



Election Compliance Audit Committee

Minutes

Meeting #: 6
Date: Monday, September 16, 2024
Time: 2 pm
Location: Electronic Participation

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

Committee Counsel present: James Plotkin (Gowling WLG)

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 remote 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 5 – August 28, 2024

Carried

4. Office of the City Clerk

4.1 Auditor's Report – Election compliance audit of the campaign finances of Candidate Doug Thompson of Ward 20 Osgoode from the 2022 Municipal Elections

File No. ACS2024-OCC-GEN-0013 – City-wide

The following, on behalf of the Auditor, Raymond Chabot Grant Thornton (RCGT), provided an overview of the Auditor's Report, and/or answered questions from Committee:

- Paul Maniscalco
- Pierre-Charles La Haye
- Shayna Miller

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

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

- Stéphane Émard-Chabot, Sicotte Guilbault, on behalf of Candidate Doug Thompson (written submission on file with the City Clerk)

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:

Report recommendation(s)

That, pursuant to Subsection 88.33(17) of the *Municipal Elections Act, 1996*, the Election Compliance Audit Committee consider the Auditor's report and decide whether to commence a legal proceeding against Candidate Doug Thompson.

Motion No. ECAC 2024-06-01

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

Upon receiving report ACS2024-OCC-GEN-0013 titled “Election compliance audit of the campaign finances of Candidate Doug Thompson of Ward 20 Osgoode from the 2022 Municipal Elections” and upon hearing the representations and/or reading the written submissions and documents submitted by the Auditor, the Candidate, and the Applicant, this Committee hereby decides not to commence legal proceedings against Candidate Doug Thompson for apparent contravention(s) of the election campaign finance provisions under the *Municipal Elections Act, 1996*.

Parties’ positions

The Applicant (by his counsel Mr. John Pappas, Aird Berlis LLP)

Mr. Pappas addressed the committee on behalf of the applicant, Mr. Phillips.

He submitted that legal proceedings should be pursued to serve the public interest or integrity and accountability underpinning the MEA’s campaign finance regime. In that respect, Mr. Pappas highlighted that the report revealed a series of errors, including inaccuracies, misclassification of transactions, and inadequate record-keeping. These issues, though seemingly minor, point to Mr. Thompson's failure to uphold his duty for accurate reporting.

Mr. Pappas placed a particular emphasis on the importance of the ECAC’s role in ensuring the integrity of elections by scrutinizing campaign finance statements and valuing contributions. He submitted that proper record-keeping is crucial for maintaining transparency and providing adequate backup when reporting to the public. The central purpose of these obligations is to foster confidence among electors in the electoral process.

Mr. Pappas submitted that, despite Mr. Thompson’s approximate 40 years of experience in municipal politics, he demonstrated a lack of the sort of care and meticulousness expected from someone of his standing. Any suggestions that these errors were merely inadvertent, is belied by Mr. Thompson’s lengthy experience.

Finally, Mr. Pappas submitted that the committee must consider the need for general deterrence. Allowing Mr. Thompson to evade accountability after his long career would undermine public trust and set a dangerous precedent.

Mr. Douglas Thompson (by his counsel Mr. Stéphane Émard-Chabot, Sicotte Guilbault LLP)

The Committee received written submissions from Mr. Thompson's counsel, Mr. Stéphane Émard-Chabot, dated 9 September, 2024, as well as oral submissions. Mr. Thompson submitted that the Committee should not commence legal proceedings.

Mr. Thompson raised a preliminary concern over the fairness of the Committee's decision to deny his adjournment request in his written submissions. Mr. Émard-Chabot did not raise this point in oral submissions.

1. Re-used Signs:

Mr. Thompson admitted to an error in the reported value of re-used campaign signs. Initially, a placeholder value of \$100 was used, which was intended to be updated with the actual cost once determined. The actual cost, confirmed as \$244.60, was independently verified by the auditor. By placing a temporary figure, Mr. Thompson states that he clearly indicated his awareness of the obligation to declare the value of the re-used signs. Mr. Thompson claims this error was in good faith, and was a simple oversight rather than a deliberate attempt to misrepresent campaign finances.

2. Contribution by Mr. Thompson's Spouse:

The audit found that a donation from Mr. Thompson's spouse was recorded but misclassified. Although the full amount was reported correctly, it was not listed under the appropriate category of "candidate and spouse." Mr. Thompson maintains this mistake was clerical in nature and not indicative of any intent to evade donation limits.

