October 12, 2020

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*
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> 5.1.1. In September $6,500 was paid by cheque from the campaign bank to the Candidate.
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> 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.
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> 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.
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> 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.
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> 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 4th, 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 3rd, 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