

Municipal Election Compliance Audit Committee Report

3rd Meeting of the 2022 Municipal Election Compliance Audit Committee
August 10, 2023

PRESENT: A. Wright (Chair), D. Ross, C. Scrimgeour
A. Bush, M. Butlin, S. Corman, J. Raycroft, E. Skalski, B. Westlake-Power

The meeting is called to order at 9:30 AM.

1. Call to Order

1.1 Disclosures of Pecuniary Interest
None.

2. Consent

2.1 Minutes of the 2nd Meeting of the 2022 Municipal Election Compliance Audit Committee
D. Ross and C. Scrimgeour

That the Minutes of the 2nd Meeting of the Municipal Election Compliance Audit Committee, held on August 2, 2023, BE APPROVED.

Motion Passed

3. Items for Discussion

None.

4. Deferred Matters/Additional Business

4.1 2022 Municipal Election Clerk's Contribution Report - Sil Palumbo
D. Ross and C. Scrimgeour

That, on the recommendation of the City Clerk, the report dated August 2, 2023 and entitled "2022 Municipal Election Clerk's Contribution Report - Sil Palumbo" to notice of an apparent contravention of the campaign contribution limits with respect to the 2022 Municipal Election, BE RECEIVED for information; and

That the City Clerk BE DIRECTED to prepare a decision (attached) of the 2022 Municipal Election Compliance Audit Committee (Committee) with respect to the 2022 Municipal Election Contribution Report with respect to Sil Palumbo (Contributor) setting out reasons in support of the decision of the Committee that despite the contravention of the Contributor of section 88.9(1) of the *Municipal Elections Act, 1996* whereas the Contributor exceeded a total of \$1,200 to any one candidate in an election, the Committee will not commence a legal proceeding against the Contributor as the Committee is of the opinion that there is no public interest in doing so;

it being noted that the Committee received a written submission from Chacko Varghese, CPA on behalf of Sil Palumbo and a verbal presentation from Khalil Ramal with respect to this matter.

Motion Passed

D. Ross and C. Scrimgeour

That the 2022 Municipal Election Compliance Audit Committee (Committee) rise and go In Closed Session, for the purpose of deliberating with respect to the 2022 Municipal Election Clerk's Contribution Report - Sil Palumbo pursuant to subsection 88.34(9.1) of the *Municipal Elections Act, 1996*.

Motion Passed

The Committee convenes In Closed Session, from 9:54 AM to 10:13 AM.

5. Adjournment

C. Scrimgeour and D. Ross

That the meeting BE ADJOURNED.

Motion Passed

The meeting adjourned at 10:15 AM.

Andrew Wright, Chair

Dan Ross, Member

Christene Scrimgeour, Member



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 a 2022 Municipal Election Contributions Report under section 88.34 of the *Municipal Elections Act, 1996* with respect to apparent contraventions of section 88.9 of the *Municipal Elections Act*;*

*AND IN THE MATTER OF the City of London's Rules of Procedure for the 2022 Municipal Election Compliance Audit Committee in accordance with section 88.37(6) of the *Municipal Elections Act, 1996*;*

Contributor: Sil Palumbo
Meeting Date: Wednesday, August 2, 2023 at 9:30 AM
Thursday, August 10, 2023 at 9:30 AM
Meeting Location: Committee Room #5 – 2nd Floor
City Hall
300 Dufferin Avenue
London, Ontario N6B 1Z2

DECISION

PURPOSE OF MEETING

The purpose of the meetings was to consider the “2022 Municipal Election Contributions Report” submitted by the City Clerk in accordance with section 88.34 of the *Municipal Elections Act, 1996* (the “**Act**”) with respect to the apparent contravention of Sil Palumbo (the “**Contributor**”) of the campaign contribution limits as set out section 88.9(1) of the Act.

The meetings were held in accordance with the provisions of the City of London's Rules of Procedure for the 2022 Municipal Election Compliance Audit Committee.