3. Calculation Errors:

Two calculation errors were identified: bank charges were overstated by \$34.05, and miscellaneous purchases were understated by \$5.91. Mr. Thompson claimed that these discrepancies are relatively small and do not suggest any deliberate attempt to misrepresent expenses. The nature of these errors—one overestimating and one underestimating—further supported the argument that they were unintentional.

4. Missing Receipt:

A single receipt for \$21.95 was missing from Mr. Thompson's records. While this is a compliance issue, Mr. Thompson claimed that it is not unexpected in a volunteer-run campaign. The absence of this receipt does not substantially impact the overall integrity of the financial reporting.

With respect to the public interest factor, in particular the need for accountability and general deterrence, Mr. Émard-Chabot pointed out that this process has put Mr. Thompson under intense public scrutiny. He submitted that the audit itself, coupled with the procedures leading up to it, have served the public interest sufficiently. He further noted that the Committee would be sending the wrong message to those who might participate in municipal politics if they fear prosecution for even the slightest errors that do not impact on the integrity of the election process.

In conclusion, Mr. Thompson acknowledged the errors and the importance of accurate reporting; however, Mr. Thompson claims the errors identified are minor compared to the overall campaign budget of \$18,701.13, which he submits represent just 1.1% of the total expenditure. Mr. Thompson claims these errors do not significantly affect the integrity of the campaign's financial statements because he was never close to exceeding the statutory spending limit.

Regarding the nature of the mistakes, these errors, individually or as an aggregate, do not pass the quantitative or qualitative thresholds of "materiality" because the errors would not objectively lead someone to question the overall validity or reliability of Mr. Thompson's filings. The errors, while acknowledged, are not of a magnitude that would justify further legal proceedings.

Mr. Thompson submits that his campaign finances have been thoroughly vetted, through Mr. Thompson's own auditor, scrutiny by the public, and the extensive work leading to the Compliance Report. Mr. Thompson submitted that commencing legal action would serve no purpose and respectfully requests that the Committee not proceed further with this complaint.

Analysis and conclusion

The Committee has considered all of the evidence and the parties submissions. Although the evidence shows Mr. Thompson's campaign finance reporting was clearly and admittedly inaccurate, we do not believe commencing legal proceedings is appropriate in these circumstances.

Given this conclusion, there is no need to address his procedural fairness argument.

With respect to the nature and gravity of the apparent violations, be they financial or merely clerical, they all fall within the de minimis threshold. As Mr. Émard-Chabot rightly pointed out, the evidence suggests that Mr. Thompson's reporting errors amount to approximately 1% of his total campaign expenses. Further, on no reading of the evidence before the Committee would it be possible to conclude that Mr. Thompson, actually or apparently, exceeded the spending limit imposed under the MEA.

These violations are not of the sort that call into question whether the Candidate's inaccurate reporting might have had any real and tangible effect on the election itself. This is distinguishable from, for example, instances in which a candidate gains an unfair advantage by exceeding a spending limit, which casts doubt on whether the election's outcome might well have been different absent the violation.

We pause to note that the Auditor, Raymond Chabot Grant Thornton, did not assess the fair market value of the reused signs. We recognize that factors might have prevented the Auditor from assessing the reused signs' fair market value down to the penny. However, in our view, the Auditor should have attempted to provide its opinion on fair market value, at least on the material value of a single sign so that the Committee could consider that figure together with the other evidence on the record (i.e., evidence of the number of signs used). As it did not, we are left with Mr. Thompson's evidence of the sign value, which he obtained from his provider, Hawley Signs. We accept that evidence.

With respect to safeguarding the public interest, the public interest in assuring accountability and transparency has been served. Mr. Thompson has been in municipal politics for 40 years. He made mistakes in his Form 4 financial statement. Those mistakes have been scrutinized by the public, the Auditor and this Committee. Again, had Mr. Thompson's violations been of a sort that could, in the eyes of a reasonable member of the public, impact the integrity of the election process, our decision might have been different. This is not the case.

The Committee has considered carefully the nature of the apparent contraventions at issue against the cost to both the public and Mr. Thompson associated with legal proceedings. In the result, the Committee is driven to the conclusion that, weighing these factors, the public interest

is best served by not commencing legal proceedings in these circumstances.

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*, should compliance audit application(s) or auditor report(s) be received.

The meeting adjourned at 4:08 pm.

E. Pelot, Committee Coordinator

Chair Timothy Cullen