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NOTICE OF DECISION
THE CORPORATION OF THE CITY OF LONDON
COMPLIANCE AUDIT COMMITTEE
established under Section 88.37 of the *Municipal Elections Act, 1996*

IN THE MATTER OF an Application for Compliance Audit under section 88.33(1) of the Municipal Elections Act, 1996;

AND IN THE MATTER OF the City of London's Rules of Procedure for the 2018 Municipal Election Compliance Audit Committee in accordance with section 88.37(6) of the Municipal Elections Act, 1996;

Candidate: Paul Cheng
Applicant: Lincoln John McCardle
File No. CAC-2019-L01-001
Meeting Date: Thursday, April 25, 2019 at 10:30 AM

Meeting Location: Committee Room #4 – 2nd Floor
City Hall
300 Dufferin Avenue
London, Ontario N6B 1Z2

DECISION

PURPOSE OF MEETING

The purpose of the meeting was to consider a Compliance Audit Application submitted by Lincoln John McCardle with respect to the 2018 City of London Municipal Election as it relates to the candidacy of Paul Cheng.

This meeting was held in accordance with the provisions of the City of London's Rules of Procedure for the 2018 Municipal Election Compliance Audit Committee.

DECISION

After reviewing the documentation submitted in response to the Application appended to the Compliance Audit Committee Agenda and hearing oral submissions from the Applicant, Mr. Lincoln John McCardle and the Candidate, Mr. Paul Cheng, it is the decision of the Compliance Audit Committee to grant the Application and direct that an auditor be retained to carry out a compliance audit in accordance with the *Municipal Elections Act, 1996*.

REASONS

The reasons for the decision are as follows:

1. Lincoln John McCardle (the "Applicant") has applied for a compliance audit of the election campaign finances of Paul Cheng (the "Candidate") in connection with his candidacy for the office of Mayor in the 2018 Municipal Election.
2. The Applicant confirmed that he was entitled to vote in the 2018 Municipal Election and is therefore qualified to make this Application.
3. In the Application, the Applicant asserts that he has reasonable grounds to believe that the Candidate contravened a provision of the *Municipal Elections Act, 1996*, (the "Act") relating to election campaign finances.

4. The Applicant has raised two issues about which he is concerned. The first relates to the Candidate's personal contributions to his own campaign and the second relates to the Candidate's activities before the commencement of the 2018 Municipal Election Campaign Period.
5. Dealing first with the personal contributions, the Applicant states that the Candidate contributed personally to his own campaign more than is permitted by the Act. Subsection 88.9.1(1) of the Act limits the amount which a candidate and their spouse may contribute to their own campaign and provides as follows:

88.9.1(1) A candidate for an office on a council and his or her spouse shall not make contributions to the candidate's own election campaign that, combined, exceed an amount equal to the lesser of,

 - (a) the amount calculated by adding,
 - (i) in the case of a candidate for the office of head of council of a municipality, \$7,500 plus 20 cents for each elector entitled to vote for the office, or
 - (ii) in the case of a candidate for an office on a council of a municipality other than the office of head of council, \$5,000 plus 20 cents for each elector entitled to vote for the office; and
 - (b) \$25,000.
6. For the 2018 Municipal Election, in the City of London, \$25,000 is the maximum contribution which can be made by a mayoral candidate and spouse.
7. The Candidate filed an audited financial statement with respect to the 2018 mayoral campaign in the prescribed Form 4. That statement is part of the record as an attachment to the Agenda for the April 25, 2019 Compliance Audit Committee ("Committee") meeting to consider, amongst other things, the subject Application.
8. The Candidate's financial statement shows a contribution in money from the Candidate and Candidate's spouse of \$25,000. It also identifies a deficit of \$19,999.46; the deficit represents the difference between the amount spent by the Candidate during the 2018 campaign period and the amount of contributions made to and received by the Candidate during the campaign period.
9. The Applicant's point is that the Candidate has or will have to cover out of his own funds the deficit by contributing the unfunded amount to his own campaign thus pushing his own contribution over the \$25,000 threshold permitted by subsection 88.9.1(1) of the Act.
10. At the April 25, 2019 Committee meeting to consider the Application, the Applicant appeared and reiterated the above position outlined in his Application.
11. At the April 25, 2019 Committee meeting to consider the Application, the Candidate acknowledged that he had exceeded the maximum contribution amount of \$25,000 and indicated that it was as a result of his inability to collect donations that had been promised.
12. The Applicant's second concern is that the Candidate conducted a lengthy and expensive pre-campaign in advance of his 2018 campaign period. For the Candidate, the 2018 campaign period commenced on the date he was nominated, which was May 1, 2018.