DECISION

After reviewing the City Clerk's Report (the “**Palumbo Report**”), documentation submitted in response to the Report, and hearing oral submissions from Khalil Ramal (the “**Candidate**”) on August 2, and August 10, 2023, and considering appropriate provisions of the Act, it is the decision of the Compliance Audit Committee (the “**Committee**”) that the Contributor apparently contravened the contribution limits of \$1,200.00 to any one candidate for office during the 2022 City of London Municipal Election. However, based on the documentation and Candidate's oral submissions before the Committee, the Committee has concluded that the Contributor, when making the contribution beyond the contribution limit, did so without knowledge of the \$1,200.00 contribution limit, that the Candidate did not provide information to the Contributor about the contribution limits and that the Candidate has returned the amount of the excess contribution to the Contributor. In those circumstances, the Committee finds that the apparent contravention is inconsequential and that commencement of a legal proceeding against the Contributor for the apparent contravention is not in the public interest nor will it serve a municipal purpose and is therefore not warranted.

REASONS

The reasons for the decision are as follows:

1. Section 88.34(1) of the Act requires that the clerk review the contributions reported on the financial statements submitted by candidates under section 88.25 of the Act to determine whether any contributor appears to have

exceeded either the individual or aggregate contribution limits. The individual and aggregate contribution limits have been in force for some time and, since the 2018 Municipal Election cycle, the Act has required the City Clerk's review to determine if contribution limits have been exceeded.

2. The Palumbo Report identifies that, based on the Form 4 Financial Statement filed by the Candidate, it appears that the Contributor contributed \$1,495 to the Candidate, a candidate for the office of mayor during the 2022 City of London. This total is \$295 more than the \$1,200 limit, thereby constituting an apparent contravention of subsection 88.9(1) of the Act.
3. After considering the Palumbo Report which identifies this apparent contravention of the Act, under subsection 88.34(8) the Committee must decide whether to commence legal proceedings against the Contributor for the apparent contravention. The Committee first met on August 2, 2023 to consider this question.
4. The Form 4 Financial Statement filed by the Candidate did not provide an address for the Contributor. By letter dated July 20, 2023 the Candidate was asked to provide to the City the Contributor's address in order that the Contributor might be given notice of the August 2, 2023 Committee meeting. The Candidate did not do so prior to the August 2, 2023 meeting.
5. The Candidate appeared at the August 2, 2023 Committee meeting to address the application to the Committee for a compliance audit of the Candidate's campaign financing. In the course of that meeting, the Candidate undertook to provide an address for the Contributor in order that the Contributor might receive notice of the Committee's consideration of the Palumbo Report. The Committee deferred taking any action with respect to the Contributor to give time for the Contributor to be notified of the Palumbo Report and to be given an opportunity to respond. The Committee deferred its deliberations to Thursday, August 10, 2023 commencing at 9:30 am.
6. The Candidate provided an address for the Contributor and on Friday, August 4, 2023 notice of the time, place and purpose of the Committee's August 10, 2023 meeting was sent by registered mail to the Contributor at the address provided by the Candidate for the Contributor. The notice included the Palumbo Report and an agenda. The Contributor received the Notice on the morning of Tuesday, August 8, 2023, after the Civic Holiday long weekend.
7. As part of this August 4, 2023 notification, the Contributor was advised that, if he wished to make any written submissions to be included on the added agenda for the August 10th meeting, his written submissions were to be sent by e-mail to elections@london.ca before noon on Tuesday, August 8, 2023.
8. By e-mail sent at 9:32 pm on August 8, 2023 by Chacko Varghese, CPA, on behalf of his client Sil Palumbo, Mr. Varghese acknowledges the Contributor's receipt of the notice of meeting the morning of August 8th but advises that his client is unable to attend the Committee's meeting on August 10th. Mr. Varghese goes on in his e-mail to advise that the Contributor agrees that he made an election contribution to the Candidate on October 15, 2022 in the amount of \$1,495.00; and that, when doing so, the Contributor was not aware that there was a contribution limit of \$1,200. Finally, in his e-mail, Mr. Varghese reports that, on August 2, 2023, the Candidate came to Contributor's office and gave the Contributor a cheque for \$295.00, being the excess amount of contribution; and that the same day, both of them went to the Contributor's bank and the Contributor cashed the cheque.
9. The Committee is appreciative of Mr. Palumbo and Mr. Varghese for their prompt response on such short notice.

