



Election Compliance Audit Committee

Minutes

Meeting #: 2
Date: Monday, July 31, 2023
Time: 9 am
Location: Champlain Room, 110 Laurier Avenue West, and by electronic participation

Present: Timothy Cullen (Chair), Catherine Bergeron (Vice-Chair), Nahie Bassett, Imad Eldahr, Michael McGoldrick

1. Notices and meeting information for meeting participants and the public
Notices and meeting information are attached to the agenda and minutes, including: availability of simultaneous interpretation and accessibility accommodations; personal information disclaimer for correspondents and public speakers (only “designated persons” shall be permitted to make submissions to the Committee); notice regarding minutes; and hybrid participation details.
Accessible formats and communication supports are available, upon request.
Unredacted versions of applications for compliance audits, and any written submissions to Committee, are available for public inspection at the City of Ottawa Elections Office during regular business hours in accordance with the *Municipal Elections Act, 1996*.
At the outset of the meeting, the Chair read an opening statement outlining the procedures for and format of the Committee Meeting.
2. Declarations of Interest
No Declarations of Interest were filed.
3. Confirmation of Minutes
 - 3.1 ECAC Minutes 1 – April 3, 2023

The Chair noted that “Tim” should be replaced with “Timothy” in the minute for item 5.1 (Election of Chair and Vice-Chair). With the will of Committee, the minutes were confirmed as amended.

Carried as amended

4. Office of the City Clerk

4.1 Election compliance audit application of the campaign finances of Candidate Doug Thompson for Ward 20 Osgoode from the 2022 Municipal Elections

File No. ACS2023-OCC-GEN-0009 – City-wide

Report recommendation

That the Election Compliance Audit Committee consider the election compliance audit application of the campaign finances of Candidate Doug Thompson for Ward 20 Osgoode from the 2022 Municipal Elections and decide if a compliance audit should be granted or rejected.

The following designated persons, on behalf of the Applicant, were in attendance, made oral submissions to Committee, and/or answered questions from Committee:

- John Pappas, Aird & Berlis LLP (written submission on file with the City Clerk)
- Edward “Ted” Phillips, Applicant

The Respondent, Candidate Doug Thompson, also made oral submissions to Committee, and/or answered questions from Committee.

The Committee recessed the meeting and deliberated in private on this matter pursuant to subsection 88.33(5.1) of the *Municipal Elections Act, 1996*. Upon reconvening, the Committee considered the following motion:

Motion No. ECAC 2023-02-01

Moved by C. Bergeron

BE IT RESOLVED THAT the Committee issues the following decision and reasons:

Upon hearing the representations and/or reading the written submissions and documents submitted by the applicant’s

representative, and the candidate, this Committee hereby grants the Application because it was presented with compelling and credible information which raises a reasonable probability that a breach of the campaign finance provisions of the *Municipal Elections Act, 1996* has occurred.

The Committee heard submissions from the Applicant's representative (J. Pappas, legal counsel), who made reference to his written submissions. Those submissions covered the legal test applicable to this stage of the process, as well as a summary of Mr. Philips's written application and the information attached thereto.

The Committee also heard oral submissions from the Respondent, Mr. Thompson, which the Committee has considered. Importantly, Mr. Thompson has admitted that his financial statement, particularly the cost allocation for signs reused from previous elections, was inaccurate. Mr. Thompson offered to file further materials that were not before the Committee. The Committee has declined to accept that information at this time as the filing deadline has elapsed. In any event, the Committee does not believe consideration of those documents at this stage are capable of changing its conclusion as to whether to grant the application; the reasonable belief standard would be met in either event.

The Committee is mindful of its task at this stage, which is to assess whether the Applicant has reasonable grounds to believe there has been a contravention of the *Municipal Elections Act, 1996*. The Committee is of the view that this threshold is met in the circumstances.

Finally, in our view, based on the jurisprudence under the *Municipal Elections Act, 1996* (see: *Jackson v. Vaughan (City)*, 2010 ONCA 118, para. 28, citing *Mastroguiseppe v. Vaughan (City)*, 2008 ONCJ 763 (Ont. C.J.), para. 62), the Committee lacks discretion at this stage to decline a compliance audit in view of the record before it.

