

NOTICE OF DECISION

**THE CORPORATION OF THE CITY OF GREATER SUDBURY
ELECTION COMPLIANCE AUDIT COMMITTEE**
established pursuant to Section 88.37 of the *Municipal Elections Act, 1996*

IN THE MATTER OF an Auditor's Report, dated May 24, 2024, prepared by KPMG LLP, pursuant to subsection 88.33(12) of the *Municipal Elections Act, 1996*, regarding the election campaign finances of Candidate William (Bill) Leduc (the "Auditor's Report");

AND IN THE MATTER OF a Meeting of the Election Compliance Audit Committee (the "Committee"), held Wednesday, July 3, 2024.

PURPOSE

The Committee held a meeting on Wednesday, July 3, 2024 at 9:30 a.m. to consider the findings outlined in the Auditor's Report, which was undertaken in connection with the Committee's decision, dated April 27, 2023, to grant an application for a compliance audit requested by Anastasia Rioux (the "Applicant") in respect of the 2022 City of Greater Sudbury Municipal Election and the campaign finances of William (Bill) Leduc, Candidate for the office of Councillor Ward 11 (the "Candidate").

The Auditor's Report concluded that the Candidate appears to have contravened the campaign finance rules set out in the *Municipal Elections Act, 1996*. As such, in accordance with subsection 88.33(17) of the *Municipal Elections Act, 1996*, the Committee must decide whether to commence a legal proceeding against the Candidate for the apparent contraventions.

The meeting was held in a hybrid format in accordance with the provisions of By-law 2023-1 of the Committee, being a By-law to Establish Procedural Rules for the Committee.

DECISION

On reviewing the Auditor's Report and hearing the presentation of Kas Rehman on behalf of KPMG LLP, and on reviewing the written submissions of the Candidate and the Applicant, and on hearing the oral submissions of the Candidate's legal counsel, Mr. Tim Harmar, the Candidate, and the Applicant, and on considering the provisions of the *Municipal Elections Act, 1996*, the Committee decides to commence a legal proceeding against the Candidate for the apparent contraventions identified in the Auditor's Report pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*.

REASONS

The reasons for the decision are as follows:

Introduction

1. This matter came before the Committee as follows:
 - a. The Candidate ran for the office of Ward 11 Councillor in the 2022 City of Greater Sudbury Municipal Election, and was elected to that office.
 - b. The Committee received and considered an application for a compliance audit at its meeting held on April 27, 2023. The Committee granted the application and ordered a compliance audit.
 - c. Pursuant to the Committee's decision, KPMG LLP was appointed to conduct the compliance audit. KPMG LLP conducted its compliance audit and presented its findings to the City Clerk through the Auditor's Report.
 - d. The Auditor's Report identified several apparent contraventions of the campaign finance rules set out in the *Municipal Elections Act, 1996*.
2. Pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*, where an auditor's report identifies apparent contraventions of the campaign finance rules, the Committee must determine whether to commence a legal proceeding against the Candidate.
3. At this stage, the Committee is performing a gate-keeping role. The Committee does not make any determination as to whether the Candidate actually violated the campaign finance rules. Rather, the Committee must determine whether it is in the public interest to commence a legal proceeding against the Candidate in respect of the apparent contraventions.

Factors in Decision-making

4. The Candidate's legal counsel, Mr. Harmar, submitted that the *Municipal Elections Act, 1996* does not give the Committee guidance on the "test" applicable to the decision before it. Mr. Harmar further submitted that this puts the Committee in an "untenable position" as it is not clear what factors should be considered in deciding whether to commence a legal proceeding against the Candidate.
5. The Committee acknowledges there is no "bright line test" set out in the *Municipal Elections Act, 1996* as to whether to commence a legal proceeding. However, the Committee does not accept Mr. Harmar's characterization of its position at this juncture, nor did Mr. Harmar suggest any factors should be taken into account. The Committee's role at this stage is, fundamentally, an exercise of discretion. Given the important public purpose underlying the campaign finance rules, and the

legislative scheme for the compliance audit process, the Committee considers the following factors to be relevant to the exercise of its discretion:

- a. The severity of the apparent contraventions, and the purpose of the campaign finance rules contravened.
- b. Whether the apparent contraventions are minor or trivial in nature, technical, or whether they are *de minimis*.
- c. Whether the apparent contraventions were committed deliberately or knowingly, or whether the apparent contraventions were committed inadvertently.
- d. Any potential explanations or defences the Candidate has raised in respect of any apparent contraventions.
- e. The evidence available to support a prosecution in this matter, and the prospect that an independent prosecutor would proceed with charges.

