

# Municipal Election Compliance Audit Committee Report

6th Meeting of the Municipal Election Compliance Audit Committee  
October 23, 2020  
Committee Room #5

Attendance: A. Wright (Chair), D. Ross, C. Scrimgeour and C. Saunders  
(Secretary)

Also Present: M. Butlin, S. Corman, W. Molson, Auditor and J.  
Raycroft.

## 1. Call to Order

### 1.1 Disclosures of Pecuniary Interest

That it BE NOTED that no pecuniary interests were disclosed.

## 2. Consent

### 2.1 5th Report of the 2018 Municipal Election Compliance Audit Committee

ROSS AND SCRIMGEOUR

That the 5th Report of the 2018 Municipal Election Compliance Audit  
Committee, from the meeting held on July 26, 2019 BE APPROVED.

Motion Passed

## 3. Items for Discussion

### 3.1 Staff Report - Auditor's Report - Compliance Audit of Mayoral Candidate Paul Paolatto for the 2018 City of London Municipal Election

ROSS AND SCRIMGEOUR

That the following actions be taken with respect to the Auditor's Report  
regarding 2018 Mayoral Candidate Paul Paolatto:

a) the staff report dated October 23, 2020 entitled "Auditor's Report –  
Compliance Audit of Mayoral Candidate Paul Paolatto for the 2018 City of  
London Municipal Election", including the Auditor's Report of William  
Molson, CPA, CA appended as Appendix "A" to the staff report, BE  
RECEIVED;

b) the City Clerk BE DIRECTED to prepare a decision of the 2018  
Municipal Election Compliance Audit Committee (Committee) pursuant to  
section 88.33(17) of the Municipal Elections Act, 1996 with respect to the  
Committee's consideration of the Auditor's Report submitted by William  
Molson and written submission from the Applicant, Lincoln John  
McCardle, that outlines the reasons for the Committee's decision not to  
commence legal proceedings against the Candidate as the apparent  
contraventions identified in the Auditor's Report are de minimis in nature  
and that neither the public interest nor any municipal purpose would be  
served by commencing legal proceedings against the Candidate for the  
apparent contraventions;

it being noted that the Committee received verbal overview of the Auditor's  
Report from the Auditor, William Molson, with respect to this matter.

Motion Passed

**4. Deferred Matters/Additional Business**

None.

**5. Adjournment**

ROSS AND SCRIMGEOUR

That the meeting of the 2018 Municipal Election Compliance Audit Committee BE  
ADJOURNED.

Motion Passed

The meeting adjourned at 3:02 PM.

## **5TH REPORT OF THE**

### **2018 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE**

Meeting held on July 26, 2019, commencing at 10:00 AM, in Committee Room #5, Second Floor, London City Hall.

**PRESENT:** A. Wright (Chair), D. Ross, C. Scrimgeour and C. Saunders (Secretary)

**ALSO PRESENT:** M. Butlin, K. Campbell, S. Corman, C. Hill and J. Raycroft.

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#### **1. CALL TO ORDER**

##### 1.1 Disclosures of Pecuniary Interest

That it BE NOTED that A. Wright disclosed conflict of interest on Item 3.4 of this Report, although not pecuniary in nature, as the subject Respondent is represented by Siskinds Law Firm.

#### **2. CONSENT ITEMS**

##### 2.1 4th Report of the 2018 Municipal Election Compliance Audit Committee

SCRIMGEOUR AND ROSS

That the 4th Report of the 2018 Municipal Election Compliance Audit Committee, from the meeting held on June 27, 2019 BE APPROVED.  
CARRIED

#### **3. ITEMS FOR DISCUSSION**

##### **IN CLOSED SESSION**

SCRIMGEOUR AND ROSS

That the 2018 Municipal Election Compliance Audit Committee (Committee) rise and go In Closed Session, for the purpose of deliberating with respect to the Application by Stephen Turner for Compliance Audit of Amir Farahi and the Application by Stephen Turner for Compliance Audit of Blackridge Strategies. CARRIED.

The Committee rises and goes In Closed Session at 11:40 AM.

The Committee, In Closed Session, rises at 11:58 AM and reconvenes at 12:00 PM.

##### 3.2 Application by Stephen Turner for Compliance Audit of Amir Farahi

SCRIMGEOUR AND ROSS

That the City Clerk BE DIRECTED to prepare a decision of the 2018 Municipal Election Compliance Audit Committee (Committee) with respect to the Application by Stephen Turner for Compliance Audit (Application) of Amir Farahi (Respondent) that outlines the reasons for the Committee's decision to reject the Application and not to order a compliance audit in accordance with the *Municipal Elections Act, 1996* as the Committee determined that they do not have jurisdiction to deal with the Application given that the Respondent did not register as a third party advertiser during the 2018 Municipal Election;

it being noted that the Committee received verbal presentations from Stephen Turner and Agent for the Respondent, with respect to this matter. CARRIED

3.3 Application by Stephen Turner for Compliance Audit of Blackridge Strategy

SCRIMGEOUR AND ROSS

That the City Clerk BE DIRECTED to prepare a decision of the 2018 Municipal Election Compliance Audit Committee (Committee) with respect to the Application by Stephen Turner for Compliance Audit (Application) of Blackridge Strategy (Respondent) that outlines the reasons for the Committee's decision to reject the Application and not to order a compliance audit in accordance with the *Municipal Elections Act, 1996* as the Committee determined that they do not have jurisdiction to deal with the Application given that the Respondent did not register as a third party advertiser during the 2018 Municipal Election;

it being noted that the Committee received verbal presentations from Stephen Turner and Agent for the Respondent, with respect to this matter. CARRIED

Appointment of Acting Chair

SCRIMGEOUR AND WRIGHT

That D. Ross BE ELECTED as Acting Chair for the portion of the July 26, 2019 Meeting of the 2018 Municipal Election Compliance Audit Committee as it relates to Item 3.4 related to the Application by Stephen Turner for Compliance Audit of Barry Phillips. CARRIED

At 12:34 PM, A. Wright leaves the meeting.

3.4 Application by Stephen Turner for Compliance Audit of Barry Phillips

SCRIMGEOUR AND ROSS

That the City Clerk BE DIRECTED to prepare a decision of the 2018 Municipal Election Compliance Audit Committee (Committee) with respect to the Application by Stephen Turner for Compliance Audit (Application) of Barry Phillips (Respondent) that outlines the reasons for the Committee's decision to reject the Application and not to order a compliance audit in accordance with the *Municipal Elections Act, 1996* as the Committee determined that they do not have jurisdiction to deal with the Application given that the Respondent did not register as a third party advertiser during the 2018 Municipal Election;

it being noted that the Committee received verbal presentations from Stephen Turner and the Respondent, with respect to this matter. CARRIED

At 12:38 PM A. Wright enters the meeting.

**IN CLOSED SESSION**

SCRIMGEOUR AND ROSS

That the 2018 Municipal Election Compliance Audit Committee (Committee) rise and go In Closed Session, for the purpose of deliberating with respect to the Application by Bill Armstrong for Compliance Audit of Shawn Lewis. CARRIED.

The Committee rises and goes In Closed Session at 12:39 PM

The Committee, In Closed Session, rises at 1:08 PM and reconvenes at 1:10 PM.

3.1 Application by Bill Armstrong for Compliance Audit of Shawn Lewis

SCRIMGEOUR AND ROSS

That the City Clerk BE DIRECTED to prepare a decision of the 2018 Municipal Election Compliance Audit Committee (Committee) with respect to the Application by Bill Armstrong for Compliance Audit (Application) of Shawn Lewis (Candidate) that outlines the reasons for the Committee's decision to reject the Application and not to order a compliance audit in accordance with the *Municipal Elections Act, 1996* as there was insufficient credible information provided to support an audit and therefore there are no reasonable grounds that the Candidate has contravened a provision of the *Municipal Elections Act, 1996* relating to election campaign finances and an audit would not be in the public interest;

it being noted that the Committee received verbal presentations from Bill Armstrong and Shawn Lewis and the attached written submissions from Bill Armstrong and Shawn Lewis with respect to this matter. CARRIED

**4. DEFERRED MATTER/ADDITIONAL BUSINESS**

None.

