

Notice of Decision
The Corporation of the City of Oshawa
Joint 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 Joe Ingino submitted under section 88.33(1)

AND IN THE MATTER OF the City of Oshawa's 2022 Municipal and School Board Election Joint Compliance Audit Committee Administrative Practices and Procedures in accordance with section 88.37(6) of the Municipal Elections Act, 1996;

Candidate: Joe Ingino
Applicant: Derek Giberson
Auditor's Report No. JCAC-24-01
Meeting Date: Wednesday, September 11, 2024 at 9:30 a.m.
Meeting Location: Committee Room, City Hall
50 Centre Street South
Oshawa, Ontario L1H 3Z7

DECISION

Purpose of Meeting

The purpose of the meeting was to consider the Auditor's Report prepared pursuant to Section 88.33(12) of the *Municipal Elections Act, 1996*, S.O. 1996 (the Act) by MNP LLP reviewing the campaign finances for candidate Joe Ingino, and to determine whether to commence a legal proceeding against the candidate.

This meeting was held in accordance with the provisions of the City of Oshawa's 2022 Municipal and School Board Election Joint Compliance Audit Committee Administrative Practices and Procedures (the "Procedures").

Delegations

Both the Applicant and the Candidate appeared and made delegations. The Applicant also submitted additional written correspondence prior to the Committee's meeting on September 11, 2024.

Decision

After hearing delegations from both the Applicant and Candidate, and reviewing the Auditor's Report prepared pursuant to Section 88.33(12) of the Municipal Elections Act, 1996, S.O. 1996 by MNP LLP on the campaign finances for candidate Joe Ingino, it is the decision of this Compliance Audit Committee that legal proceedings be commenced against the candidate.

Reasons

The reasons for the decision are as follows:

Introduction

1. This matter came before the Committee as follows:
 - (a) The Candidate ran for the office of Mayor in the 2022 City of Oshawa Municipal Election but was not elected to that office.
 - (b) The Committee received and considered an application for a compliance audit at its meeting held on July 23, 2023. The Committee granted the application and ordered a compliance audit.
 - (c) Pursuant to the Committee's decision, MNP LLP was appointed to conduct the compliance audit. MNP LLP conducted its compliance audit and presented its findings to the City Clerk through the Auditor's Report.
 - (d) The Auditor's Report identified multiple apparent contraventions of the campaign finance rules set out in the *Municipal Elections Act, 1996*.
2. Pursuant to Subsection 88.33(17) of the *Municipal Elections Act, 1996* (the "Act"), where an auditor's report identifies apparent contraventions of the campaign finance rules, the Committee must determine whether to commence a legal proceeding against the Candidate.
3. At this stage, the Committee is performing a gate-keeping role. The Committee does not make any determination as to whether the Candidate violated the campaign finance rules. Rather, the Committee must determine whether it is in the public interest to commence a legal proceeding against the Candidate in respect of the apparent contraventions.

Factors in Decision-making

4. The Committee's role at this stage is, fundamentally, an exercise of discretion. Given the important public purpose underlying the campaign finance rules, and the legislative scheme for the compliance audit process, the Committee considers the following factors to be relevant to the exercise of its discretion:
 - (a) The severity of the apparent contraventions, and the purpose of the campaign finance rules contravened.

- (b) Whether the apparent contraventions are minor or trivial in nature, technical, or whether they are *de minimis*.
- (c) Whether the apparent contraventions were committed deliberately or knowingly, or whether the apparent contraventions were committed inadvertently.
- (d) Any potential explanations or defences that the Candidate has raised in respect of any apparent contraventions.
- (e) The evidence available to support a prosecution in this matter, and the prospect that an independent prosecutor would proceed with charges.

Apparent Contraventions and the Candidate's Response

5. The Auditor's Report identified three (3) areas of apparent contraventions of the Act, which can be summarized as follows:

- (a) There is an apparent contravention of Sections 88.11(a), (b) and (d) of the Act as the Candidate did not open a bank account for his campaign exclusively for the purposes of the Campaign.
- (b) There are apparent contraventions of Sections 88.9(1) and 92(1)(b) of the Act as the Candidate's Financial Statement included overcontributions by two (2) individuals.
- (c) There is an apparent contravention of Section 92(1)(b) of the Act as the Candidate's Financial Statement did not include the correct Campaign Period.

