

# Municipal Elections Act, 1996: Recent decisions clarify mandatory audit requirements

By **Scott Lemke**

Law360 Canada (April 16, 2025, 12:50 PM EDT) -- Municipal lawyers are taking note of two recent decisions from the Ontario Superior Court of Justice, *Thompson v. City of Ottawa Elections Compliance Audit Committee*, 2025 ONSC 682 (*Thompson*, as yet unpublished) and *Phillips v. Compliance Audit Committee*, 2025 ONSC 1180 (*Phillips*), that have established a clear and stringent interpretation of the *Municipal Elections Act, 1996* (MEA) regarding the mandatory nature of compliance audits.

The court has unequivocally held that upon the identification of any substantive inaccuracy in a candidate's Form 4 financial statement, Compliance Audit Committees (CACs) are obligated to order a compliance audit, provided reasonable grounds exist to believe a contravention of the MEA has occurred. Municipal lawyers will tell you that this interpretation eliminates any discretionary authority for CACs to decline an audit when a financial discrepancy is detected.



Scott Lemke



Drypsiak: ISTOCKPHOTO.COM

The decisions emphasize that CACs serve a gatekeeping function, determining whether there are reasonable grounds to believe a contravention of the MEA has occurred, not adjudicating the substantive merits of any alleged contravention.

## **Phillips v. Compliance Audit Committee: mandatory audit triggered**

Justice Calum MacLeod, in *Phillips*, clarified that the legal threshold for triggering a mandatory audit under s. 88.33 of the MEA is met by any substantive inaccuracy in calculation or reporting, exceeding a mere typographical error. This includes errors in the valuation of reused campaign signs, or inventory of election signs.

The rulings underscore the paramount importance of transparency in municipal election financing.

Even seemingly minor inaccuracies can trigger an audit, as they may indicate broader financial irregularities.

### **Thompson v. City of Ottawa Elections Compliance Audit Committee: mandatory audit triggered**

The Superior Court of Justice has made it clear that even *de minimis* errors can trigger the audit process. In *Thompson*, the court upheld the CAC's decision to order an audit after a candidate acknowledged an error in the reported value of reused campaign signs.

This decision reinforced the mandatory nature of the audit process under the MEA. Similarly, in *Phillips*, the court upheld the CAC's decision to order an audit after a candidate acknowledged an error in the reported value of reused campaign signs.

As Justice Narissa Somji articulated in *Thompson*, the CAC's role is to initiate the audit process, not to determine guilt or innocence.

### **Municipal Elections Act places high bar on financial disclosure**

These decisions serve, says this municipal lawyer, as a clear notice to all municipal candidates that financial disclosure requirements under the MEA will be strictly enforced. Any error, regardless of intent, can lead to a compliance audit and potential legal and political consequences.

Section 92 of the MEA outlines potential penalties for violations, including fines and, in certain cases, disqualification from holding office. The severity of such penalties is subject to judicial determination, based on the nature and extent of the contravention.

Finally, it is important to remember that a compliance audit is only the first stage of a multi-stage process under the MEA. Should the audit reveal evidence suggesting a contravention of the Act, the matter may proceed to judicial review, where the Ontario Court of Justice will determine whether a violation has occurred and, if so, impose any applicable penalties as outlined in s. 92 of the MEA, which may include fines and, in certain circumstances, disqualification from office.

These 2025 decisions provide crucial clarification regarding the mandatory audit requirements under the MEA. Municipal election candidates must exercise meticulous care in the preparation and submission of their financial statements to ensure compliance with the Act. A wise and experienced municipal lawyer is an important ally in any municipal candidate's run for public office.

*Scott Lemke practises civil/commercial litigation, with a focus on commercial real estate litigation, and is a partner at Massey LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

*Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at [Richard.Skinulis@lexisnexis.ca](mailto:Richard.Skinulis@lexisnexis.ca) or call 437-828-6772.*