**5. ADJOURNMENT**

SCRIMGEOUR AND ROSS

That the meeting of the 2018 Municipal Election Compliance Audit Committee BE ADJOURNED. CARRIED

The meeting adjourned at 1:12 PM.

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Andrew Wright, Chair

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Dan Ross, Member and Acting Chair (Item 3.4)

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Christene Scrimgeour, Member

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Catharine Saunders, Secretary

<b>TO:</b>	<b>2018 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE MEETING ON OCTOBER 23, 2020</b>
<b>FROM:</b>	<b>CATHY SAUNDERS CITY CLERK</b>
<b>SUBJECT:</b>	<b>AUDITOR'S REPORT – COMPLIANCE AUDIT OF MAYORAL CANDIDATE PAUL PAOLATTO FOR THE 2018 CITY OF LONDON MUNICIPAL ELECTION</b>

<b>RECOMMENDATION</b>
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That, the following actions be taken with respect to the Auditor's Report regarding 2018 Mayoral Candidate Paul Paolatto:

- a) that the attached Auditor's Report of William Molson, CPA, CA (Appendix "A") dated September 30, 2020 entitled "Municipal Election Compliance Audit of the Campaign Finances of Candidate Paul Paolatto", BE RECEIVED; and
- b) the City Clerk BE ADVISED pursuant to section 88.33(17) of the *Municipal Elections Act, 1996*, of the 2018 Municipal Election Compliance Audit Committee decision after considering the Auditor's Report noted in a) above, as to whether a legal proceeding should be commenced against 2018 Mayoral Candidate Paul Paolatto for an apparent contravention.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Compliance Audit Committee – May 3, 2019 – Selection of an Auditor to conduct Compliance Audit under the *Municipal Elections Act, 1996*.

Compliance Audit Committee – May 17, 2019 – Appointment of an external auditor for conducting Compliance audits of 2018 municipal election campaign finances.

<b>BACKGROUND</b>
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The 2018 Municipal Election Compliance Audit Committee (the "Committee") is established pursuant to the *Municipal Elections Act, 1996* (the "Act"). Pursuant to Section 88.33(7) of the Act, the Committee shall consider applications by electors for an audit of candidates' or registered third party advertisers' election campaign finances.

At its' meeting held May 3, 2019, after reviewing the documentation submitted and hearing oral submissions from Lincoln McCardle (the "Applicant"), the Committee granted an application for a compliance audit of the election campaign finances of Paul Paolatto (the "Candidate") with respect to the Candidate's 2018 City of London mayoral campaign.

Pursuant to Section 88.33(10) of the Act, the Committee was required to appoint an Auditor to conduct the compliance audit. The Committee appointed William Molson, CPA, CA (the "Auditor"), at its meeting on May 17, 2019. At this meeting, the Committee further directed and authorized the City Clerk to take the necessary actions to negotiate a contract with the Auditor to carry out compliance audits in response to the decisions of the 2018 Municipal Election Compliance Audit Committee.

The Auditor was retained as directed and has completed the compliance audit. The Auditor provided a copy of the compliance audit report (the "Auditor's Report") to the Applicant, the Candidate, and to the City Clerk's Office on September 30, 2020. The City Clerk submitted the Auditor's report to the Committee on October 1, 2020 within 10 days of receiving it, as required by Section 88.33(14) of the Act. Accordingly, the 30-day timeline under Section 88.33(17) of the Act for the Committee to consider and decide this matter expires on October 30, 2020.

Attached as Appendix "A" to this report is the Auditor's Report, dated September 30, 2020, prepared pursuant to Section 88.33(12) of the Act, for the Committee's consideration.

## DISCUSSION

The determination to commence a legal proceeding against the Candidate rests entirely with the Committee and, as such, this report does not comment on or make any recommendations pertaining to the appended Auditor's Report.

The Act requires that the Committee consider the Auditor's Report and, if the Report concludes that the Candidate appears to have contravened a provision of the Act relating to election campaign finances, the Committee shall decide whether to commence a legal proceeding against the Candidate for the apparent contravention.

Should the Committee decide to commence legal proceedings against the Candidate, the City Clerk shall carry out the required steps to implement the Committee's decision, pursuant to Section 88.37(6) of the Act. Where a decision by the Compliance Audit Committee to commence legal proceedings has been made, best practice for municipalities is to appoint an independent, external prosecutor to represent the Committee in the matter.

Once the prosecutor has been retained, they will be required to review the records related to this matter, and use their professional discretion to determine whether or not to initiate legal action. The prosecutor must exercise their decision impartially and must take into consideration things such as public interest and reasonable prospect of conviction based on the available evidence and circumstances of the matter.

## FINANCIAL IMPLICATIONS

In accordance with Section 88.33(16) the City of London shall pay the Auditor's costs of performing the audit. Should the Committee decide to commence legal proceedings, the City shall be responsible for the prosecutor's costs, in accordance with Section 88.37(7) of the Act. In accordance with the Municipal Election Compliance Audit Committee Terms of Reference, costs will be funded from the Elections Reserve.

## CONCLUSION

### **Next Steps of 2018 Municipal Election Compliance Audit Committee:**

Upon receiving the Auditor's Report, the 2018 Municipal Election Compliance Audit Committee is directed under the Act to undertake the following:

88.33(17) The committee shall consider the report within 30 days after receiving it and, if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, the committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention. 2016, c. 15, s. 63.

88.33(18) The decision of the committee under subsection (17), and brief written reasons for the decision, shall be given to the candidate, the clerk with whom the candidate filed his or her nomination, the secretary of the local board, if applicable, and the applicant. 2016, c. 15, s. 63.

**Note:** The 30-day timeline under the *Municipal Elections Act, 1996* for the Committee to consider and decide this matter expires on October 30, 2020.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>JEANNIE RAYCROFT MANAGER, LICENSING AND ELECTIONS</b>	<b>SARAH CORMAN MANAGER, LICENSING AND ELECTIONS</b>
<b>RECOMMENDED BY:</b>	
<b>CATHARINE SAUNDERS CITY CLERK</b>	



## APPENDIX "A"

Municipal Election Compliance Audit  
The City of London  
Candidate Paul Paolatto – Election of October 22, 2018

# Report for the Council of The City of London

## Municipal Election Compliance Audit of the Campaign Finances of Candidate Paul Paolatto

### Contents

1. Summary of findings
2. Introduction and background, including list of issues identified by Applicant
3. Audit approach and procedures, and certain implications
4. Findings with respect to issues identified by Applicant
5. Other findings
6. Treatment of Surplus (or Deficit) for the Campaign
7. Restrictions and limitations

Appendix A – Amounts reported in Financial Statement (as Filed and as Adjusted)

Appendix B – Auditor's credentials

*William Molson CPA, CA*  
*Licensed Public Accountant*  
*September 30, 2020*

## **INDEPENDENT AUDITOR’S REPORT ON COMPLIANCE WITH THE REQUIREMENTS OF THE MUNICIPAL ELECTIONS ACT, 1996**

To: Paul Paolatto, Candidate;  
Cathy Saunders, City Clerk of the City of London;  
Lincoln John McCardle, Applicant.

