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NOTICE OF DECISION
THE CORPORATION OF THE CITY OF LONDON
2022 MUNICIPAL ELECTION 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, 1996;

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: Nella Soufan
Meeting Date: Monday, June 26, 2023 at 9:30 AM
Friday, July 7, 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 meeting was to consider the “2022 Municipal Election Contributions Report” (“**Report**”) submitted by the City Clerk in accordance with section 88.34 of the *Municipal Elections Act, 1996* (“**Act**”) with respect to the apparent contravention of Nella Soufan (“**Contributor**”) of the campaign contribution limits as set out section 88.9(4) of the Act.

The meeting was 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 (“**Report**”) and considering appropriate provisions of the Act, it is the decision of the 2022 Municipal Election Compliance Audit Committee (“**Committee**”) that the Contributor contravened the contribution limits of \$5,000 to two or more candidates for office of the same council during the 2022 City of London Municipal Election as set out in section 88.34 of the Act. Based on the documentation and submissions before the Committee, the Committee finds that the public interest and a municipal purpose will be served by commencing legal proceedings against the Contributor for the apparent contraventions identified in the Report; accordingly, the Committee has decided to authorize the commencement of such proceedings by appointing an independent prosecutor.

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 a candidate 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 Report identifies that the Contributor contributed a total of \$5,600 to two or more candidates for office on the same council during the 2022 City of London Municipal Election. This total is \$600 in excess of the \$5,000 limit prescribed by section 88.9(4) of the Act.
3. After considering the Report which identifies apparent contraventions of the Act, under subsection 88.34(8), the Committee must decide whether to commence legal proceedings against the Contributor for the apparent contravention(s). The Committee met on June 26, 2023 to consider this question.
4. On June 8, 2023 notice of the time, place and purpose of the Committee's meeting, including the Report and an agenda, was sent by registered mail to the Contributor at the address for the Contributor appearing on the Financial Statements of the various candidates who reported having received contributions from the Contributor. The notice was received on June 15, 2023.
5. As part of this June 8, 2023 notification, the Contributor was advised that, if they wished to make any written submissions to be included on the added agenda for this meeting, their written submissions were to be sent by e-mail before 9:00 AM Wednesday, June 21, 2023, to elections@london.ca.
6. No such written submissions were received.
7. By reason of a lack of quorum, the Committee's meeting on June 26, 2023, was truncated before the business on the agenda could be completed. The Committee reconvened on July 7, 2023. Notice of the time and place of the reconvened meeting was sent to the Contributor by registered mail and by courier on June 27, 2023, and was received on June 29, 2023.
8. At the meeting, the Report was presented by Sarah Corman, Deputy City Clerk. She offered to answer any questions about the Report, but the Committee had no questions. The Contributor was not present or represented before the Committee in person or online on either June 26 or July 7.
9. 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.
10. 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 and contributors 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 Candidate or 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?
11. Following the last municipal election cycle in 2018, there were two contributors identified as a result of the Clerk's review required by subsection 88.34(1) of the Act. One contributor was \$2,100 over the \$5,000 aggregate limit, and the other was over by \$100. After the Clerk's Reports were presented to the Committee of

the day, the Committee took into consideration that the 2018 Municipal Election was the first in which the Report was required and that it has created a significant and unprecedented focus on aggregate contributions to candidates and the Committee decided not to proceed with prosecutions saying, amongst other things, that:

The Committee is satisfied that media and other publicity with respect to its meetings and deliberation will serve to increase awareness of the contribution limits, will have a deterrent effect, and will lead to the refinement, at least in the City of London, of future election practices relating to contributors and, in particular, the aggregate contribution limit.

12. Sadly, that deterrence message did not reach or was disregarded by the Contributor in this case. In a worst case the message was that, so long as the apparent contravention involves no more than about \$2,000, a Contributor will get a pass from the Committee.
13. The Committee is concerned that this apparent contravention amounts to a flouting of the law concerning municipal election contributions and believes that the deterrence message needs to be reiterated more forcefully at this time. The Committee finds that the public interest and a municipal purpose will be served by commencing legal proceedings against the Contributor for the apparent contraventions identified in the Report. The Committee has therefore decided to authorize the commencement of such proceedings by appointing an independent prosecutor.
14. In coming to this decision, the Committee recognizes that the prosecutor has a separate, independent function that includes determining whether there are reasonable grounds to believe that the Contributor has committed offences under the Act and whether there is a reasonable prospect of conviction. Assuming the independent prosecutor makes such a determination, charges would be laid, and pre-trial procedure followed leading to a trial. Throughout, the independent prosecutor has prosecutorial discretion and the Committee's decision does not derogate from that in any way.
15. The Committee is concerned about the cost associated with enforcement proceedings under the Act. It is only in the case of a very serious apparent contravention of the Act that the cost of enforcement will be commensurate with the public interest or municipal purpose benefits of doing so. The Committee is of the view that the availability of an administrative monetary penalty regime would allow the system to send a non-punitive compliance message to an apparently non-compliant person without the cost of retaining independent counsel. And, if an administrative monetary penalty were issued, an appeal therefrom would be to the Committee. The Municipality could elect to come to the Committee to seek authority to proceed with enforcement proceedings under the Act via the *Provincial Offences Act*, as an alternative to issuing an administrative monetary penalty. It is understood that this would entail legislative authority so it is not something the City could initiate on its own.

ISSUED by The Corporation of the City of London Municipal Election Compliance Audit Committee at London, Ontario, on July 7, 2023



Andrew Wright, Chair

[signed copy on file]_____
Dan Ross, Member

[signed copy on file]_____
Christene Scrimgeour, Member