6. In response to the apparent contraventions identified in the Auditor's Report, the Candidate responded as follows during the Committee's September 11, 2024 meeting:

- (a) With respect to an apparent contravention of Sections 88.11(a), (b) and (d), the Candidate confirmed his statement to the Auditor that he did not open a bank account exclusively for the purposes of the Campaign and that all Campaign-related contributions and expenses did not go through a bank account specific to the Campaign.

The Candidate further advised that, despite repeated efforts on his part, to open a bank account exclusively for the purposes of the Campaign, he was unable to do so as the bank he approached would not allow him to open an account. In response to questioning by the Committee, the Candidate advised that he did not approach any other bank to open an account for the exclusively for the purposes of his Campaign.

The Candidate did not provide the foregoing explanation to the Committee during its July 23, 2023 meeting nor during his discussions with the Auditor. The Candidate did not provide secondary supporting records for the explanation.

- (b) With respect to an apparent contravention of Sections 88.9(1) and 92(1)(b), the Candidate did not elaborate on the information he provided to the Auditor, which is detailed in "Section 4G Allegation No. 5 – Contributions to Mr. Ingino's Campaign"

of the Auditor's Report, other than to note that only one (1) of the two (2) individuals who allegedly overcontributed to his Campaign is being prosecuted pursuant to the provisions of the Act.

- (c) With respect to an apparent contravention of Section 92(1)(b), the Candidate did not elaborate on the information included in the Auditor's Report, specifically that the Candidate filed his Nomination Papers on May 4, 2022, while the Candidate's Financial Statement states that the Campaign start date was June 4, 2022.

Prosecution would be in the Public Interest


7. The Committee is of the opinion that it is in the public interest to commence a prosecution against the candidate for his apparent contraventions of the campaign finance rules described in the Act.
8. The Committee accepts that the findings identified in the Auditor's Report give rise to apparent contraventions of the campaign finance rules described in the Act, recognizing that the Court will make the final determination and that the Committee makes no determination of guilt.
9. The Candidate has run for municipal office on multiple occasions prior to the 2022 municipal election. Regardless, there is an expectation that all candidates for municipal office, new or experienced, understand and comply with the campaign finance rules set out in the Act.
10. It is the Committee's opinion that Candidate's apparent contraventions, individually and collectively, are significant and impact the integrity of the electoral process.
11. For example, by failing to open a bank account exclusively for the Campaign, the Candidate undermines the important public policy objectives of the Act, including, but not limited to, preventing the tracking of contributions to and expenses of the candidate, thereby threatening the principle that election finances be transparent and bear high scrutiny as well as undermining the integrity of the electoral process.
12. Further, the acceptance of contributions exceeding the limits set out in the Act subverts one of the basic principles of the Act, which is to ensure a level playing field amongst candidates.
13. As well, the Candidate's insertion of the incorrect date of his Campaign Period demonstrates carelessness in preparing the Financial Statement, which, in conjunction with the other apparent contraventions noted in the Auditor's Report, suggest a disregard of the campaign finance rules by the Candidate.
14. The Candidate did not provide any compelling explanation for the apparent contraventions of the Act identified in the Auditor's Report or present any credible evidence that he exercised all reasonable care or took all objectively reasonable steps that may be expected of an experienced candidate in a municipal election in order to avoid contravening the Act.
15. Finally, the Committee acknowledges the Additional Correspondence dated September 6, 2024, submitted by and summarized by the Applicant during his delegation to the Committee on September 11, 2024, and agrees that the Auditor's Report potentially does

not effectively address the fair market value of the advertising undertaken by the Candidate, which impacts the Committee's ability to render a fulsome decision in this matter.

Conclusion

- 16. Based on the foregoing, the Committee has determined that it is in the public interest to commence a legal proceeding against the Candidate for the apparent contraventions identified in Auditor's Report.
- 17. As such, the Committee hereby decides to commence a legal proceeding against the Candidate pursuant to Subsection 88.33(17) of the *Municipal Elections Act, 1996*, and authorizes the appointment of a prosecutor.


Dated this 26th day of September 2024


Kelly Gravelle (Sep 26, 2024 16:00 EDT)

Kelly Gravelle, Chair


Wm. J. Paul Jones (Sep 26, 2024 15:36 EDT)

Paul Jones, Member


Sachin Persaud (Sep 26, 2024 15:16 EDT)

Sachin Persaud, Member