### **1. Summary of findings**

- 1.1. The Candidate complied with the requirements of the *Municipal Elections Act, 1996* (‘the *Act*’) with respect to the issues raised by Lincoln McCardle (“McCardle” or “the Applicant”), as set out in section 4 below.
- 1.2. The Candidate apparently contravened the *Act* in respect of certain requirements, as set out in section 5 below. Certain contributions and certain campaign expenses were incorrectly calculated and reported.
- 1.3. The Candidate exceeded the limit on contributions that he was entitled to make to his own campaign for the office of Mayor, by \$693.33.
- 1.4. The Candidate’s records were organized, well maintained, and generally consistent with the requirements of the *Act*. The Candidate cooperated fully with the compliance audit process.
- 1.5. Appendix A provides a copy of the Financial Statement as filed, and as adjusted by the findings in this report, in summary form.

### **2. Introduction and background, including list of issues identified by Applicant**

- 2.1. Paul Paolatto (“Paolatto” or “the Candidate”) filed his nomination for election as Mayor on May 1, 2018 in the election to be held October 22, 2018.
- 2.2. Paolatto was not elected as Mayor in that election.
- 2.3. Paolatto filed the Financial Statement for the campaign period from May 1, 2018 to December 31, 2018 on March 28, 2019 and attested that to the best of his knowledge, it was true and correct.
- 2.4. Paolatto’s Financial Statement reported *Total Campaign Income*<sup>1</sup> of \$91,403.34, *Expenses subject to general spending limit*, of \$91,402.67, and *Expenses not subject to spending limits*, of \$2,260.00, with a resulting *Deficit for the campaign* of \$2,259.33. Paolatto’s *Spending limit - General* (i.e. the maximum amount of qualifying expenses that he was permitted to incur) was \$223,931.25.

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<sup>1</sup> In this report certain terms may be italicized as a means of emphasizing that the item is specifically identified in the Financial Statement or the *Act*.

2.5. McCardle submitted to the City of London an application for a compliance audit on April 3, 2019 setting forth the grounds for believing that Paolatto had contravened the *Act* in respect of election campaign finances. The Application cited sections 88.24 and 88.22, which govern the determination of the campaign period, and the duties of a candidate, respectively. Specifically, the Applicant alleged that:

2.5.1. Paolatto had “a lengthy and expensive ‘pre-campaign campaign’ prior to his nomination as a candidate on May 1, 2018 that included, but was not limited to: billboards, a website, social media and bu[s] shelter ads”;

2.5.2. Paolatto had incurred campaign expenses, such as registration of the web domain “PaolattoforMayor.com”, and purchased signs and promotional T-shirts, prior to his nomination as a candidate on May 1, 2018.

2.6. The Municipal Election Compliance Audit Committee of the City of London determined that a compliance audit in respect of the municipal election campaign finances of Paolatto be carried out and on May 17, 2019 appointed William Molson CPA, CA to do so in accordance with subsection 88.33(10) of the *Act*. Appendix B provides a summary of the auditor’s credentials.

### **3. Audit approach and procedures, and certain implications**

3.1. In accordance with subsection 88.33(12) of the *Act* the objective of my compliance audit is to conduct an audit and report “any apparent contravention by the candidate”.

3.2. My audit procedures included the following: a review of the Financial Statement as filed with the Clerk’s Office; ongoing review of the *Act*, the 2018 Candidates’ Guide for Ontario Municipal and School Board Elections<sup>2</sup>, and “London Votes – Candidate Information Package – 2018 Municipal Election”; consultation with subject-matter experts; interviews and examination of documents and financial and other records provided by the Applicant, the Candidate, and other persons where considered potentially to have information relevant to the audit; ongoing email and telephone exchanges with the above; public information; and preparation of my report.

3.3. Significantly, item 3.1 above means that the scope of my engagement is to audit and report not only with regard to the specific issues identified by the Applicant, but also with regard to any other apparent contravention which might come to my attention during the audit. Consequently, as is the present case, it is possible to conclude and report that while the Candidate did not apparently contravene the *Act* as alleged by the Applicant, other apparent contraventions had taken place. Further, it is important to recognize that any such apparent contraventions may subsequently be determined not to be actual contraventions.

In so doing, it is important to apply the term “apparent” consistently throughout the report and with a clear definition of the word in mind. Relevant modern definitions of the word “apparent” include that which is evident, plain, clear, or obvious, and also that which appears to the senses or mind, as distinct from though not necessarily opposed to, what really is the case.

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<sup>2</sup> This guide “is a plain language guide for candidates and voters [that] does not have the force of law”. Jackson v. Vaughan (City), 2009 CarswellOnt 1490, [2009] O.J. NO. 1057, 176 A.C.W.S. (3d) 384, 59 M.P.L.R. (4<sup>th</sup>) 55 at para 14.

#### 4. Findings with respect to issues identified by Applicant

##### 4.1. Promotional activities prior to May 31, 2018

4.1.1. In 2017 Paolatto began activities to promote public awareness and discussion of civic issues that he thought important to residents of the City of London. This included “The Paolatto Report”, an internet blog.<sup>3</sup> Paolatto considered this to be an effective means of “getting ideas out” and estimated that he has written approximately 50 blog posts since its commencement.

4.1.2. Paolatto states that he met with the City Clerk’s Office of the City of London to proactively seek clarity regarding specific provisions of the *Act*, and share his intention to initiate and advertise an online blog. Paolatto’s understanding from that meeting was that advertising a blog or other digital property was not in contravention of the *Act*, provided there was no reference to a particular candidacy.

4.1.3. In October, 2017 Paolatto rented three billboards for the month, and a number of bus shelter ads, to promote the blog. These costs have been estimated at approximately \$9,000 and were not included in the Financial Statement filed. One or more complaints were received that this might be considered “campaigning” for public office and hence reflect the incurring of “campaign expenses” outside of the election campaign period. This program was discontinued approximately six months prior to May 1, 2018, and its discontinuation connotes no admission of propriety, nor do I consider this to be an indication of an apparent contravention.

4.1.4. Also in October, 2017 Paolatto appeared on the Radio 980AM Craig Needles Show and was reported to have expressed an intention to run for the office of Mayor in 2018. Global News in October, 2017 reported that Paolatto, as well as the incumbent Mayor<sup>4</sup> and Mr. Cheng, “intends to run” for the office of Mayor.

4.1.5. Paolatto obtained a legal opinion, dated April 25, 2018 regarding his promotion of the blog, which opinion reads in part:

“Expenditures promoting your blog are not campaign expenses.

“Expenses associated with the promotion of the Paolatto Report do not represent costs incurred wholly or partly for the purpose of an election campaign. Your intention for the blog is to share with the public your views on matters of public interest and to stimulate discussion.

“The purpose of the [Municipal Elections] Act is not to make discussion or debate about matters of public interest the exclusive domain of candidates or to prohibit such discussions from taking place outside the campaign period.”

4.1.6. Paolatto met with the City Clerk’s Office prior to May 1, 2018 to discuss the blog The Paolatto Report. On January 19, 2018 the City Clerk wrote to Paolatto regarding his “recent activity as a potential candidate for the 2018 City of London Municipal Election.”

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<sup>3</sup> A blog is a regularly updated website or web page, typically one run by an individual or small group, that is written in an informal or conversational style.

<sup>4</sup> The incumbent mayor did not subsequently run for the office of Mayor in 2018.

This letter set out section 88.24 of the *Act*, which establishes the start and end of a campaign period, and section 88.20, which limits the incurring of candidate’s expenses to the campaign period, and did not discuss what constitutes a campaign expense or reference The Paolatto Report.

4.1.7. The question here is whether Paolatto incurred expenses under the *Act*, as defined in subsection 88.19(1), prematurely. Subsection 88.20(2) prohibits the incurring of an expense by a person or under the person’s direction, outside his campaign period, which in Paolatto’s case began May 1, 2018.

4.1.8. The determination of whether in publishing the blog posts, Paolatto incurred any expense, and if so, whether the content of the blog, and the billboard promotion was “wholly or in part for use in his or her election campaign”, involves a consideration of whether these activities were intended to promote, or had the effect of promoting, his election, or were to promote discussion of matters of public interest.

