



## Election Compliance Audit Committee

### Minutes

**Meeting #:** 5  
**Date:** Wednesday, August 28, 2024  
**Time:** 2 pm  
**Location:** Electronic Participation

**Present:** Timothy Cullen (Chair), Catherine Bergeron (Vice-Chair), Nahie Bassett, Imad Eldahr, Michael McGoldrick

**Committee Counsel** James Plotkin (Gowling WLG)  
**present:**

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1. Notices and meeting information for meeting participants and the public  

Notices and meeting information are attached to the agenda and minutes, including: availability of simultaneous interpretation and accessibility accommodations; personal information disclaimer for correspondents and public speakers (only “designated persons” shall be permitted to make submissions to the Committee); notice regarding minutes; and hybrid participation details.

Accessible formats and communication supports are available, upon request.

Unredacted versions of applications for compliance audits, and any written submissions to Committee, are available for public inspection at the City of Ottawa Elections Office during regular business hours in accordance with the *Municipal Elections Act, 1996*.
2. Declarations of Interest  

No Declarations of Interest were filed.
3. Confirmation of Minutes
  - 3.1 ECAC Minutes 3 – December 8, 2023

Carried

## 4. Communications

4.1 Memo – Updates regarding election compliance audit application deadlines for the 2022 Municipal Elections

## 5. Office of the City Clerk

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

File No. ACS2024-OCC-GEN-0012 – City-wide

**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.**

Member M. McGoldrick did not participate in discussion or vote on this item.

At the outset of the meeting, the Chair read an opening statement outlining the procedures for and format of the Committee Meeting.

The Auditor, BDO Canada LLP, provided an overview of their report. Monica Guzzo, Melissa Marino, and Owen Hussey of BDO Canada LLP, were in attendance and answered questions. A copy of the slides are on file with the City Clerk.

The following designated person, on behalf of the Applicant, Edward “Ted” Phillips, was in attendance, and made oral submissions to Committee:

- John Pappas, Aird & Berlis LLP (written submission on file with the City Clerk)

The following designated person, on behalf of the Third Party Advertiser, Horizon Ottawa, was in attendance, made oral submissions to Committee, and answered questions from Committee:

- Emilie Taman (written submission on file with the City Clerk)

Caitlin Salter MacDonald, City Clerk, also answered questions from Committee.

The Committee recessed the meeting and deliberated in private on this matter pursuant to subsection 88.33(5.1) of the *Municipal Elections Act, 1996*. Upon reconvening, the Committee considered the following motion:

Moved by T. Cullen

**Motion No. ECAC 2024-05-01**

**BE IT RESOLVED THAT the Committee issues the following decision and reasons:**

Upon receiving report ACS2024-OCC-GEN-0012 titled “Auditor’s Report – Election compliance audit of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections” and upon hearing the representations and/or reading the written submissions and documents submitted by the Auditor, the Applicant and Horizon Ottawa, this Committee hereby decides to commence legal proceedings against Third Party Advertiser Horizon Ottawa for apparent contraventions of the election campaign finance provisions under the *Municipal Elections Act, 1996*.

**Reasons for decision**

The Committee heard a presentation by the Auditor, BDO, and submissions of the Applicant, by his counsel John Pappas, and Horizon Ottawa, by its counsel, Emilie Taman. The Committee also received and considered written submissions from both the Applicant and Horizon Ottawa.

**Parties’ positions**

*The Applicant*

The Applicant submits that the Committee should commence legal proceedings. The Applicant identified the relevant factors as including the severity of the contraventions and the MEA’s objectives, namely ensuring the integrity of the electoral system through accountability and transparency.

The Applicant stated that the Auditor’s report shows that Horizon Ottawa failed to keep accurate records, accepted cash contributions in a non-transparent manner and incurred expenses while not registered, all in contravention of the MEA. The Applicant stated that these apparent contraventions are counter to the MEA’s purpose. The Applicant also says these contraventions undercut the City Clerk’s role in assessing

contributions, and gave Horizon Ottawa an advantage over other advertisers who registered before incurring any expenses. The outcome, according to the Applicant, is that Horizon Ottawa endorsed several candidates, and several of those candidates were elected.

The Applicant also raised concerns relating to the Auditor's Report and whether it properly considered all issues, including the very issue raised in the initial application that led to this audit. In particular, the Applicant raised concerns about the Report's failure to expressly address a poster advertising Horizon Fest, showing (in his view) that not every potentially contravening expense would have been considered.

The Applicant submitted that the Committee's role is not to decide innocence or guilt, but rather whether a prosecution is in the public interest. Here, the Applicant argues prosecution is in the public interest. The contraventions were not *de minimis*—they were not minor but go to the heart of the regime. Further, the Applicant stated that any inadvertence or good faith on Horizon Ottawa's part is not relevant. This is because the MEA expressly states that inadvertence and good faith are not defences and should only be considered as a mitigating factor in sentencing should the matter proceed to prosecution.

#### *Horizon Ottawa*

Horizon Ottawa agreed that the MEA's purpose, and that of the third-party advertising regime, is to ensure the appropriate scrutiny of third-party expenditures and promote transparency. Horizon Ottawa stated that its actions were always in the spirit of accountability and transparency, and that it acted in good faith in the filing process. It says that the apparent contraventions are, at most, good faith accounting errors.

