



London
CANADA

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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 the Municipal Election Compliance Audit Report submitted under section 88.33(12) of the Municipal Elections Act, 1996 in response to the Compliance Audit Committee's decision issued under section 88.33(8) with respect to an application regarding candidate Paul Cheng, submitted 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
Applicants: Lincoln John McCardle and Alan McQuillan
File No. CAC-2019-L01-001
Meeting Date: Friday, March 5, 2021
Meeting Location: Remote meeting by Zoom during the COVID-19
Pandemic and Committee Room #5 – 2nd Floor
City Hall
300 Dufferin Avenue
London, Ontario N6B 1Z2

DECISION

PURPOSE OF MEETING

The purpose of the meeting was to consider the Municipal Election Compliance Audit Report of William Molson, CPA, CA (the "Auditor's Report") entitled "Municipal Election Compliance Audit of the Campaign Finances of Candidate Paul Cheng", dated February 17, 2021 in response to an application submitted by Lincoln John McCardle (the "Applicant") and Alan McQuillan (the "Applicant") pertaining to the campaign finances of Paul Cheng (the "Candidate") and to determine whether to commence a legal proceeding for an apparent contravention(s) in relation to the City of London 2018 Municipal Election.

The 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 considering the Auditor's Report under subsection 88.33(17) of the *Municipal Elections Act, 1996* (the "Act"), hearing the verbal overview of the findings from William Molson (the "Auditor"), the verbal submission from the Applicant, Mr. McCardle and the verbal submission from the Candidate, Mr. Cheng, considering appropriate provisions of the Act, it is the decision of the Compliance Audit Committee (the "Committee") that the public interest and a municipal purpose will be served by commencing legal proceedings against the Candidate for the apparent contraventions identified in the Auditor's Report. The Committee has therefore decided to authorize the commencement of such proceedings by appointing an independent prosecutor.

REASONS

The reasons for the decision are as follows:

1. This case comes before the Committee for decision under subsections 88.33(17) and 88.33(18) of the Act in the following circumstances:
 - a) On March 29, 2019 the Candidate filed the form of Financial Statement (the "Financial Statement") required by the Act in connection with the 2018 Municipal Elections in London.
 - b) The Candidate was unsuccessful in seeking to be elected Mayor in those elections.
 - c) The Committee received and considered the applications of the Applicants for a compliance audit with respect to the Financial Statement filed by the Candidate.
 - d) The McCardle Application was dated April 3, 2019 and the McQuillan Application was dated April 4, 2019; both were heard by the Committee on April 25, 2019 and on that date the Committee decided to order a compliance audit for reasons issued May 3, 2019.
 - e) On May 17, 2019 the Committee appointed William Molson, CPS, CA, as the Auditor to conduct the compliance audit.
 - f) The Auditor's Report was issued on February 17, 2021. The Report identified apparent contraventions about which more will be said below.
2. After considering the Auditor's Report which identifies apparent contraventions of the Act, under subsection 88.33(17), the Committee must decide whether to commence legal proceedings against the Candidate for the apparent contravention(s). The Committee met on March 5, 2021 to consider this question.
3. At the meeting, the Auditor's Report was presented by the Auditor. The Committee heard an oral comment from Applicant, Lincoln McCardle and from the Candidate.
4. In making its decision the Committee is to serve in a gate-keeper function to see that municipal financial and other resources are deployed in the public interest or for some useful municipal purpose. It is not the role of the Committee to determine whether the apparent contravention is in fact a contravention of the Act.
5. Some examples of public interest or useful municipal purpose to be given consideration by the Committee are:
 - a) Does the apparent contravention involve a legal interpretation of the Act which should be settled by a court so all candidates will have a common understanding of the electoral ground rules during the next election cycle?
 - b) Was the apparent contravention deliberate, undertaken with careless disregard for the Act and/or undertaken for personal benefit?
 - c) Was the apparent contravention a *de minimis* matter or was it something for which, if determined to be a contravention, the Candidate should be censured?