4.1.9. This consideration involves the weighing of a number of factors, including but not necessarily limited to, the nature and use intended of the particular expense; their relevance and proximity to the Candidate’s campaign period; the clarity of the circumstances; and the relation of the particular activities to the purpose of the *Act*.

4.1.10. Incumbents and media personalities have a pre-existing public profile which may be created or enhanced by their positions on matters of public concern. I do not think that the *Act* intends to deny persons who may or may not aspire to public office, the opportunity to engage in profile-building or to promote public discussion of matters of civic interest.

4.1.11. While there was likely a benefit to Paolatto in his subsequent election campaign commencing in May 2018, from the promotion of The Paolatto Report blog and associated media and other attention arising, Paolatto himself did not make reference to his subsequent campaign or specifically promote his subsequent candidacy. The evidence is that Paolatto was diligent in acquiring an understanding of the provisions of the *Act* and was careful to comply with it. The activities in question ceased approximately six months prior to the campaign period. Of particular importance is a recognition that, as expressed by legal counsel at 4.1.5 above, “The purpose of the *Act* is not to make discussion or debate about matters of public interest the exclusive domain of candidates or to prohibit such discussions from taking place outside the campaign period.”

4.1.12. Accordingly, I do not conclude that these activities prior to May 1, 2018 apparently contravene the *Act*.

#### 4.2. Promotional activities prior to May 31, 2018 – Sections 88.3 through 88.7

4.2.1. The Compliance Audit Committee in its May 3, 2019 Notice of Decision, which directed that a compliance audit be carried out, at paragraph 7 of the Reasons suggested that the definition of *election campaign advertisement* found at subsection 88.3(1) of the *Act*, should have some application to Paolatto’s activities before he filed his nomination as a candidate. The definition of *election campaign advertisement* is very broad and includes advertisements in any broadcast, print or other electronic medium.

The *Act* at sections 88.3 through 88.7 sets out rules regarding *election campaign advertisements*. These rules are in addition to the more general rules at sections 88.19 and 88.20 which regulate expenditures by “persons”. However, the rules at sections 88.3

through 88.7, are applicable to and limited to “candidate[s]”, and are intended to set out the regime applicable to third-party advertisers. The term “candidate” is defined in section 1(1) as “a person who has been nominated under section 33”. Paolatto was not a candidate prior to May 1, 2018 and accordingly the rules at sections 88.3 through 88.7 do not apply to his activities prior to that date, nor is it the intention of the *Act* that they should. I have obtained legal advice from outside counsel considered expert in the application of the *Act*, and this advice confirms this conclusion.

4.3. Facebook pages prior to May 1, 2018

4.3.1. Materials provided by the Applicant include several Facebook printscreens from September 12, 2017 onward entitled “Paul Paolatto for Mayor”, as evidence of Paolatto specifically campaigning for the office of Mayor.

4.3.2. My enquiries indicated that the name of a Facebook page can be changed with retroactive effect. Paolatto stated that he had been careful to effect such name changes only after his nomination as candidate.

4.3.3. Accordingly no apparent contravention is found.

4.4. Registration of the web domain “PaolattoforMayor.com” and purchase of signs and promotional T-shirts prior to May 1, 2018

4.4.1. Certain expenses related to the campaign launch event on May 2, 2018 were incurred immediately prior to registration on May 1, 2018 (see table below). While it may be difficult to find either fault or significant strategic advantage in holding an entirely appropriate event with campaign paraphernalia at hand immediately upon filing a nomination, the *Act* in its plain language prohibits the incurring of such expenses until the nomination has been filed, at subsections 88.20(1) and (2).

Invoice date	Expense item	Paid from the campaign?	Reported in Financial Statement?	Cost (\$)
April 27, 2018	Registration of Web domain	Yes	Yes	23.65
April 30, 2018	15 T-shirts	Yes	Yes	237.30
May 1, 2018	Signs	Yes	Yes	221.50
			Total	482.45

4.4.2. The incurring of these expenses, the timing, and their full and frank disclosure indicate no effort to hide their occurrence, nor do they suggest an understanding that the approach taken by Paolatto was anything less than proper. Nevertheless, my role requires me to evaluate whether this constitutes an “apparent contravention”, and I have sought and obtained legal advice in this respect. It is my understanding from that advice that it is not sufficient simply to apply statutory language literally in all cases. Rather, it is appropriate to look at the entire context, and consider adapting a literal interpretation in order to take into account the scheme and purpose of the *Act* and the Legislature’s intention regarding its finance provisions. I see those purposes as including public accountability, transparency and the establishment of a level playing field between candidates.

4.4.3. Specifically regarding the requirements that no one other than a candidate is to incur an election expense and that a candidate may not incur such an expense outside of the election period, I would see transparency and competitive fairness as the primary intentions at play. Although there may be arguments to be made to the contrary, I am of the view that there is no lack of transparency or unfair advantage obtained in incurring and then reporting purchases made immediately before a nomination is filed where the goods and services purchased are put to no use at all until the campaign period has commenced. This result is consistent with the generally accepted accounting treatment of such amounts which is to consider the expense to occur in the period of actual use. Accordingly, while it is conceivable that a contravention occurred, it is by no means apparent to me that this is necessarily the appropriate legal conclusion in the present circumstances, and therefore I do not find there to be an apparent contravention of the *Act* arising from these expenses for the website, T-shirts and signs.

## 5. Other findings

### 5.1. *Income and Expenses – Understatement of income and expense*

5.1.1. In September \$6,500 was paid by cheque from the campaign bank to the Candidate.

5.1.2. In the books of account, this \$6,500 payment was recorded as a reduction of the contributions that the Candidate had previously made to his campaign, and as a reduction of the total advertising expense by the same amount. As a result, contributions reported in the Financial Statement were reduced by \$6,500 and reported expenses were reduced by the same amount.

5.1.3. The *Act* contains no provision that might permit a campaign contribution made by the candidate to be returned to him prior to the election. It only permits a return of candidate contributions to the candidate under subsection 88.31(6) where, after the campaign period has ended (on December 31, 2018) the candidate has a surplus.

5.1.4. Based on discussion with the Candidate, the intention was to reimburse the Candidate for expenses incurred to date by way of credit card, and fund anticipated charges from Google for advertising. As of the date of the cheque, expenses incurred by credit card and not yet reimbursed totalled \$5,605.34. Charges from Google in the following weeks totalled an additional \$7,500.

5.1.5. Subsection 88.25(1) requires that a Financial Statement be filed “in the prescribed form” and subsection 92(1) makes it an offence to file a Financial Statement that is incorrect. The understatement of income and advertising expense is therefore an apparent contravention of the *Act*. This had no impact on the deficit reported.

### 5.2. *Income and Expenses – Understatement of income and expense*

5.2.1. During the course of the campaign, Paolatto made use of his personal cellphone. This has not been accounted for in the Financial Statement. Based on discussion, a value of \$30 per month has been estimated as appropriate.

5.2.2. This omission is an apparent contravention of subsection 92(1) of the *Act*. Expenses, and Contributions from the candidate, were under-reported by \$180. This had no impact on the deficit reported.

5.3. Income and Expenses – Overstatement of Income and Expense

5.3.1. In the course of ongoing discussion with the City Clerk’s Office prior to his nomination, Paolatto incurred \$2,900 in costs to obtain professional legal advice concerning the application of the *Act* to his activities, in particular The Paolatto Report. These costs were paid from the Campaign account and reported as an expense.

5.3.2. These costs relate to Paolatto’s efforts to ensure that his pre-nomination activities were in compliance with the requirements of the *Act*. In my opinion, they do not constitute an expense within the meaning of section 88.19.

5.3.3. The argument may be made that the amount paid was by default reimbursement of other costs incurred by the Candidate. Accordingly, Contributions from the candidate, and Expenses were over-stated by \$2,900, which is an apparent contravention of the *Act*. This had no impact on the deficit reported.