BE IT FURTHER RESOLVED THAT this Committee directs that the Office of the City Clerk in consultation with the Committee's independent legal counsel, initiate a call-up against the City's Standing Offer for Audit Services, and provide the Committee with the proposals received of up to three (3) potential auditors. The Committee will speak to the nature of the compliance audit to be carried out at the time of the auditor's appointment.

4.2 Election compliance audit application of the campaign finances of Candidate Shawn Menard for Ward 17 Capital from the 2022 Municipal Elections

File No. ACS2023-OCC-GEN-0010 – City-wide

Report recommendation

That the Election Compliance Audit Committee consider the election compliance audit application of the campaign finances of Candidate Shawn Menard for Ward 17 Capital from the 2022 Municipal Elections and decide if a compliance audit should be granted or rejected.

The following designated persons, on behalf of the Applicant, were in attendance, made oral submissions to Committee, and/or answered questions from Committee:

- John Pappas, Aird & Berlis LLP (written submission on file with the City Clerk)
- Edward “Ted” Phillips, Applicant

The following designated persons, on behalf of the Respondent, were in attendance, made oral submissions to Committee, and/or answered questions from Committee:

- Andrew Rodie, Chaplin & Co. LLP, Chartered Professional Accountants (written submission on file with the City Clerk)
- Candidate Shawn Menard

The Committee recessed the meeting and deliberated in private on this matter pursuant to subsection 88.33(5.1) of the *Municipal Elections Act, 1996*. Upon reconvening, the Committee considered the following motion:

Motion No. ECAC 2023-02-02

Moved by N. Bassett

BE IT RESOLVED THAT the Committee issues the following decision and reasons:

Upon consideration of the election compliance application, and/or hearing the representations and/or reading the written submissions and documents submitted by the applicant, the candidate, and their

representatives, this Committee hereby rejects the Application because it was not presented with compelling and credible information which raises a reasonable probability that a contravention of the campaign finance provisions of the *Municipal Elections Act, 1996* has occurred.

The Committee heard submissions and evidence from the Applicant's representative (J. Pappas, Legal Counsel), which comprised reference to the legal test, as well as the content of the Applicant's application related to his observations about the Respondent's election signs, their size, placement and number. The Applicant also answered questions from the Committee related to his observations on the number and placement of certain signs referenced in his application.

The Committee then heard from the Respondent's representative (A. Rodie of Chaplin & Co. LLP, Chartered Professional Accountants) in which he referenced the materials filed by the Respondent, including entries in the Respondent's financial statement (Form 4). Mr. Rodie also raised a preliminary submission that the Application was non-compliant for failing to reference a specific provision of the *Municipal Elections Act, 1996*. Mr. Menard also answered several questions the Committee posed following Mr. Rodie's submissions. Those questions related to the disclosure of Mr. Menard's use of previously purchased signs and materials in his financial statement (Form 4).

Based on descriptions of expenses contained in the financial statement (Form 4), it was conceivable for the Applicant to have believed that Mr. Menard failed to report certain relevant campaign advertising expenses (i.e., the cost of certain signs and other materials required to erect the signs). The Committee notes that it accepts as credible the answers provided by both the Applicant and the Respondent to the Committee's questions. In our view, with the benefit of that additional information, a reasonable person in the Applicant's position would not believe there are reasonable grounds for believing Mr. Menard violated the *Municipal Elections Act, 1996*.

Finally, the Committee takes note of Mr. Rodie's preliminary submission that the Application fails to identify a specific provision in the *Municipal Elections Act, 1996*. The Committee rejects this submission. Although Applications should generally identify the

statutory provisions in issue, this is not a strict requirement such that the Application in this matter was compliant.

Carried

4.3 Election compliance audit application of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections

File No. ACS2023-OCC-GEN-0011 – City-wide

Report Recommendation

That the Election Compliance Audit Committee consider the election compliance audit application of the campaign finances of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections and decide if a compliance audit should be granted or rejected.

