

Recent jurisprudence on compliance audits

Reported judicial decisions

[Karygiannis v. Toronto \(City\)](#), 2020 ONCA 411, leave to appeal dismissed, [2020 CanLII 68942 \(SCC\)](#)

An elected councilor's financial statement showed that he exceeded the allowable spending limit for expressions of appreciation. Upon the city clerk's notification that forfeiture of office is the statutory penalty for the councilor's non-compliance, the councilor applied for, and obtained, an order of court for relief from forfeiture relying on the "good faith exception." The appellant, a Toronto voter, appealed against the application judge's decision to grant relief from forfeiture on the basis that the judge had no jurisdiction to grant the relief. The Ontario Court of Appeal allowed the appeal and held that there is no jurisdiction under subsection 88.23(2) of the *Municipal Elections Act* ("MEA") or s. 98 of the *Courts of Justice Act* to provide relief from forfeiture.

[French v. Township of Springwater](#), 2018 ONSC 94 (CanLII)

The applicant, Mayor of Springwater, sought judicial review of the Compliance Audit Committee's decision to appoint a firm to conduct a second audit of the applicant's election spending – the Committee described the audit as a 'forensic audit.' The Ontario Divisional Court dismissed the application for being premature in view of the applicant's failure to explore the statutory right of appeal conferred under the *MEA*.

Notwithstanding the dismissal of the application, the court made instructive pronouncements on other ancillary issues raised in the proceedings. First, the court held that in an application of this nature, the municipality is entitled to notice but should have no partisan interest in the outcome unless there was some issue of direct interest to the municipality. In the same vein, the court held that the Audit Committee is a proper party on judicial review but its role should be limited to issues of jurisdiction, interpretation of its home statute and the standard of review. However, the Committee should not defend the merits of its own decision except in exceptional circumstances.

Second, the court considered whether a limited liability partnership of licensed auditors are eligible for appointment to conduct a compliance audit under the *MEA*. In this regard, the court held that such a firm of licensed auditors is not eligible for appointment to conduct a compliance audit under the *MEA*.

Lastly, the court rejected the applicant's argument that the term of the Committee had expired by lapse of time. The court relied on s. 4.3 of the *Statutory Powers Procedure Act* to deem the term of the Committee extended to enable the members complete their statutory mandate.

[Ontario Ombudsman v. Hamilton \(City\)](#), 2018 ONCA 502

The Ontario Court of Appeal affirmed the decision of the Divisional Court¹ to the effect the Election Compliance Audit Committee and the Property Standards Committee are not "local board[s]" under the *Municipal Act*. Consequently, the court held that those committees do not fall within the purview of Ombudsman's investigative jurisdiction with regard to alleged non-compliance with the open meeting requirement of s. 239 of the *Municipal Act*.

¹ [Hamilton \(City\) v. Ombudsman of Ontario](#), 2017 ONSC 4685 (Div Ct)

Decisions of Compliance Audit Committees

City of Ottawa

[Re Candidate George Darouze, May 2019](#)

The Committee rejected an application for a compliance audit of the candidate's campaign finances for the 2018 municipal election for failure to disclose probable breach of the campaign finance provisions of the *MEA*.

[Re Candidate Jay Tysick, May 2019](#)

The Committee granted an application for compliance audit of the candidate's campaign finances for the 2018 municipal election because it disclosed probable breach of the *MEA*. In this case, the candidate admitted non-compliance with the *MEA* by failing to file a financial statement under s. 88.25 of the *MEA*. The Committee therefore initiated the process for appointment of an auditor.

Upon receiving the compliance audit report, the Committee, in [December 2019](#), decided to commence legal proceedings against the candidate for apparent contravention of the *MEA* as well as the candidate's failure to comply with the auditor's reasonable requests for information.

[Re Candidate Eli El-Chantiry, June 2019](#)

The Committee rejected an application for compliance audit of the candidate's campaign finances for the 2018 municipal election for failure to disclose probable breach of the *MEA*.

[Re Candidate Laura Dudas, July 2019](#)

The Committee granted an application for compliance audit of the candidate's campaign finances for the 2018 municipal election. The Committee made a finding that the candidate incurred video expenses prior to the commencement of the campaign in a manner that raises a reasonable probability that a breach of the *MEA* occurred. In addition, the Committee made a finding that a breach of the *MEA* may have occurred by the use of 2014 election signs to the campaign benefit without being accounted for in the 2018 financial statement. The Committee therefore initiated the process for appointment of an auditor.

Upon receiving the compliance audit report, the Committee, in [March 2020](#), decided to commence legal proceedings against the candidate for "numerous" apparent *MEA* contraventions identified in the report.