5.4. Contributions from the candidate – In excess of limit

5.4.1. It has been determined above that certain adjustments to the total amount of Contributions from the candidate reported in the Financial Statement are appropriate; specifically, increases of \$6,500 (the cheque referred to in 5.1 above) and \$180 (the cell phone usage referred to in 5.2 above) are in order, as well as a decrease of \$2,900 (legal fees discussed in 5.3 above), for a net increase of \$3,780, making the candidate’s total contributions to his campaign equal \$25,693.

5.4.2. Paragraph 88.9.1(1)(b) provides that a candidate and his or her spouse may not contribute more than \$25,000 to his or her campaign. Paolatto exceeded this maximum by \$693, which is an apparent contravention of the *Act*.

5.5. Income and Expenses – Misallocated Contributions

5.5.1. The books of account providing the basis for the preparation of the Financial Statement appear to have been constructed by accounting for expenses paid directly from the bank; adding other expenses incurred by personal credit card; and adding expenses not yet accounted for. My review of the records indicated that there was no duplication of expenses.

5.5.2. While there is a requirement at paragraph 88.22(1)(d) that payments for campaign expenses are to be made from the campaign accounts, many suppliers of services require immediate payment otherwise than by cheque, and use of credit cards is accepted on the understanding that the candidate should be promptly reimbursed from the campaign account. Similarly, as a matter of convenience, candidates and others may pay for expenses, such as office and other such supplies, by other means on the understanding that they are to be promptly reimbursed from the campaign bank account. As an alternative, the person may choose to make a “gift in kind” of the goods and services purchased, in which case the transaction value is recorded both as a contribution and as an expense.

5.5.3. The Financial Statement filed reported all contributions from the Candidate as being *Contributions in money*. However, based on my review of the financial records, and taking into account the adjustments made at 5.1 (\$6,500 cheque), 5.2 (cell phone) and 5.3



(legal fees) above, it appears that *Contributions in money* totalled \$11,610.10 and *Contributions in goods and services from candidate* totalled \$14,082.23.

5.5.4. The incorrect disclosure of the nature of these contributions in the Financial Statement filed is an apparent contravention of the *Act*. Subject to the adjustments at 5.1, 5.2 and 5.3 above, it otherwise has no impact on reported total contributions or the deficit.

#### 5.6. *Income and Expenses – Misallocated Expenses*

5.6.1. The prescribed Financial Statement separates Expenses into those *subject to the general spending limit*, those *subject to the spending limit for parties and other expressions of appreciation* and those *not subject to spending limits*. The purpose of this separation is to ensure that a campaign does not exceed set spending levels, and to promote a level playing field.

5.6.2. Where the expenses incurred on a campaign are substantially below the limits, it is not uncommon for all expenses other than the audit fee to be reported as *subject to the general spending limit*, leaving the audit fee alone as *not subject to spending limits*. This is not in accordance with the reporting requirements of the *Act*, which separates expenses into these three categories.

5.6.3. The Financial Statement filed by the Candidate reported all expenses, other than the audit fee, as *subject to the general spending limit*.

5.6.4. Of the expenses reported as *subject to the general spending limit*, the following reallocations were found to be appropriate:

- \$240.00 in Bank charges to *not subject to spending limits*
- \$391.93 in Other – Rent to *not subject to spending limits*
- \$266.75 in Other – Meals to Other – Vehicle expenses
- \$766.66 in Other – Meals to *subject to the spending limit for parties and other expressions of appreciation*

5.6.5. The incorrect disclosure in the Financial Statement filed is an apparent contravention of the *Act*. It otherwise has no impact on reported total expenses or the deficit.

#### 5.7. *Income and Expenses – Trivial adjustments*

5.7.1. Based on my procedures, further trivial adjustments of less than \$3 in aggregate were necessary to bring the Financial statements into apparent conformity with the requirements of the *Act*.

#### 5.8. *Compliance with other requirements at Section 88.22*

5.8.1. Subsection 88.22(1) sets out a number of duties that a candidate is required to observe with respect to the financial management of the campaign.

5.8.2. In the course of my procedures, it was noted that where campaign expenses were paid by electronic transfer directly from the campaign bank, and information evidently originating from the related receipts was recorded in the records, in a number of instances the underlying receipts themselves for smaller miscellaneous amounts were not kept. This is an apparent contravention of the *Act*. Nothing came to my attention that would suggest that information had not been recorded correctly.

5.8.3. As well, the candidate did not issue contribution receipts to himself relating to monetary and non-monetary contributions, as required by paragraph 88.22(f). This is an apparent contravention of the *Act*.

## 6. Treatment of Surplus (or Deficit) for the Campaign

Section 6.1 below provides a general discussion of selected significant changes in the *Act* from 2006 onwards. Section 6.2 discusses the application of this framework to the Candidate’s Financial Statement.

### 6.1. *Evolving legislation*

6.1.1. The Surplus or Deficit of a particular campaign is calculated by deducting the sum of total expenses and amounts properly returned<sup>5</sup> to the candidate, from total revenues. As well, for the 2018 election a transitional rule also allowed the deduction of any deficit from a previous campaign for the same office. The disposition of the surplus or deficit is subject to various rules including those set out in the table below. There have been significant changes over the past decade and consistent treatments of the surplus or deficit in financial statements as actually filed have not yet emerged.

	2006	2010	2014	2018	2022
<b>Definition of Surplus or Deficit</b>	79	79	79	88.31(1)	
<b>Can a Deficit be carried forward to the next election?</b>	Yes	Yes	Yes	No	Not anticipated
<b>Can a Deficit be carried forward from the previous election?</b>	Yes 79(3)	Yes 79(3)	Yes 79(3)	Yes 88.31(10) transitional rule	Not anticipated
<b>Is there a limit on Expressions of appreciation?<sup>6</sup></b>	No	No	No	Yes 88.20(9)	Anticipated

<sup>5</sup> These being the return of contributions permitted under subsection 88.31(6).

<sup>6</sup> Prior to the 2018 election, there was no separate spending limit for parties and other expressions of appreciation. This limit was introduced for the 2018 election to address an issue arising as a consequence of new rules first applicable in 2010. Prior to the 2010 election, surplus funds from a particular campaign were paid to and held in trust by the City Clerk, and returned to the candidate if he or she ran for the same office in a subsequent election. This allowed successively successful candidates to build up substantial “war chests” of funds for future use, which was perceived as conferring an unfair advantage upon incumbents. Accordingly, starting in 2010 surplus funds were payable to the City Clerk and were not made available for subsequent campaigns.

In apparent response, some candidates in the 2010 and 2014 election cycle held large parties and events after polling day or made gratuitous payments to third parties after polling day, thereby incurring correspondingly large expenses that were not subject to spending limits but reduced the calculated surplus and hence the amount otherwise payable to the City Clerk. In response to the view that this outcome was not in keeping with legislative intent, a separate spending limit for parties and other expressions of appreciation was introduced at subsection 88.20(9) and first applicable to the 2018 election. Amendments were made at the same time to the regulations under the *Act* setting that limit as 10% of the general spending limit.

<b>Who gets the Surplus?</b>	City Clerk holds in trust <sup>7</sup>	City Clerk holds in trust <sup>7</sup>	City Clerk <sup>7</sup>	City Clerk <sup>7</sup>	
<b>Are Surplus monies available for the next election?</b>	Yes 79(8)	No	No	No	Not anticipated

The above table presents the information in general form. References are to the legislation in force at December 31 of that year. For application to a specific situation, reference should be made to the specific legislative requirement as the above treatments may be subject to additional considerations.

If the result of the above calculation at 6.1.1 is greater than zero, there is a surplus, which is paid to the City Clerk upon filing the Financial Statement; by implication, once all the bills for the campaign are paid, and any permitted amounts are returned to the candidate, the funds remaining in the bank are enough, but not more than enough, to pay the City Clerk.<sup>8</sup> Up to and including the 2018 election, candidates were permitted to use a current surplus to repay themselves for deficits arising in a previous campaign for the same office, and deduct that from the amount payable to the City Clerk, but under current legislation this will not be the case in future.