The following designated persons, on behalf of the Applicant, were in attendance, made oral submissions to Committee, and/or answered questions from Committee:

- John Pappas, Aird & Berlis LLP (written submission on file with the City Clerk)
- Edward Phillips, Applicant

The following designated persons, on behalf of the Respondent, were in attendance, made oral submissions to Committee, and/or answered questions from Committee:

- Kyle Morrow, Fasken Martineau DuMoulin LLP (written submission on file with the City Clerk)
- Sam Hersh, Horizon Ottawa

The Committee recessed the meeting and deliberated in private on this matter pursuant to subsection 88.33(5.1) of the *Municipal Elections Act, 1996*. Upon reconvening, the Committee considered the following motion:

Motion No. ECAC 2023-02-03

Moved by I. Eldahr

BE IT RESOLVED THAT the Committee issues the following decision and reasons:

Upon consideration of the election compliance application, and/or hearing the representations and/or reading the written submissions

and documents submitted by the applicant, the registered third party advertiser, and their representatives, this Committee hereby grants the Application because it was presented with compelling and credible information which raises a reasonable probability that a contravention of the campaign finance provisions of the *Municipal Elections Act, 1996* has occurred.

The Committee heard submissions from the Applicant's representative (J. Pappas, legal counsel). Mr. Pappas referred the Committee to the *Municipal Elections Act, 1996* provisions on third party advertisers, as well as the legislative debates leading to those provisions' enactment. The Applicant advanced three submissions: 1) The event at issue, "Horizon Fest", was not properly categorized on the Respondent's financial statement (Form 8); 2) the Respondent incurred expenses before registering as a third party advertiser; and 3) the donation jar at the Horizon Fest event was not monitored to ensure no more than \$25 was contributed, and only by eligible electors.

The Committee heard submissions from the Respondent (per. Mr. Hersh) and the Respondent's representative (K. Morrow, legal counsel). In brief, Mr. Morrow focused his submission on whether Horizon Fest was properly within the definition of a fundraising function, and argued that it was not. This submission was based in part on the fact that the event was a music festival lasting approximately 9 hours, only a portion of which was allocated to candidate speeches. Mr. Morrow also submitted that the Applicant provided no evidence that the \$25 threshold was exceeded when the Respondent made available a donation jar at the Horizon Fest event. Finally, Mr. Morrow submitted that, as per the Ministry guidelines as set out in the "manual", free, "unboosted" social media (tweets etc.) are not regulated. Further, posters are not regulated if soliciting of contributions is merely incidental.

The Committee is satisfied that there were reasonable grounds for the Applicant to suspect a violation of the *Municipal Elections Act, 1996* based solely on the advertisements the Respondent posted on their social media account. The Committee takes note that the Respondent categorized the Horizon Ottawa event as a "third party advertisement" in its financial statement (Form 8). The Committee has considered the evidence put forward by the Applicant, specifically evidence of the Respondent's Twitter tweets made on

August 12 and 20, 2022 promoting the event. One of those posts shows a photo of the flyer the Respondent posted in various locations in Ottawa. The Respondent only registered as a third party advertiser on August 24, 2022. The Committee concludes that the Applicant reasonably inferred that the Respondent incurred costs for a third party advertisement, at a minimum those associated with designing and producing the flyer, before registering as a third party advertiser.

In light of the foregoing, it is unnecessary for the Committee to assess whether the Horizon Ottawa event was a “fundraising function” within the meaning ascribed in section 1 of the *Municipal Elections Act, 1996*. The Committee likewise need not comment on whether Horizon Ottawa’s use of the donation jar offended the *Municipal Elections Act, 1996*.

Finally, the Committee acknowledges Mr. Morrow’s submission that the Committee’s Rules of Procedure require that an application must reference the specific provision of the *Municipal Elections Act, 1996* that the Applicant says he or she suspects has been offended. Mr. Morrow is correct. However, the Rules of Procedure also permit this Committee to vary or suspend the Rules’ requirements “to ensure that the real questions in issue are determined in a just manner”. We hereby exercise that discretion.

BE IT FURTHER RESOLVED THAT this Committee directs that the Office of the City Clerk, in consultation with the Committee’s independent legal counsel, to initiate a call-up against the City’s Standing Offer for Audit Services, and provide the Committee with the proposals received of up to three (3) potential auditors. The Committee will speak to the nature of the compliance audit to be carried out at the time of the auditor's appointment.

Carried

Member M. McGoldrick was not present when this vote was carried.

5. Inquiries

There were no Inquiries.

6. Other Business

There was no other business.

7. Adjournment

Next Meeting: To be scheduled as required within the timelines prescribed by the *Municipal Elections Act, 1996*, to consider applications for audits, appointments of auditors, audit reports, or reports from the City Clerk on the apparent contraventions of contribution limits if any are received.

The meeting adjourned at 2:04 pm.

Committee Coordinator

Chair