13. The Act prohibits a Candidate from incurring any election expenses or accepting campaign contributions outside of the campaign period. Subsection 88.20(2) of the Act provides that: “An expense shall not be incurred by or under the direction of a candidate outside his or her election campaign period.” (Section 88.8 has similar provisions about campaign contributions.)
14. Subsection 88.19(1) of the Act provides that: “For the purposes of this Act, costs incurred for goods or services by or under the direction of a person wholly or partly for use in his or her election campaign are expenses.” Section 88.19 goes on to provide clarification about what are or are not to be considered to be “expenses” for the purposes of the Act.
15. The Act does not define campaign. There is however a definition of “election campaign advertisement” in subsection 88.3 (1) of the Act; “election campaign advertisement” means an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting or supporting the election of a candidate. The Committee believes that what is meant by campaign or campaigning is, according to the circumstances, to be instructed by the definition of election campaign advertisement.
16. In support of his application, the Applicant has provided documentation extracted from the internet and social media illustrating the Candidate’s activities in advance of May 1, 2018. From some of those activities, the Applicant draws an inference that expenses were incurred.
17. The Applicant reports that in May 2017 the Candidate publically announced his intention to run for Mayor and started fund raising through a web site. The Applicant suggests that the web site must have had a cost related to its development.
18. The Applicant indicates that in December 2017 a professionally prepared video entitled “Paul Cheng London – Lets build a better London 2018” appeared on YouTube. The Applicant suggests that the video production must have had a cost related to its development.
19. In January 2018 the Applicant indicates that there is a report of the hiring of Kattie Forbes as Executive Assistant – Communications at the Candidate’s office. Again, the Applicant suggests that there must be costs related to the hiring of the executive assistant.
20. The Applicant also reports TV commercials in January 2018 and suggests that the commercials would have costs related to the production and there would have been a cost associated to air the commercial TV.
21. The Applicant indicates that during this same time period, the Candidate continued a social media presence using the theme: “Why Not London”. The Applicant also indicated that the Candidate was also holding town hall meetings at various locations and exhibiting poster sized signage of himself. The Applicant suggests that there likely would have been costs related to the payment for the sites of these town hall meetings and there would have been a cost to produce the signage.
22. It is not clear whether any part of the costs incurred by the Candidate before May 1, 2018 are reported as expenses in the Candidate’s audited financial statement with respect to the 2018 mayoral campaign.
23. At the Committee meeting held on April 25, 2019 to consider the Application, 2019, the Applicant appeared and reiterated the above-noted positions outlined in his Application.

24. At the April 25, 2019 Committee meeting, the Candidate addressed the Committee on both points.
25. When deciding about whether to commission a compliance audit under the Act, the Committee needs to consider whether there are reasonable grounds to believe that there has been a contravention of the Act relating to election campaign financing. It appears that the Candidate will have a challenge complying with the requirements of subsection 88.9.1(1) of the Act concerning his own personal contributions to his campaign as he acknowledged at the Committee meeting that he had exceeded the maximum contribution amount of \$25,000, thus warranting the need for a compliance audit to be undertaken.
26. As for costs incurred by the Candidate prior to May 1, 2018, the Candidate raised an argument at the April 25, 2019 meeting of the Committee that his pre-campaign period costs were not expenses on his particular interpretation of what campaigning is and whether his pre-May 1, 2018 “Why Not London” activities constituted campaigning. The Committee is satisfied that based on the information provided to the Committee, and given that the Candidate appears to have significant expenses prior the campaign period, that a compliance audit is warranted.
27. A review of applicable case law has been instructive in both determining the role of the Committee and determining when an application should be granted. At this stage of the proceedings, the Committee acts primarily as a gatekeeper in determining whether an audit should be undertaken. It is a pre-investigatory stage and not a determination that the Candidate has contravened the Act in any way. The test is whether the Applicant, acting in good faith, has reasonable grounds to believe the Candidate contravened the Act. Once reasonable grounds have been found to exist, the Committee has limited discretion in deciding whether to order a compliance audit.
28. Based upon the information provided by the Applicant in his Application and at the meeting and by the Candidate, the Committee is satisfied that the Candidate incurred expenses prior to the campaign period and by the Candidate’s own acknowledgement that he exceeded the maximum contribution amount of \$25,000 and a compliance audit is warranted in order to determine what the costs incurred were within the May 1, 2017 to May 1, 2018 period, as well as what was spent during the Candidate’s campaign thereafter.. The Committee therefore grants the Application and directs that an auditor be retained to carry out a compliance audit in accordance with the *Municipal Elections Act, 1996*.

ISSUED by the The Corporation of the City of London Compliance Audit Committee at London, Ontario, on May 3, 2019.

Compliance Audit Committee

Andrew Wright, Chair

Dan Ross, Member

Christene Scrimgeour, Member