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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 Paolatto
Applicant: Lincoln John McCardle
File No.: CAC-2019-L01-003
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 Paolatto.

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, 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 Paolatto (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's 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.
5. 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.)
6. 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.
7. 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.
8. In support of his Application, the Applicant has provided documentation extracted from 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.
9. The Applicant reports that in October 2017 the Candidate publically announced his intention to run for Mayor and shortly thereafter launched a web site, had billboards, bus shelter ads and various forms of advertising – including TV commercials. The Applicant suggests that there must have been a cost related to all of these activities with an estimate being in the order of \$9,000 before the end of 2017. The Applicant also indicates that a Paolatto Facebook and other social media presence began in September 2017.
10. At the Committee meeting held on April 25, 2019 to consider the Application, the Applicant appeared and reiterated the above-noted positions outlined in his Application.
11. In advance of the April 25, 2019 Committee meeting, the Candidate submitted a letter dated April 18, 2019 addressed to the Committee that describes a meeting with the City Clerk's Office in June 2017 about the use of billboards promoting "The Paolatto Report", a blog commentary on civic matters. The Candidate suggests in his letter that based on the advice he says he was given he made no reference to his candidacy for Mayor in the blog or in the promotion of the blog and was therefore not in violation of the Act.
12. In the April 18, 2019 letter, the Candidate also provides a copy of a legal opinion dated April 25, 2018 addressing the question of whether expenditures related to the promotion of "The Paolatto Report" are expenses for the purposes of the Act. The legal opinion, provided by the Candidate, indicates that the purpose of "The Paolatto Report" is said to be sharing with the public Mr. Paolatto's view on matters of public interest and to stimulate discussion. The legal opinion was to the effect that, by definition of "expenses" in the Act, there can be no expenses until after nomination so any expenditures before nomination are not "expenses" for the purpose of the Act.

13. The Candidate indicates in his April 18, 2019 letter to the Committee that the pre-nomination costs related to his “digital properties” are paid for by him personally and are not included in the Form 4 financial statement. The Candidate indicates that he intends to continue to write blogs and to utilize his digital properties in the future.
14. The Candidate in his April 18, 2019 letter to the Committee, asks the Committee to dismiss the Application on the basis that neither he nor his campaign knowingly violated any provisions of the Act.
15. Neither Mr. Paolatto nor anyone on his behalf appeared before the Committee on April 25, 2019 to speak to the Application.
16. 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.
17. With respect to costs incurred by the Candidate prior to May 1, 2018, it is the Applicant’s position that the purpose of “The Paolatto Report” and the billboards and advertising associated with it, was to promote and support the election of a candidate by increasing the Candidate’s name recognition amongst the voting public and by identifying the Candidate with issues which became part of his policy position after his nomination. It is the Candidate’s position, by written submission and supported by an opinion from his legal Counsel, that costs incurred in the pre-campaign period were not campaign expenses based upon his interpretation of the Act. The Committee acknowledges the submissions of the Applicant and the Candidate, however, at this stage of the proceedings, it is not within the Committee’s mandate or authority to weigh evidence or decide which position is correct in law, but to determine whether the Applicant has reasonable grounds to believe the Candidate has contravened the Act.
18. Based upon the information provided by the Applicant in his Application and at the meeting, the Committee is satisfied that the Candidate incurred significant expenses prior to the campaign period, and a compliance audit is warranted in order to determine what these costs were within the October 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