

Subject: Auditor's Report – Election compliance audit of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections

File Number: ACS2024-OCC-GEN-0012

Report to Election Compliance Audit Committee on 28 August 2024

Submitted on July 30, 2024 by Caitlin Salter MacDonald, City Clerk

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Ward: Citywide

Objet : Rapport du vérificateur – Vérification de conformité des élections concernant le financement de la campagne électorale du tiers annonceur Horizon Ottawa dans le cadre des élections municipales de 2022

Numéro de dossier : ACS2024-OCC-GEN-0012

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

Rapport soumis le 28 août 2024

Soumis le 2024-07-30 par Caitlin Salter MacDonald, Greffière municipale

Personne ressource : Krista Bressette, gestionnaire intérimaire, Élections municipales et Services en français

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATION(S)

That, pursuant to Subsections 88.35(4) and 88.33(17) of the *Municipal Elections Act, 1996*, the Election Compliance Audit Committee consider the Auditor's report and decide whether to commence a legal proceeding against Third Party Advertiser Horizon Ottawa.

RECOMMANDATION(S) DU RAPPORT

Que, conformément aux paragraphes 88.35(4) et 88.33(17) de la *Loi de 1996 sur les élections municipales*, le Comité de vérification de conformité des élections examine le Rapport du vérificateur et décide d'entamer ou non une action en justice contre le tiers annonceur Horizon Ottawa.

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 was established on [August 25, 2022](#) and their term 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.

Further, 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 and make their decision on whether to grant or reject a compliance audit.

Following 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.

Subsection 88.33(10) of the MEA requires that, if the Committee decides to grant an application, it shall appoint an auditor to conduct a compliance audit of the candidate's or registered third party advertiser's election campaign finances. In accordance with Subsection 88.33(11) of the MEA, the appointed Auditor must be licensed under the *Public Accounting Act, 2004*.

At its meeting on [Monday, July 31, 2023](#), the Committee considered an election compliance audit application for Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections.

Following private deliberations, the Committee carried Motion No. ECAC 2023-02-03 with the following direction:

BE IT FURTHER RESOLVED THAT this Committee directs that the Office of the City Clerk, in consultation with the Committee's independent legal counsel, to initiate a call-up against the City's Standing Offer for Audit Services, and provide the Committee with the proposals received of up to three (3) potential auditors. The Committee will speak to the nature of the compliance audit to be carried out at the time of the auditor's appointment.

As directed, the Office of the City Clerk initiated a call-up against the City's standing offer for auditing services (RFSO No. 29121-91804-S01) on September 20, 2023. The following firm's proposals were submitted to the Elections Office on October 4, 2023:

1. Raymond Chabot Grant Thornton's (RCGT)
2. BDO Canada LLP (BDO)

At its meeting on [Friday, December 8, 2023](#), following a review of the two firm's confidential written proposal, the Committee carried with the following recommendations as amended:

That the Election Compliance Audit Committee:

1. Approve the appointment of BDO Canada LLP, an external licensed auditor to conduct an election compliance audit of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections, as outlined in this report;

2. Delegate the authority to finalize the contract and audit plan to the City Clerk or his designate, in consultation with the Committee's legal counsel, as outlined in this report.

DISCUSSION

This report does not make a recommendation on the decision to proceed or not to proceed with a legal proceeding against Third Party Advertiser Horizon Ottawa as this responsibility lies solely with the Election Compliance Audit Committee (the "Committee"), as per the *Municipal Elections Act, 1996* (the "MEA"). Rather, this report provides the Committee with a copy of the report submitted by BDO Canada LLP (referred to hereon out as the "Auditor") pursuant to Subsections 88.35(4) and 88.33(17) of the MEA, and provides information on the legislative timelines, as further described below.

Auditor's report

The Auditor's report was prepared pursuant to Subsection 88.33(12) of the MEA, which requires that the Auditor conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of the MEA relating to election campaign finances and that the Auditor's report outline any apparent contravention by the third party advertiser. This report is attached as Document 1 for the Committee's consideration.

The Auditor provided their report to Third Party Advertiser Horizon Ottawa, the City Clerk, and the Applicant on July 29, 2024, in accordance with Subsection 88.33(13) of the MEA. The City Clerk forwarded the Auditor's report to the Committee on July 30, 2024, within 10 days of her receipt as required by Subsection 88.33(14) of the MEA.

Within 30 days of receiving the Auditor's report, the Committee shall hold a meeting for the purposes of considering the report in accordance with Subsections 88.35(4) and 88.33(17) of the MEA. If the Auditor's report finds that the third party advertiser appears to have contravened provision(s) of the MEA, the Committee will decide whether or not to commence legal proceedings against the third party advertiser.

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 29, 2024.

The City Clerk will provide a copy of the Committee's written decision and reasons to Third Party Advertiser Horizon Ottawa and the Applicant in accordance with Subsection 88.33(18) of the MEA.

If the Committee decides to commence a legal proceeding

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 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 Sections 88.35(4) and 88.33(17) of the *Municipal Elections Act, 1996*, within 30 days after receiving a report under Section 88.33(14), the Committee shall consider it and decide whether to commence a legal proceeding against a third party advertiser for an apparent contravention. Where such a proceeding is commenced by the Committee, the City Clerk retains an independent, external prosecutor to review and determine whether or not to pursue legal proceedings.

A number of different considerations may be weighed by the prosecutor, including such things as whether or not the public interest will be served and advanced by the prosecution, as well as whether there exists a reasonable prospect of conviction, based on all of the available evidence and the particular circumstances of the case. The City Clerk will provide updates to the Committee on the status of any legal proceedings, as they become available.

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 – Elections compliance audit of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections dated July 29, 2024

DISPOSITION

The City Clerk will provide a copy of the Election Compliance Audit Committee's (the "Committee") written decision and reasons to Third Party Advertiser Horizon Ottawa and the Applicant in accordance with Subsection 88.33(18) of the MEA.

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 *Municipal Elections Act, 1996*. Specifically, the City Clerk will 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.

Clerical amendment to this report

Pursuant to the Delegation of Authority By-law (By-law No. 2024-265), Schedule "C", Section 8, the City Clerk has authorized the clerical amendment to the report "Auditor's Report – Election compliance audit of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections" (File Number: ACS2024-OCC-GEN-0012). Upon receiving and considering an adjournment request by the Third Party

Advertiser Horizon Ottawa, and in consultation with the Election Compliance Audit Committee's External Legal Counsel, the Committee adjourned the hearing to consider this report, originally scheduled for August 6, 2024, to August 28, 2024. The meeting date has accordingly been updated on the cover page of this report from August 6 to August 28, 2024.