

**Subject: City Clerk's report with respect to an apparent contravention of contribution limits under the *Municipal Elections Act, 1996* for the 2022 Municipal Elections – Jennifer Kwong**

**File Number: ACS2023-OCC-GEN-0017**

**Report to Election Compliance Audit Committee on 8 December 2023**

**Submitted on November 27, 2023 by David White, City Solicitor and Interim City Clerk, Office of the City Clerk**

**Contact Person: Krista Bressette, Acting Manager, Municipal Elections and French Language Services, Office of the City Clerk**

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**Ward: Citywide**

**Objet : Rapport du greffier municipal concernant une violation apparente de la limite de contribution permise en vertu de la *Loi de 1996 sur les élections municipales* dans le cadre des élections municipales de 2022 – Jennifer Kwong**

**Numéro de dossier : ACS2023-OCC-GEN-0017**

**Rapport présenté au Comité de vérification de la conformité pour les élections**

**Rapport soumis le 8 décembre 2023**

**Soumis le 27 novembre 2023 par David White, Avocat général et greffier municipal par intérim**

**Personne-ressource : Krista Bressette, gestionnaire intérimaire, Élections municipales et Services en français**

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**Quartier : À l'échelle de la ville**

## **REPORT RECOMMENDATION**

**That the Election Compliance Audit Committee consider this report and decide whether to commence a legal proceeding against Contributor Jennifer Kwong for apparent contravention of the contribution limits under the *Municipal Elections***

**Act, 1996.**

## **RECOMMANDATION DU RAPPORT**

**Que le Comité de vérification de conformité des élections examine le présent rapport et décide s'il va ou non entamer une poursuite judiciaire contre le contributeur Jennifer Kwong en raison d'une violation apparente de la limite de contribution permise en vertu de la *Loi de 1996 sur les élections municipales*.**

## **BACKGROUND**

On Wednesday, March 23, 2022, City Council approved the staff report titled "[Update on the 2022 Municipal Elections and Amendments to Election-Related By-laws and Policies](#)" which included recommendations to establish the 2022-2026 Election Compliance Audit Committee (the "Committee"), pursuant to Section 88.37 of the *Municipal Elections Act, 1996* (the "MEA"). The 2022-2026 Committee's term of office began on Tuesday, November 15, 2022, and will end on Saturday, November 14, 2026.

The Committee is an independent, statutory body whose responsibilities and powers are largely prescribed by the MEA. The Committee is responsible for reviewing and making decisions on applications for municipal election campaign finance compliance audits, and on reports from the City Clerk regarding apparent contraventions of contribution limits prescribed by the MEA, resulting from the regular municipal election or any by-election held during the term of office for the City Council for which the Committee was appointed.

Sections 88.34 and 88.36 of the MEA prescribe that the City Clerk is responsible for reviewing the financial statements submitted by candidates and registered third party advertisers to determine whether any contributor appears to have exceeded the contribution limits established by the MEA. More specifically, the City Clerk's review seeks to determine if:

1. A candidate's financial statement(s) shows that a contributor gave more than \$1,200 to a single candidate or more than \$5,000 total to two or more candidates for office on the same council or local board in the 2022 Municipal Elections in accordance with Section 88.9; and
2. A registered third party advertiser's financial statement(s) show that a contributor gave more than \$1,200 to a third party or more than \$5,000 total to multiple third parties registered in the same municipality in accordance with Section 88.13.

In accordance with Subsection 88.34(4) and 88.36(4), the City Clerk's report(s) must be submitted to the Committee as soon as possible following the day that is 30 days after the filing deadlines (March 31, 2023 for initial statements and September 29, 2023 for supplementary statements, with consideration of the 30-day grace periods).

In order to assist the City Clerk with fulfilling this statutory duty, and as noted in staff's report titled "[Office of the City Clerk's 2022 Annual Report](#)", the Elections Office has hired a licensed Auditor from Raymond Chabot Grant Thornton ("RCGT") in accordance with the City's procurement process who has completed the above-noted review. The Auditors were tasked with reviewing the financial statements and submitting two reports, one report for the initial financial statements and a second report for supplementary financial statements.

As the Auditor's report attached as Document 2 finds apparent contraventions of the candidate contribution limits established by Section 88.9 of the MEA, this report has been prepared by the City Clerk for Jennifer Kwong (the "Contributor") as further described in the Discussion section.

### **Apparent contraventions by contributors to candidates for School Board Trustee**

Further, in accordance with Subsection 88.34(5), should the above-noted review indicate that there are apparent contraventions by contributors to candidates for a local board (i.e., school boards), the City Clerk shall forward the report(s) to the secretary of the local board, and within 10 days of receiving the report(s), the secretary of the board will forward the report(s) to their respective compliance audit committee for their consideration.

As the City Clerk's review found no contributors with apparent contraventions of contribution limits with respect to contributions to School Board Trustee candidates, the City Clerk issued memos on November 27, 2023, to the school boards to advise them accordingly.

### **Contribution limits to candidates**

Subsection 88.9(1) of the MEA establishes a maximum contribution limit to any one candidate, and places the obligation on the contributor to comply with that limit, as follows:

*A contributor shall not make contributions exceeding a total of \$1,200 to any one candidate in an election.*

In addition, Subsection 88.9(4) of the MEA establishes a cumulative contribution limit of \$5,000, and places the obligation on the contributor to comply with that limit, as follows:

*A contributor shall not make contributions exceeding a total of \$5,000 to two or more candidates for office on the same council or local board.*

Further, Subsection 88.22(1)(r) of the MEA requires candidates to inform each contributor that a contributor shall not make contributions exceeding a total of \$1,200 to any one candidate or total contributions of \$5,000 to two or more candidates for office on the same council or local board.