10. The Contributor was not present or represented before the Committee in person or online on August 10, 2023.
11. At the meeting on August 10, 2023, the Palumbo Report was presented by Sarah Corman, Deputy City Clerk.
12. From the Form 4 Financial Statements filed by all candidates for City Council during the 2022 City of London municipal election, it does not appear that the Contributor made a financial contribution in excess of \$100.00 to any other candidate. Also, from a review of those Form 4 Financial Statements, the Contributor is the only person who contributed in excess of the \$1,200 limit.
13. At the August 2, 2023 Committee meeting, when dealing with the application for a compliance audit of the Candidate's campaign finances, the Candidate explained to the Committee that, after filing his Form 4 Financial Statement, he realized that he had reported a contribution from the Contributor in excess of the \$1,200.00 limit. The Candidate said that he thought the limit was \$1,500.00 because, the Candidate said, that is what he heard it was in Toronto. The Committee notes that subsection 88.9(3) of the Act provides a single exception to the \$1,200.00 contribution limit to a candidate and that is for contributions to a mayoralty candidate in Toronto in which case the limit is \$2,500.00.
14. The Candidate said to the Committee on August 2nd that, after filing his Form 4 Financial Statement, the Candidate refunded to the Contributor the excess amount by cheque dated April 21, 2023. The Committee asked that, for the August 10, 2023 resumption of the Committee hearing with respect to the Palumbo Report, the Candidate produce a copy of the April 21, 2023 cheque and provide confirmation that the cheque had cleared the Candidate's bank account.
15. In the circumstances described by Chacko Varghese, CPA, in paragraph 8 above, while the Candidate produced the April 21, 2023 cheque he alluded to in his presentation to the Committee on August 2, 2023, he was unable to confirm that it cleared the Candidate's bank account until it or a replacement cheque was cashed on August 2, 2023.
16. In making its decision, the Committee is to serve in a gate-keeper function to see that municipal financial 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 is in fact a contravention of the Act.
17. According to the circumstances of a case, examples of indicia of public interest or useful municipal purpose for which the Committee may have regard are:
 - (a) Does the apparent contravention involve a legal interpretation of the Act which a court should settle so all candidates will have a common understanding of the electoral ground rules during the next election cycle?
 - (b) Was the apparent contravention deliberate, undertaken with careless disregard for the Act and/or undertaken for personal benefit?
 - (c) Is the apparent contravention something for which, if determined to be a contravention, the Contributor should be censured?
 - (d) If determined to be a contravention, is the deterrent effect of a prosecution in the public interest?
 - (e) Was the apparent contravention a *de minimis* matter?
18. Political contributions are an important component of municipal elections, and it is in the public interest and serves a municipal purpose to encourage contributions to campaigns for elected municipal office. Taking legal proceedings against a contributor for whatever reason risks creating a chilling effect on other potential future contributors so it is not in the public interest or serve a municipal purpose to do so except in a clear case.

19. The Committee is concerned about the Contributor making a contribution in excess of the \$1,200.00 limit established by subsection 88.9(1). The Committee is more concerned about the Candidate apparently receiving the contribution and apparently not returning the excess as soon as possible after becoming aware of the apparent contravention as contemplated by clause 88.25(o) of the Act. While there is some onus upon contributors to be aware of the law when making political contributions, clause 88.25(r) of the Act imposes the principal onus upon candidates to inform contributors of the limitations on the amounts of contributions. The Candidate's role is troublesome for the Committee but that is another matter which is being dealt with by the Committee separately.
20. With respect to the Contributor, the Committee is of the view that the Contributor apparently contravened the contribution limits of \$1,200.00 to the Candidate during the 2022 City of London Municipal Election. However, based on the documentation and the Candidate's oral submissions before the Committee, the Committee has concluded that the Contributor, when making the contribution in excess of the contribution limit, did so without knowledge of the \$1,200.00 contribution limit, that the Candidate did not provide information to the Contributor about the contribution limit and that the Candidate has, somewhat belatedly, returned the amount of the excess contribution to the Contributor.
21. In the circumstances of this case, the Committee finds that the apparent contravention is inconsequential and that commencement of a legal proceeding against the Contributor for the apparent contravention is not in the public interest nor will it serve a municipal purpose and is therefore not warranted.
22. The Committee concludes by expressing their concern that the Contributor was given such little notice of this proceeding. Had the Committee decided differently, it might have been necessary to further adjourn to give the Contributor a fair opportunity to make a more fulsome response and to arrange for a mutually convenient date so the Contributor could meet with the Committee. Given that the Committee's decision is not to commence proceedings, the point is moot.

ISSUED by The Corporation of the City of London Compliance Audit Committee at London, Ontario, on August 11, 2023

Compliance Audit Committee

[Signed copy on file]

Andrew Wright, Chair

[Signed copy on file]

Dan Ross, Member

[Signed copy on file]

Christene Scrimgeour, Member