If the calculated result at 6.1.1 is less than zero, there is a deficit; by implication, the funds remaining in the bank are not enough to cover remaining accounts payable from the campaign.

In some instances, historically, where the candidate had already paid the suppliers, a candidate might prefer to account for a deficit as a contribution in kind from the candidate, and the Financial Statement would show a surplus or deficit of Nil. In other instances, where a candidate intended to run in the following election and anticipated being able to repay himself the current deficit from a subsequent campaign for the same office, the deficit was reported as such. The financial statement for the subsequent election would incorporate the previously reported deficit and deduct this amount from any surplus amounts otherwise payable to the City Clerk, as described above.

Where the supplier of the goods and services had not been paid, the liabilities would be considered the responsibility of the candidate to pay; and could potentially be considered to be contributions from the supplier, with related contraventions of the *Act* arising. Discussion of these issues is beyond the scope of the current report.

<sup>7</sup> Portions of the surplus may be returned to a candidate in special circumstances, for example, where there are costs associated with a compliance audit (section 88.32).

<sup>8</sup> A vexatious issue in attempting to apply these provisions correctly arises from the fact that the campaign bank may remain open for some months after December 31 while bills are paid, amounts (if any) are returned to the candidate, and the audit completed, and during this period bank charges will likely continue to apply. Historically, some candidates cover this amount personally on the basis that it is beyond the delineated scope of the Act, while others will accrue an amount as at December 31 to cover these anticipated costs. The second treatment is not clearly consistent with legislative requirements.

6.1.2. For completeness of discussion, it is noted that under the new rules applicable to the 2018 election, candidates are no longer able to carry deficits forward to a subsequent campaign. As a result, while in previous campaigns an excess of expenses over revenues would commonly be reported as a deficit in order to facilitate its carry-forward to and recovery from a subsequent election campaign, this reasoning no longer applies.

6.2. Deficit reported by the Candidate

6.2.1. After giving effect to the adjustments identified above, the deficit calculated is \$2,260, being the cost of the audit only.

6.2.2. Paragraph 88.19(3)3 specifically includes audit fees in the definition of campaign expenses. Although subsection 88.20(2) prohibits a candidate from incurring expenses outside his campaign period, subsection 88.20(3) carves out an exception that explicitly permits audit expenses to be incurred after the campaign period has ended.

6.2.3. Since the audit necessarily takes place after the campaign period has ended, the logic behind this exception is clear. It follows, therefore, that since the candidate cannot accept contributions after the end of the campaign period (in this case December 31), and there is no requirement to retain a reserve in the campaign account to pay for a mandatory audit, it must be possible for a candidate to pay for that audit despite a lack of remaining campaign funds from which to do so. Accordingly, the payment of the audit expense by the candidate should not be considered a contribution governed by section 88.8 and 88.9.1.

6.2.4. I would therefore conclude that it was proper for the Candidate to calculate a deficit that is essentially equal to the audit expense, and that the Candidate properly reported the Deficit for his campaign.

**7. Restrictions and limitations**

7.1.1. This report was prepared for the City of London regarding the election finances of Paul Paolatto in the election held October 22, 2018, as requested by the Municipal Election Compliance Audit Committee of the City of London. This report is not to be used for any other purpose and I disclaim any responsibility for losses or damages incurred as a result of the use of this report for any other purpose.

7.1.2. I am under no obligation to review or revise the contents of this report in light of information that becomes known to me after the date of this report, although I reserve the right to do so.

Respectfully submitted

*William Molson CPA, CA*

Chartered Professional Accountant, Licensed Public Accountant

Licence # 1-18660

September 30, 2020

Toronto, Ontario

## APPENDIX A

### AMOUNTS REPORTED IN FINANCIAL STATEMENT (as Filed and as Adjusted)

<b>INCOME</b>			
Contributions in money from Candidate	21,913.33	5.1.2, 5.2.2, 5.3.3, 5.5.3	11,611.10
Contributions in goods and services from Candidate	-	5.3.3, 5.5.3	14,082.23
	<b>21,913.33</b>		<b>25,693.33</b>
Contributions from all others	69,490.01		69,490.01
	<b>91,403.34</b>		<b>95,183.34</b>
<b>EXPENSES</b>			
<b>Expenses subject to general limit</b>			
Advertising	34,625.41	5.1.2	41,125.41
Brochures/flyers	17,795.16		17,795.16
Signs	13,038.35	5.7.1	13,038.00
Meetings Hosted	2,057.81		2,057.81
Office expenses until voting day	4,806.14	5.7.1	4,807.16
Phone and/or internet expenses until voting day	3,356.39	5.2.1	3,527.68
Salaries, benefits until voting day	5,000.00		5,000.00
Bank charges until voting day	1,608.93	5.6.4	1,368.93
Other – Legal advice	2,900.00		-
Other – Vehicle expenses	628.90	5.6.4	895.65
Other – Rent	4,050.00	5.6.4	3,658.07
Other - Meals	1,535.58	5.6.4	502.17
	<b>91,402.67</b>		<b>93,776.04</b>
<b>Expenses subject to spending limit for parties and other expressions of appreciation</b>			
Volunteer appreciation meals after close of polls	-	5.6.4	<b>766.66</b>
<b>Expenses not subject to spending limits</b>			
Audit	2,260.00		2,260.00
Phone and/or internet expenses after voting day	-	5.2.1	8.71
Bank charges after voting day	-	5.6.4	240.00
Other – Rent after voting day	-	5.6.4	391.93
	<b>2,260.00</b>		<b>2,900.64</b>
	<b>93,662.67</b>		<b>97,443.34</b>
<b>DEFICIT FOR THE CAMPAIGN</b>	<b>(2,259.33)</b>		<b>(2,260.00)</b>

## **APPENDIX B**

### **AUDITOR’S CREDENTIALS**

#### **William Molson CPA, CA**

Will Molson is a licensed public accountant providing assurance and business advisory services primarily to not-for-profit organizations. His professional experience spans more than 30 years including 15 years in a large firm environment servicing small, medium and large domestic and international clients. He has significant experience in election audits, conducting government tax audits and managing tax appeals. He has audited approximately 500 election and riding association returns at the federal, provincial and municipal level, including 100 municipal returns.

Will is a Chartered Professional Accountant, Certified Public Accountant (Illinois), and Certified Management Accountant, and holds a Master’s in Business Administration and a Certificate in Dispute Resolution (University of Toronto).

Will is a member of the Public Accountants Council for the Province of Ontario; the Chartered Professional Accountants of Canada, Federal Elections Task Force Advisory Committee; the C.D. Howe Institute; and is past Chair of the Public Accounting Licensing Board of the Institute Chartered Professional Accountants of Ontario.



300 Dufferin Avenue  
P.O. Box 5035  
London, ON  
N6A 4L9

**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 Paolatto, 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;*

<b>Candidate:</b>	<b>Paul Paolatto</b>
<b>Applicant</b>	<b>Lincoln John McCardle</b>
<b>File No.</b>	<b>CAC-2019-L01-003</b>
<b>Meeting Date:</b>	<b>Friday, October 23, 2020</b>
<b>Meeting Location:</b>	<b>Committee Room #5 – 2<sup>nd</sup> Floor City Hall 300 Dufferin Avenue London, Ontario N6B 1Z2</b>

**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") dated September 30, 2020 in response to an application submitted by Lincoln John McCardle (the "Applicant") pertaining to the campaign finances of Paul Paolatto (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 and the written submission from the Applicant and considering appropriate provisions of the Act, it is the decision of the Compliance Audit Committee (the "Committee") that the apparent contraventions outlined in the Auditor's Report are *de minimis* in nature and that neither the public interest nor any municipal purpose would be served by commencing legal proceedings against the Candidate for the identified apparent contraventions. The Committee therefore does not authorize the commencement of such proceedings. Committee hereby decides not to commence legal proceedings against the Candidate for an apparent contravention of the provisions of the Municipal Elections Act, 1996 relating to election campaign finances.