The notice of contribution limits was included on the City of Ottawa issued contribution receipts for candidates who opted to use them or were required to as part of the Contribution Rebate Program.

### **Contribution limits to registered third party advertisers**

Subsections 88.13(1) and 88.13(2) of the MEA establishes that a contributor shall not make contributions exceeding \$1,200 to a single registered third party advertiser or more than \$5,000 to two or more registered third party advertisers, and places the obligation on the contributor to comply with these limits, as follows:

*(1) A contributor shall not make contributions exceeding a total of \$1,200 to a registered third party in relation to third party advertisements that appear during an election in a municipality.*

*(2) A contributor shall not make contributions exceeding a total of \$5,000 to two or more registered third parties registered in the same municipality in relation to third party advertisements.*

Further, Subsection 88.26(1)(r) of the MEA required third party advertisers to inform each contributor that a contributor shall not make contributions exceeding a total of \$1,200 to any one third party advertiser or total contributions of \$5,000 to two or more third party advertisers registered in the same municipal election.

The notice of contribution limits was included on the City of Ottawa issued contribution receipts for third party advertisers who opted to use them.

### **DISCUSSION**

This report does not make a recommendation on the decision to commence a legal proceeding against the Contributor as this responsibility lies solely with the Election

Compliance Audit Committee (the “Committee”), as per the *Municipal Elections Act, 1996* (the “MEA”). Accordingly, the candidates are not parties to this matter.

The Committee does not have the jurisdiction to commence legal proceedings against persons other than the Contributor in considering the City Clerk’s report.

As such, this report provides the Committee with the City Clerk’s findings with respect to the Contributor’s apparent contravention of contribution limits pursuant to Section 88.9 of the MEA, and provides information on the legislative timelines, as further described below.

### **Contributor’s apparent contravention of contribution limits**

Following a review by the independent Auditor retained by the City Clerk, Contributor Jennifer Kwong appears to have exceeded a contribution limit established under the MEA.

Specifically, based on the contribution information available in the financial statements filed in relation to the 2022 Municipal Elections, this Contributor appears to have made contributions exceeding the contribution limit of \$1,200 to any one candidate, established under Subsection 88.9(1) of the MEA. For the purpose of this report, the Contributor did not exceed the contribution limit of a total of \$5,000 to two or more candidates for the office on the same council, as established under Subsection 88.9(4) of the MEA.

Document 1 attached to this report further sets out the Contributor’s information and contributions to candidates for office on City Council.

Document 2 attached to this report is the report prepared by the Auditor of Raymond Chabot Grant Thornton (“RCGT”) that provides an overview of the scope and methodology used to complete the review. This report was submitted to the City Clerk on November 22, 2023, and the City Clerk submitted it to the Committee on November 27, 2023.

Accordingly, the 30-day timeline under Section 88.34(8) of the MEA for the Committee to consider and decide on this matter expires on December 27, 2023.

Lastly, Document 3 attached to this report is Candidate Bina Shah’s Financial Statement – Auditor’s Report Candidate - Form 4 as filed by the candidate listed in Document 1 for the Committee’s reference.

### **If the Committee decides to commence a legal proceeding**

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Subsection 88.37(6) of the MEA. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor. The City Clerk may provide updates to the Committee on the status and/or resolution of the legal proceedings.

The City is responsible for the prosecutor's costs related to commencing the legal proceedings.

### **FINANCIAL IMPLICATIONS**

In accordance with Subsection 88.37(7) of the *Municipal Elections Act, 1996*, the City of Ottawa shall pay all costs in relation to the Election Compliance Audit Committee's operation and activities. These costs will be funded from the Tax Stabilization Reserve.

### **LEGAL IMPLICATIONS**

Under Subsection 88.34(8) of the *Municipal Elections Act, 1996*, within 30 days after receiving a report under Subsection 88.34(4), the Election Compliance Audit Committee (the "Committee") shall consider it and decide whether to commence a legal proceeding against a contributor for an apparent contravention. Where the Committee issues a decision to commence such a proceeding, the City Clerk will carry out the required steps pursuant to Subsection 88.37(6) to retain an independent, arm's length, external prosecutor to review the records related to this matter and determine next steps. The City Clerk may provide updates to the Committee on the status and/or resolution of the legal proceedings.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This is a Citywide report.

### **CONSULTATION**

This report is required under the *Municipal Elections Act, 1996* and is administrative in nature, therefore no public consultation was required.

### **ACCESSIBILITY IMPACTS**

There are no accessibility implications associated with this report.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

## **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

## **TERM OF COUNCIL PRIORITIES**

This report has no direct impacts on the 2023-2026 City Strategic Plan and Term of Council Priorities.

## **SUPPORTING DOCUMENTATION**

Document 1: Contributor information and contributions

Document 2: Report prepared by Raymond Chabot Grant Thornton dated November 22, 2023

Document 3: Candidate Bina Shah's Financial Statement – Auditor's Report - Form 4

## **DISPOSITION**

The City Clerk will provide a copy of the Election Compliance Audit Committee's (the "Committee") written decision and reasons to the Contributor.

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Section 88.37(6) of the MEA. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor who will have the usual power and authority of a prosecutor. The City Clerk may provide updates to the Committee on the status and/or resolution of the legal proceedings.