citizen;
- c) are at least 18 years old; and
- d) are not prohibited from voting under Subsection (3) or otherwise by law.

Subsection 17(3) further defines persons prohibited from voting as:

- a) A person who is serving a sentence of imprisonment in a penal or correctional institution;
- b) A corporation;
- c) A person acting as an executor or trustee or in any other representative capacity, except as a voting proxy. Under Subsection 44(1) of the Act, both the proxy and the individual who appoints the proxy must both be entitled to be electors in the local municipality; or
- d) A person who was convicted of a corrupt practice described in Subsection 90(3) of the Act (including giving, or promising to give, favourable consideration, money, or employment in exchange for a vote or the non-exercise of a vote), if Voting Day in the current election is less than five years after Voting Day in the election in respect of which the person was convicted.

Applications related to candidates for City Council and registered third party advertisers must be made to the City Clerk of the municipality. Applications relating to candidates for School Board Trustee must be made to the [secretary of the applicable school board](#).

The applications must be in writing on the [form](#) prescribed by the City Clerk and include the reasons for the application. In accordance with Subsections 88.33(3) and 88.35(3) of the MEA, applications for compliance audit must be made within 90 days after the respective filing dates.

For the purpose of the 2022 Municipal Elections, the following application periods apply:

Initial financial statements

- The 90-day application period for an elector to apply for a compliance audit of a candidate or third party advertiser's initial campaign finances began on April 3, 2023 and ended on June 29, 2023.
- Any candidate or third party advertiser who filed their initial statement during the 30-day "grace period" has a specific 90-day application period set based on the date that they filed.
- No filing extensions from the Superior Court of Justice were submitted by candidates or third party advertisers for initial financial statements.

The application periods to apply for a compliance audit on a candidate or third party advertiser's initial financial statement in the 2022 Municipal Elections are posted on ottawa.ca/vote.

Supplementary financial statements

- Three candidates extended their campaigns in accordance with the MEA. No third party advertisers extended their campaigns.
- The 90-day application period for an elector to apply for a compliance audit of a candidate's supplementary campaign finances will begin on October 2, 2023, and will end on December 28, 2023.
- Any candidate who files their supplementary statement during the 30-day "grace period" will have a specific 90-day application period set based on the date that they filed.
- If a candidate receives a filing extension from the Superior Court of Justice, the 90-day period to apply for a compliance audit begins the day after the extension expires.

As the supplementary financial statement filing period is currently ongoing, application periods to apply for a compliance audit on a candidate's supplementary financial statement in the 2022 Municipal Elections will be posted on ottawa.ca/vote following the applicable deadlines (September 29, 2023 at 2 pm, and October 30, 2023 at 2 pm for the 30-day "grace period").

In accordance with Subsections 88.33(4) and 88.35(4), within 10 days after receiving the application, the City Clerk shall forward the application to the Committee.

Subsections 88.33(7) and 88.35(4) state that within 30 days after the Committee has received the application, the Committee shall consider the application make their decision on whether to grant or reject a compliance audit.

Following the consideration of the application, the Committee will provide their decision and brief written reasons to the candidate or third party advertiser, the City Clerk, and the Applicant.

The decision of the Committee to grant a compliance audit may be appealed to the Superior Court of Justice within 15 days after the decision is made, and the court may

make any decision the Committee could have made such as granting or rejecting the request for a compliance audit.

Once the decision has been made to grant a compliance audit, the Committee will appoint an Auditor to review the campaign finances of the candidate or third party advertiser.

The auditor is hired following a Call-up on Standing Offer or Statement of Work for auditing services from the standing offer list that is prepared and issued by the Elections Office on behalf of the City Clerk.

The Committee will review the Auditor's report and decide whether legal proceedings should be commenced against the candidate or registered third party advertiser for apparent contravention(s) within 30 days of receipt of the Auditor's report.

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Section 88.37(6) of the MEA. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor. The City Clerk will provide updates to the Committee on the status and/or conclusion of the legal proceedings.

The City is responsible for the prosecutor's costs related to commencing the legal proceedings.

DISCUSSION

This report does not make a recommendation on the decision to grant or reject the compliance audit application, as this responsibility lies solely with the Election Compliance Audit Committee (the "Committee"), as per the *Municipal Elections Act, 1996* (the "MEA").

As such, this report provides the Committee with a copy of the election compliance audit application submitted by the Applicant pursuant to Section 88.35 of the MEA, and provides information on the legislative timelines, as further described below.