## REASONS

The reasons for the decision are as follows:

1. In making the decision, the Committee acts primarily as a gatekeeper in determining whether legal proceedings should be undertaken and to see is that municipal finances 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(s) is in fact a contravention(s) of the Act. Some examples of public interest or useful municipal purpose given consideration by the Committee, include the following:
  - 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?
  - Was the apparent contravention deliberate and/or undertaken for personal benefit?
  - Was the apparent contravention a *de minimis* matter or was it something which, if determined to be a contravention, should be censured?
2. The Auditor's Report identified errors in the treatment and/or reporting of three or four items in the Financial Statement. In all cases, the incorrect reporting was off-setting and had no impact on the deficit reported in the Financial Statement filed by the Candidate. The Auditor's Report reported that these errors constituted an apparent contravention of the Act. Correcting the errors had the cumulative effect of increasing the contributions to \$95,183.34 and increasing campaign expenses that are subject to the campaign limit to \$93,776.04. With the adjustments arising from correcting these errors, the following apparent contraventions were identified:
  - the Candidate contributed to their own campaign \$693.00 more than the \$25,000 they and their spouse were permitted to contribute;
  - the Candidate did not issue themselves a receipt for the contributions they made to their own campaign as the Act requires; and
  - 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.
3. The Auditor's Report noted that in some instances, underlying receipts for smaller miscellaneous expenses were not retained. While the details of the expenses were recorded and the Auditor saw nothing to suggest the recorded information was not correct, the Act requires receipts to be retained. Failure to do so is an apparent contravention of the Act.
4. After considering the Auditor's Report under subsection 88.33(17) of the Act, hearing the verbal overview of the findings from the Auditor, the written submission from the Applicant and considering appropriate provisions of the Act, it is the decision of the Committee that the apparent contraventions outlined in the Auditor's Report are *de minimis* in nature and that neither the public interest nor any municipal purpose would be served by commencing legal proceedings against the Candidate for the identified apparent contraventions. The Committee therefore does not authorize the commencement of such proceedings.



DECISION  
Paolatto/McCardle

Page 3

The Committee is satisfied that it is within its discretion and consistent with its traditional gatekeeper role to determine whether the public interest would be served by the commencement of legal proceedings against the Candidate for an apparent contravention(s) of the Act. For the reasons herein set out, it is the Committee's decision that it is not in the public interest to commence a legal proceeding against the Candidate for the apparent contraventions of the Act relating to election campaign finances.

ISSUED by The Corporation of the City of London Compliance Audit Committee at London, Ontario, on October 29, 2020.

Compliance Audit Committee

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Andrew Wright, Chair

---

Dan Ross, Member

---

Christene Scrimgeour, Member



London  
CANADA

300 Dufferin Avenue  
P.O. Box 5035  
London, ON  
N6A 4L9

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*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;*

<b>Candidate:</b>	<b>Paul Paolatto</b>
<b>Applicant</b>	<b>Lincoln John McCardle</b>
<b>File No.</b>	<b>CAC-2019-L01-003</b>
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**DECISION**

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**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 and the written submission from the Applicant and considering appropriate provisions of the Act, it is the decision of the Compliance Audit Committee (the "Committee") that the apparent contraventions outlined in the Auditor's Report are *de minimis* in nature and that neither the public interest nor any municipal purpose would be served by commencing legal proceedings against the Candidate for the identified apparent contraventions. The Committee therefore does not authorize the commencement of such proceedings. Committee hereby decides not to commence legal proceedings against the Candidate for an apparent contravention of the provisions of the *Municipal Elections Act, 1996* relating to election campaign finances.

## REASONS

The reasons for the decision are as follows:

1. In making the decision, the Committee acts primarily as a gatekeeper in determining whether legal proceedings should be undertaken and to see is that municipal finances 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(s) is in fact a contravention(s) of the Act. Some examples of public interest or useful municipal purpose given consideration by the Committee, include the following:
  - 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?
  - Was the apparent contravention deliberate and/or undertaken for personal benefit?
  - Was the apparent contravention a *de minimis* matter or was it something which, if determined to be a contravention, should be censured?
2. The Auditor's Report identified errors in the treatment and/or reporting of three or four items in the Financial Statement. In all cases, the incorrect reporting was off-setting and had no impact on the deficit reported in the Financial Statement filed by the Candidate. The Auditor's Report reported that these errors constituted an apparent contravention of the Act. Correcting the errors had the cumulative effect of increasing the contributions to \$95,183.34 and increasing campaign expenses that are subject to the campaign limit to \$93,776.04. With the adjustments arising from correcting these errors, the following apparent contraventions were identified:
  - the Candidate contributed to their own campaign \$693.00 more than the \$25,000 they and their spouse were permitted to contribute;
  - the Candidate did not issue themselves a receipt for the contributions they made to their own campaign as the Act requires; and
  - 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.
3. The Auditor's Report noted that in some instances, underlying receipts for smaller miscellaneous expenses were not retained. While the details of the expenses were recorded and the Auditor saw nothing to suggest the recorded information was not correct, the Act requires receipts to be retained. Failure to do so is an apparent contravention of the Act.
4. After considering the Auditor's Report under subsection 88.33(17) of the Act, hearing the verbal overview of the findings from the Auditor, the written submission from the Applicant and considering appropriate provisions of the Act, it is the decision of the Committee that the apparent contraventions outlined in the Auditor's Report are *de minimis* in nature and that neither the public interest nor any municipal purpose would be served by commencing legal proceedings against the Candidate for the identified apparent contraventions. The Committee therefore does not authorize the commencement of such proceedings.

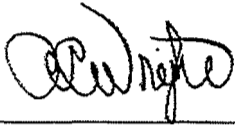
DECISION  
Paolatto/McCardle

Page 3

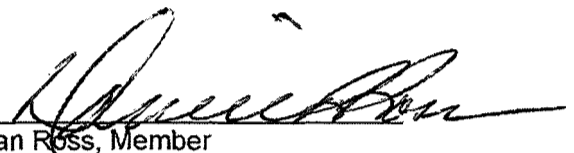
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ISSUED by The Corporation of the City of London Compliance Audit Committee at London, Ontario, on October 29, 2020.


Compliance Audit Committee



Andrew Wright, Chair



Dan Ross, Member

  
Christene Scrimgeour, Member

**City of London 2018 Municipal Election Compliance Audit Committee**

**RE: Compliance Audit of Paul Paolatto’s election campaign**

I would like to begin by thanking Mr. Molson, the City of London staff and members of this committee for their time, energy and deliberation in this matter. My apologies for not attending in person – it is purely related to the ongoing pandemic and should not reflect on the importance with which I regard today’s considerations. Additionally, I want to publicly state that I hope Mr. Paolatto in no way considers my actions to date as anything personal as this was always solely about maintaining the integrity of the *Municipal Elections Act, 1996* and I wish him nothing but the best in his future endeavours. It is possible to disagree with someone without disliking them and that is the case here. I have heard from multiple people whose opinion I trust that Mr. Paolatto is a good and well-intentioned man and I have no reason to believe this not to be the case. Be further notified that I still fundamentally disagree with Mr. Molson’s conclusion that Mr. Paolatto did not apparently contravene sections of the *Act* as I alleged and find little solace that as part of the subsequent audit apparent contraventions had taken place. While the auditor’s report appears to mostly vindicate his actions in regards to what I have previously termed his ‘pre-campaign campaign’ I maintain that these activities, if they do not contravene the letter of letter of the law, certainly in my opinion, seem to contradict the spirit of it – and perhaps even set a dangerous precedent for future municipal elections.