Disregard for Financial Records and Reporting Requirements of the Act

6. The Auditor's Report identified numerous errors in the treatment and/or reporting of many items in the Financial Statement. Because the Act requires the filing of a correct Financial Statement, it is an apparent contravention of the Act to have filed a Financial Statement that included these errors.
7. Before reviewing two particular apparent contraventions, it is important to note what the Auditor said about the Candidate's financial records. Selective quotes are as follows:
 - 1.3 The Candidate's records provided were not organized in a manner that would facilitate compliance with the reporting requirements of the Act. Approximately 45 percent of the apparent campaign expenses were not recorded in the campaign records provided to the external auditor for audit.
 - 3.3.1 My audit concluded that a significant portion of reportable transactions were not reflected in the Financial Statement filed.
8. Variations on this theme appear throughout the Auditor's Report.
9. In his presentation to the Committee, the Auditor commented that the nature of the errors contained in the Financial Statement was surprising and implied a lack of familiarity with the Act and how it works.
10. This apparent lack of respect for and/or understanding of the record keeping and reporting requirements of the Act is of great concern the Committee. It seems to be at the root of numerous specific apparent contraventions of the Act identified in the Auditor's Report. If it is found that there has been a contravention of the Act for failing to file a correct Financial Statement and that failure reflects the Candidate's careless disregard for the record keeping and reporting requirements of the Act, such conduct, in the Committee's respectful view, is not a mere technicality but rather the public interest warrants significant consequences both to censure the Candidate and to set an example for the Candidate and others in future municipal election cycles, a useful municipal purpose.
11. This disregard for or lack of understanding of other requirements, limitations and provisions of the Act permeates much of the Auditor's Report and its findings of apparent contraventions of the Act. Again, if these apparent contraventions are found to be contraventions and they relate to the Candidate's deliberate or careless disregard for the relevant provisions of the Act, such conduct, in the Committee's respectful view, warrants substantial consequences both to censure the Candidate and to provide a deterrent for future such conduct by him or others.

Pre-Campaign Period Expenses and Contributions

12. As mentioned, the Auditor's Report identifies numerous specific apparent contraventions of various provisions of the Act, but the Committee wishes to focus on two salient items.

13. The first relates to campaign expenses incurred by the Candidate before the May 1, 2018 commencement of the Candidate's campaign period. Such expenses go back to as early as December of 2017. The Auditor's Report goes into detail about payment of rent, salaries, advertising and other things in this pre-campaign period, but the conclusion appears as follows:

3.4.5 As described in 4.3 below and detailed separately in Appendix B, Cheng apparently accepted contributions in kind of \$750.00 and incurred expenses of \$23,785.22 prior to registration as a candidate on May 1, 2018. While these are apparent contraventions of subsection 88.8(2) and 88.20(2), respectively, the manner in which these transactions are to be reported in the Financial Statement itself under such circumstances is not clear.

14. What is clear is that the pre-campaign expenses and in-kind contribution were not reported in the Financial Statement.
15. For the Committee, what is central in this context, is what differentiates campaigning activities, which are prohibited, from profile-building activities, which are permitted in the pre-campaign period. The Auditor has considered this distinction and has concluded that what the Candidate did was campaigning. The Committee is of the view that it would be beneficial, and serve a useful municipal purpose, to have a judicial interpretation of this part of the Act so all candidates will have a common understanding of the electoral ground rules during the next election cycle.

Candidate Financed Campaign

16. The Auditor's Report says, in paragraph 5.2.6, that

After adjusting for the additional transactions identified and detailed above in section 4 of this report, it appears that Cheng contributed \$98,508.26 to his campaign and thereby exceeded his permitted contribution limit of \$25,000 by \$73,508.26. This is an apparent contravention of subsection 88.9.1(1).

To put this in context, the total contributions to the campaign in cash and in kind and the total campaign expenditures were each about \$124,000.00 (with a deficit of about \$2,000.00).

17. As the Committee understands it, the scheme of the Act is to create a level playing field in which wealthy candidates cannot simply buy themselves a self-financed campaign. The limit of self-financing is \$25,000; after that money must be raised via financial support from a significant number of individual contributors (not a corporation or trade union) each of whom has a \$1,200 limit on the amount which they can contribute. If it is determined that there is a contravention of subsection 88.9.1(1) of the Act in the order of magnitude reported by the Auditor, in the Committee's respectful view, there should be severe censure of the Candidate for his largely self-financed campaign as a deterrent against such behaviour in the future. Again, this would be in the public interest and serve a useful municipal purpose.

Conclusion

18. The Committee finds that the public interest and a municipal purpose will be served by commencing legal proceedings against the Candidate for the apparent contraventions identified in the Auditor's Report. The Committee has therefore decided to authorize the commencement of such proceedings by appointing an independent prosecutor.
19. In coming to this decision, the Committee recognizes that the prosecutor has a separate, independent function that includes determining whether there are reasonable grounds to believe that the Candidate has committed offences under the Act and whether there is a reasonable prospect of conviction. Assuming such a determination is made by the independent prosecutor, charges would be laid, and pre-trial procedure followed leading to a trial. Throughout, the independent prosecutor has prosecutorial discretion and the Committee's decision does not derogate from that in any way.

ISSUED by The Corporation of the City of London Compliance Audit Committee at London, Ontario, on March 9, 2021.

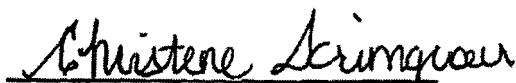
Compliance Audit Committee



Andrew Wright, Chair



Dan Ross, Member



Christene Scrimgeour, Member