Horizon Ottawa stated that it had initially decided not to register as a third party advertiser when the advertising period began, noting it would have been permitted to engage in its usual advocacy and even endorse candidates so long as it did not incur regulated expenses. However, Horizon Ottawa later opted to register, in part because it decided to invite particular candidates to Horizon Fest, making it a third party advertisement.

Horizon Ottawa submits its registration is evidence that acted with diligence and complied with its obligations under the MEA: to be transparent in its election-related spending and advocacy. There was no

intent, and the Auditor did not find any evidence of, an effort to conceal any information, donations, or expenses.

Horizon Ottawa disputed the Auditor's finding that it incurred ineligible expenses when purchasing the items highlighted in the Report before the campaign period. Rather, Horizon Ottawa submits that the lay person's understanding, and what it claims is the understanding under Generally Accepted Accounting Principles, is that an expense is "incurred" when the good or service in question is used. It was Horizon Ottawa's submission that none of the expenses at issue were used prior to its registration as a third party advertiser.

Horizon Ottawa also submitted that the apparent contravention related to the donation jar was a simple misclassification in its financial statements; it did not affect election fairness. It reported the amount and made no attempt to obscure any monies received.

Finally, Horizon Ottawa submitted that, even if the apparent contraventions identified in the Auditor's Report were actual contraventions, they were *de minimis* in nature and do not justify commencing legal proceedings. Rather, the MEA's purpose has been achieved by the Committee's process to-date. For that reason, Horizon Ottawa submits that the public interest is not served by commencing legal proceedings.

### **Analysis**

Horizon Ottawa argued that it did not "incur" the impugned expenses for Horizon Fest outside the campaign period. It argued this interpretation is consistent with its auditor's view and the outcome of a different ECAC's decision in respect of a candidate in a different election.

The Committee does not agree with this submission. The Committee interprets the term "incur" in subsection 88.19(2) as meaning the moment the third party advertiser purchases the good or service for use in relation to third party advertisements. In other words, the expense is not "incurred" only at the time the good or service is ultimately used. This is consistent with subsection 88.19(2)'s plain meaning:

#### **For third party advertisements**

(2) For the purposes of this Act, costs incurred by or under the direction of an individual, corporation or trade union for goods or services for use wholly or partly in relation to third party

advertisements that appear during an election in a municipality are expenses

At the time it incurred the impugned expenses, Horizon Ottawa had not yet registered as a third party advertiser. It later changed its mind and opted to register. The Committee finds this decision flowed, at least in part, from Horizon Ottawa's decision to have select municipal candidates participate in Horizon Fest. This made Horizon Fest a third party advertisement under the MEA. In that regard, the impugned expenses became campaign expenses, for the MEA's purposes, upon Horizon Ottawa deciding to participate in the election as a third party advertiser. By incurring the expenses before the campaign period, Horizon Ottawa gained an advantage in its campaign activities. The MEA imposes a campaign period, in part, to prevent just such an advantage.

Horizon Ottawa's position that it acted in good faith by considering in earnest the meaning of the term "incur" under the MEA is not determinative of the issue. While intention might be a valid consideration in any eventual prosecution, it is not relevant to this Committee's task, which is to determine whether there is an apparent contravention that merits referral for legal proceedings.

With respect to the other two apparent contraventions referenced in the audit report—collection of cash donations and deficient recordkeeping—the Committee accepts the auditor's opinion that these items are apparent contraventions. Regarding the cash donations accepted at Horizon Fest, the Committee takes note of Horizon Ottawa's written submission that it was entitled to accept anonymous donations under \$25 in relation to third party advertisements as "contributions". Accepting Horizon Ottawa's submission at face value, Horizon Fest was in fact a third party advertisement regulated under the MEA.

As noted above, both parties made submissions on whether the apparent contraventions identified in the auditor's report were *de minimis*, and thus insufficient to merit commencing legal proceedings. In the Committee's view, the question of whether one or more apparent contraventions are *de minimis* is bound up with the extent to which those contraventions affect the public interest considerations that underpin the MEA's campaign finance regime—transparency and integrity in the electoral campaign finance/advertising process. The dollar value of any particular expense and the prospect of a potential sanction (or lack thereof) in an eventual proceeding are relevant but not determinative.

The Committee has considered carefully the nature of the apparent contraventions at issue against the cost to both the public and Horizon Ottawa associated with legal proceedings. In the result, the Committee is driven to the conclusion that, weighing these factors, the public interest is best served by commencing legal proceedings in these circumstances.

The Committee directs the City Clerk to 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 is to retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor.

**Carried**

Member Nahie Bassett dissenting.

6. Inquiries

There were no Inquiries.

7. Other Business

There was no other business.

8. Adjournment

Next Meeting: To be scheduled as required within the timelines prescribed by the *Municipal Elections Act, 1996*, should compliance audit application(s) or auditor report(s) be received.

The meeting adjourned at 5:37 pm.

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E. Pelot, Committee Coordinator

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Chair Timothy Cullen