I would like to begin by redirecting your attention to Mr. Molson’s report – specifically section 4.4.1:

*4.4. Registration of the web domain “PaolattoforMayor.com” and purchase of signs and promotional T-shirts prior to May 1, 2018*

4.4.1. Certain expenses related to the campaign launch event on May 2, 2018 were incurred immediately prior to registration on May 1, 2018 (see table below). While it may be difficult to find either fault or significant strategic advantage in holding an entirely appropriate event with campaign paraphernalia at hand immediately upon filing a nomination, the *Act* in its plain language prohibits the incurring of such expenses until the nomination has been filed, at subsections 88.20(1) and (2).

Invoice date	Expense item	Paid from the campaign?	Reported in Financial Statement?	Cost (\$)
April 27, 2018	Registration of Web domain	Yes	Yes	23.65
April 30, 2018	15 T-shirts	Yes	Yes	237.30
May 1, 2018	Signs	Yes	Yes	221.50
			Total	482.45

I am frankly baffled as to why Mr. Molson appears to gloss over this. Initially I believed it was an attempt to appear impartial yet upon a deeper reading, I am less convinced this is case. This is simply not a matter that is open to nuanced interpretation – *Municipal Elections Act, 1996* clearly states it in black and white and the fact that these expenses were incurred immediately prior to registration makes little difference. What if it were a few days? Or months or years? I ask you to contemplate that if May 1, 2018 was not in fact the clear deadline than what date was – and what does that look like going forward with future municipal elections? When Mr. Molson states that he ‘see[s] those purposes as including public accountability, transparency and the establishment of a level playing field between candidates’ he is suggesting that choose not to consider subsections 88.20(1) and (2) of the *Act*. I hope and trust that you will choose not to do this. Perhaps he is proposing the argument that ‘well, everyone is doing it’ which I believe is actually more troubling, not less. I am swayed even less by the argument that a ‘full and frank disclosure’ somehow should forgive these transgressions. I ask you to consider making the argument in court that your client should have the charges dropped because they maintained eye contact with the store clerk and stated ‘I am shoplifting’ while conducting the act. I am in no equating the acts – only using a similar scenario to illustrate the weakness of this argument. Not only is it sufficient to ‘apply statutory language literally’ – it is in fact exactly the basis of our legal system. I undertook this difficult and arduous process mainly due to the fact that from the onset I was of the opinion that the candidate spent money prior to his nomination on May 1, 2018 and on this point, it seems that all parties have reached complete agreement. Even if you decide to overlook the lengthy and expensive ‘pre-campaign campaign’ (which given the process to date I suspect that you are), I do hope you will consider enforcing what appears to be clear and direct contravention of the *Act*.

I will only quickly touch upon the ‘Overstatement of Income and Expense’ section of the report because while there appears to some misallocations and technicalities I believe Mr. Molson has a deeper understanding and his explanation is sufficiently in-depth that there is little useful information I could add given my level of expertise on the subject matter or processes. To summarize, The Candidate apparently contravened the *Act* in respect of certain requirements, as set out in section 5 of the findings, certain contributions and certain campaign expenses were incorrectly calculated and reported. That being said, there is however one specific item that I do ask that you consider. Why is it exactly that Paolatto incurred \$2,900 in costs to obtain professional legal advice concerning the application of the *Act* to his activities, in particular The Paolatto Report? (These costs were paid from the campaign account and reported as an expense.) It seems that we are being asked to determine that ‘The Paolatto Report’ is both simultaneously somehow part and yet not a part of the campaign. If this were truly a separate and unrelated entity from the ensuing campaign as suggested then I would presume there should be no issue in deducting these costs that should have been paid by Mr. Paolatto personally – as were the rest of expenses that were associated with this activity? While I do not wish to further confuse the existing financial reporting I do think for the sake of transparency and clarity it should at least be considered. Lastly on this subject, just a friendly reminder that

the *Act* contains no provision that might permit a campaign contribution made by the candidate to be returned to him prior to the election as allegedly took place during this one, in this specific case the September \$6,500 paid by cheque from the campaign bank to Mr. Paolatto:

*5.1. Income and Expenses – Understatement of income and expense*

5.1.1. In September \$6,500 was paid by cheque from the campaign bank to the Candidate.

5.1.2. In the books of account, this \$6,500 payment was recorded as a reduction of the contributions that the Candidate had previously made to his campaign, and as a reduction of the total advertising expense by the same amount. As a result, contributions reported in the Financial Statement were reduced by \$6,500 and reported expenses were reduced by the same amount.

5.1.3. The *Act* contains no provision that might permit a campaign contribution made by the candidate to be returned to him prior to the election. It only permits a return of candidate contributions to the candidate under subsection 88.31(6) where, after the campaign period has ended (on December 31, 2018) the candidate has a surplus.

5.1.4. Based on discussion with the Candidate, the intention was to reimburse the Candidate for expenses incurred to date by way of credit card, and fund anticipated charges from Google for advertising. As of the date of the cheque, expenses incurred by credit card and not yet reimbursed totalled \$5,605.34. Charges from Google in the following weeks totalled an additional \$7,500.

5.1.5. Subsection 88.25(1) requires that a Financial Statement be filed “in the prescribed form” and subsection 92(1) makes it an offence to file a Financial Statement that is incorrect. The understatement of income and advertising expense is therefore an apparent contravention of the *Act*. This had no impact on the deficit reported.

I would like to close by discussing the most important matter in my opinion, my thoughts on the ‘pre-campaign campaign’ and possible repercussions in relation to integrity of the *Municipal Elections Act, 1996*. On April 4<sup>th</sup>, 2016 the Government of Ontario introduced legislative changes to the *Act* and for the purposes of this discussion I would like to highlight the following:

- **Shortening the municipal election campaign.** Candidates would be able to register between May 1 and the fourth Friday in July.
- **Third party advertising,** while permitted will include registration rules, contribution, and spending limits.
- **Campaign finance rules.** The legislation aims to make rules easier to follow for voters, candidates and contributors, and gives municipalities the option to ban corporate and union donations.

Now while I was not privy to the discussions that led to these changes I cannot think of any other possible reason except for making the ability to run for municipal office more accessible and affordable to the people of Ontario. The idea that future candidates could promote themselves as an individual (whether or not they specifically discuss municipal affairs and their ideas on what they would do in office) prior to a municipal election with no limit on effort or expense seems to nullify any existing rules. You have, in essence, negated any reason to include rules regarding election campaign length or campaign finance at all, no? This was, and remains,

the main motivation I submitted my April 3<sup>rd</sup>, 2019 application and why we are all here today – after much time, energy and efforts expended since then. Without a definitive change of opinion and/or strengthening of existing statutes, it is my fear there will be precious little of the *Act* worth enforcing. Make no mistake; your decision today could set a dangerous precedent for future municipal elections within the province and what Mr. Paolatto may have inadvertently done is written the playbook that could make viable campaigns unaffordable for the vast majority of potential candidates for future municipal elections. I would argue that precious few have the financial resources for signs, advertising and multimedia coverage required for an actual campaign, let alone a ‘pre-campaign campaign’ and related advertising across a variety of platforms in advance of the actual campaign itself. I will not pretend to be knowledgeable enough to suggest potential ways to mend what appears to be a loophole within the existing legislation and only hope that it will somehow be recognized and addressed by those who have the knowledge and ability to do so. Despite assurances to the contrary, the truth is I lack the ability and/or influence to effect change on my own, although I will not stop trying. At this point, my best hope is that one person who has the will, power to do so will read this as a call to arms, and while I not optimistic about eventual success, feel I have little choice but to take any opportunity presented to shed a light on this issue as possible.

With that, I will respectfully thank all parties involved for their time and energy in relation to this matter and know that I am truly grateful to have been given this opportunity to speak and be heard. I wish you all health, happiness and all the best going forward.

Take care,  
Lincoln McCardle