City of Toronto

[Re Candidate Faith Goldy, April 2019](#)

The Committee granted an application for compliance audit of the candidate's campaign finances. According to the Committee, sufficient concern was raised that contributions may have been solicited from outside Ontario in contravention of the *MEA*. The Committee therefore appointed an auditor to conduct the compliance audit.

Upon consideration of the audit report, the Committee, in [February 2022](#), decided to commence legal proceedings against the candidate. While acknowledging the candidate's "sincere offer" to take remedial steps, the Committee noted that it does not have jurisdiction to make such direction under subsection 88.33(17) of the *MEA*.

[Re Candidate Jim Karygiannis, July 2019](#)

The Committee granted an application for compliance audit of the candidate's election campaign finances. In this regard, the Committee concluded that there were reasonable grounds that the candidate misclassified honorarium payments, expenses for mailing promotional materials and a voter appreciation event.

In a separate [application](#) involving the same candidate, the Committee found reasonable grounds that the candidate failed to report a discount received on services and failed to provide supporting documentation to justify the classification of a payment under voter appreciation expense. The Committee therefore appointed an auditor to conduct the compliance audit.

Upon consideration of the audit report, the Committee, in [December 2021](#), decided to commence legal proceedings against the candidate for the identified contraventions including the payment of non-campaign related honoraria and exceeding the limit on parties and other expressions of appreciation. While acknowledging that the candidate had already incurred significant consequences including removal from office and disqualification from the next regular election, the Committee noted that other consequences could apply including a fine equal to the amount of the excess expenses.

[Re Candidate Norm Kelly, July 2019](#)

The Committee denied the application for compliance audit due to the minor nature of the breaches and the candidate's remedial actions. The application raised concerns about the cost of holding a fund-raising function and a campaign reception as well as the candidate's failure to file receipts along with the financial statements. In response, the candidate made efforts to remedy the issues including disclosure of the corrections and payment of the surplus to the Clerk.

[Re Candidate Nick Mantas, July 2021](#)

The Committee denied the application for compliance audit in light of the candidate's satisfactory explanations for all the allegations as well as the minimal amount of the unreported discount identified in the application.

City of Guelph

[Re Candidate Stacy Cooper, May 2019](#)

The Committee rejected the application for compliance audit of the candidate's financial statement. The Committee resolved that the magazine article that formed the basis of the application was not an advertisement and there was no evidence that the candidate solicited the article. In any event, the article did not promote the candidate or oppose another candidate.

City of Hamilton

[Re Candidate Lloyd Ferguson, July 2019](#)

The Committee rejected the application for compliance audit as it involved a determination of whether the expense described as "Thank You Voters notice in News Paper (sic)" is subject to the spending limit for parties and other expressions of appreciation. The Committee concluded that the issue is a matter of statutory interpretation that cannot be resolved by an audit.

[Re Candidate John Vail, July 2019](#)

The Committee rejected the application for compliance audit despite acknowledging that the candidate may have breached the *MEA* by incorrectly calculating the value of reused campaign signs. The Committee considered that an audit is unlikely to reveal that the candidate materially exceeded the self-financing limit under the *MEA*.

City of Richmond Hill

[Re Candidate Greg Beros, July 2019](#)

The Committee granted the application for compliance audit on grounds that the candidate provided insufficient information to address the concerns raised by the applicant. The Committee therefore appointed an auditor to conduct the compliance audit.

Upon consideration of the audit report, the Committee, in [January 2020](#), decided not to commence proceedings against the candidate because the report had insufficient information regarding the allegations and the Committee was satisfied that the identified irregularities were the result of the candidate's inadvertence.

[Re Candidate Tom Muench, July 2019](#)

The Committee rejected the application for compliance audit on grounds that the candidate properly reported expenses and did not exceed spending limits.

[Re Candidate Joe DiPaola, July 2019](#)

The Committee rejected the application for compliance audit on grounds that the candidate's expenses were sufficiently reasonable.

[Re Candidate Carmine Perrelli, July 2019](#)

The Committee rejected the application for compliance audit on grounds that the candidate properly reported expenses and did not exceed spending limits.

City of Burlington

[Re Candidate Gareth Williams, July 2019](#)

The Committee rejected the application for compliance audit on grounds that there were no reasonable grounds to proceed with an audit.

[Re Candidate Rory Nisan, January 2020](#)

The Committee initially granted the application for compliance audit [in July 2019](#) on grounds that there was insufficient information on the monetary and non-monetary contributions to the candidate's raffle event. However, the Committee reconvened in January 2020 and rejected the application after ostensibly receiving additional information from the candidate and confirming that the candidate derived no financial benefit from the raffle.