Candidate financial statement

For the purposes of the application before the Committee, Horizon Ottawa was a third party advertiser registered in the 2022 Municipal Elections. Their campaign period began on August 24, 2022 and ended on January 3, 2023.

In accordance with the Subsection 88.29(1) of the MEA, Horizon Ottawa submitted their initial financial statement to the Elections Office on March 31, 2023, in advance of the deadline on March 31, 2023, at 2 pm.

Election compliance audit application

In accordance with Subsection 88.35(3) of the MEA, the deadline for an eligible elector to submit a compliance audit application of the campaign finances of Horizon Ottawa for the 2022 Municipal Elections was June 29, 2023 at 4:30 pm.

Pursuant to Section 88.35 of the MEA the compliance audit application was filed with the Elections Office on June 28, 2023. A copy of the application is attached to this report as Document 1.

In accordance with the MEA, and the application form established by the City Clerk, the Applicant has declared that they are an eligible elector in the City of Ottawa, that they have reasonable grounds to believe that the third party advertiser contravened a provision of the MEA relating to election campaign finances, and that they have set out the reasons for their belief in the application.

A copy the election compliance audit application was submitted to the Committee on July 7, 2023, within 10 days of its filing, as required by Subsection 88.33(4) of the MEA.

Accordingly, the 30-day timeline under Subsection 88.33(7) of the MEA for the Committee to consider and decide on this matter expires on August 6, 2023.

The decision of the Committee may be appealed to the Superior Court of Justice within 15 days of the decision.

If the Committee decides to grant a compliance audit

If the Committee decides to grant the application for a compliance audit, the Committee is required to appoint an Auditor, licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the third party advertiser's campaign finances. The City of Ottawa is responsible for the costs associated with the audit.

Upon completing their compliance audit, the Auditor will prepare a report outlining any apparent contraventions by the third party advertiser of the election campaign finance provisions of the MEA. The Auditor will provide their report to the third party advertiser and the City Clerk.

The City Clerk will then forward the Auditor's report to the Committee within 10 days of his receipt.

Within 30 days of receiving the Auditor's report, the Committee shall hold a meeting for the purposes of considering the report. If the report finds that the third party advertiser appears to have contravened a provision of the MEA, the Committee will decide whether to commence legal proceedings against the third party advertiser.

All decisions of the Committee and brief written reasons for the decisions will be provided to the third party advertiser and the Applicant, and they will be posted on ottawa.ca with the meeting agenda and minutes.

If the Committee decides to commence legal proceedings

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Subsection 88.37(6) of the MEA. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor. The City Clerk will provide updates to the Committee on the status and/or conclusion of the legal proceedings.

In accordance with the MEA, the City of Ottawa is responsible for the prosecutor's costs related to commencing the legal proceedings.

FINANCIAL IMPLICATIONS

In accordance with Subsection 88.37(7) of the *Municipal Elections Act, 1996*, the City of Ottawa shall pay all costs in relation to the Election Compliance Audit Committee's operation and activities. These costs will be funded from the Tax Stabilization Reserve.

LEGAL IMPLICATIONS

Under Subsection 88.33(7) of the *Municipal Elections Act, 1996*, the Election Compliance Audit Committee shall consider an application within 30 days after receiving it and decide whether it should be granted or rejected.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a Citywide report.

CONSULTATION

This report is required under the *Municipal Elections Act, 1996* and is administrative in nature, therefore no public consultation was required.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

TERM OF COUNCIL PRIORITIES

This report has no direct impacts on the 2023-2026 City Strategic Plan and Term of Council Priorities.

SUPPORTING DOCUMENTATION

Document 1: Election compliance audit application for the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections

DISPOSITION

The City Clerk will provide a copy of the Election Compliance Audit Committee's (the "Committee") written decision and reasons to the third party advertiser and the Applicant.

If the Committee decides to grant a compliance audit, the Committee will appoint an Auditor to review the campaign finances of the third party advertiser. To appoint the Auditor, the Elections Office on behalf of the City Clerk will prepare a Call-up on Standing Offer or Statement of Work for auditing services from the City's [standing offer list](#) and prepare a report for the Committee's approval.

Following the audit, the Committee will review the Auditor's report and decide whether legal proceedings should be commenced against the third party advertiser for apparent contravention(s) within 30 days of receipt of the Auditor's report.

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Section 88.37(6) of the MEA. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor. The City Clerk may provide updates to the Committee on the status and/or conclusion of the legal proceedings.