Apparent Contraventions and the Candidate's Response

6. The Auditor's Report identified four areas of apparent contraventions of the *Municipal Elections Act, 1996*, which can be summarized as follows:

- a. Accepting a contribution of cash in excess of the limit provided for in subsection 88.8(8) of the *Municipal Elections Act, 1996*.

The Candidate's Financial Statement reported a \$1000 contribution from an individual, part of which was provided in the form of a cheque for \$500, and part of which was provided in the form of cash (five (5) \$100 bills).

- b. Accepting contributions from a single contributor in excess of maximum amount provided for in subsection 88.9(1) of the *Municipal Elections Act, 1996*.

The Candidate's Financial Statement reported three (3) \$1000 contributions from three apparently related individuals. The Auditor's Report identified that these contributions were provided in the form of three (3) bank drafts, each purchased by the same individual, with the names of two other individuals written in the memo line. It therefore appears that the bank drafts were not purchased by each of the three nominal contributors, but rather constitute an overcontribution from the same contributor, which the Candidate accepted.

- c. Failing to ensure all payments for campaign expenses were made from the campaign bank account, contrary to clause 88.22(1)(d) of the *Municipal Elections Act, 1996*.

The Auditor's Report noted fifteen (15) expenditures, totalling \$307.14, which were not paid from the Candidate's campaign bank account, but rather by cash or debit card by the Candidate personally. The Candidate did not reimburse himself for these expenses from campaign funds.

- d. Failing to accurately record all campaign expenses and campaign contributions in the financial statement, particularly in relation to the Grandparent's Day 2022 event, contrary to clause 92(1)(b) of the *Municipal Elections Act, 1996*.

The Auditor's Report noted five (5) expenditures (and related contributions) in relation to the Grandparent's Day 2022 event that were not reported in the Candidate's Financial Statement. Some of these expenditures were paid for and/or invoiced to the Candidate directly, and others paid by other persons.

In particular, the main issue identified in the Committee's April 27, 2023 decision, the Auditor's Report verified that the Candidate incurred expenses in relation to prizes given away at the Grandparent's Day 2022 event, which expense was paid for using funds from the campaign bank account. This expenditure was not reported in the Candidate's Financial Statement. Had this expense been reported, it would have caused the Candidate to exceed the general spending limit prescribed by the *Municipal Elections Act, 1996*.

7. The Candidate was represented by legal counsel, Mr. Harmar, who made submissions to the Committee at the meeting. In addition to raising procedural issues, Mr. Harmer's oral submissions, and the Candidate's written submissions, responded to the Auditor's Report as follows:
 - a. The cash contribution of \$500 should be understood as a single contribution of \$1000 consisting of a \$500 cheque and five (5) \$100 bills, not a separate cash contribution, and this was contributed in a manner that associated the name and account of the contributor with the payment. As such, the Candidate did not contravene the campaign finance rules regarding the acceptance of contributions of cash exceeding \$25.
 - b. Although the Candidate accepted three separate bank drafts from the same contributor, this was done for convenience and with the intent that the contributions would be made by three separate individuals. At the meeting, the Candidate also asserted – in the absence of any evidence – that the account from which the bank drafts were purchased was jointly held by all three contributors.
 - c. The expenses paid for from funds outside the campaign bank account were actually contributions of "goods" provided by the Candidate to his own campaign, and that it was a matter of convenience to pay by cash or debit

card and record these items as contributions from the Candidate in his Financial Statement.

- d. The Candidate maintained the position that he was not campaigning at the Grandparent's Day 2022 event, but rather has been actively involved in organizing that event in the past and with other community initiatives. That he used video footage from the event in a campaign video, or that he did purchase, *inter alia*, pizza and prizes for the event, did not transition the event to a campaign event. Mr. Harmar also submitted that there can only be a contravention if the Candidate was found to have been campaigning at the event, which he asserted he was not.
8. The Candidate and Mr. Harmar also variously submitted that the Candidate made honest mistakes and/or made errors in good faith.

Prosecution Would be in the Public Interest

9. The Committee is of the opinion that it is in the public interest to commence a prosecution against the Candidate for his apparent contraventions of the campaign finances rules. Despite the Candidate's submissions challenging the audit findings, the Committee accepts that the findings identified in the Auditor's Report give rise to apparent contraventions of the campaign finance rules, recognizing that the final determination will be made by the courts and that the Committee makes no determination of guilt.
10. First, the Committee does not accept the Candidate's assertion that the apparent contraventions were trivial or in the *de minimis* range. Individually and collectively, the Candidate's apparent contraventions are significant, both in terms of monetary value and potential impact to the integrity of the electoral process. For example, the monetary value of unreported expenses, cash contributions, and contributions made by a single contributor were not purely technical oversights. Moreover, the amount of expenses associated with the Grandparent's Day 2022 event were significant, and potentially result in the Candidate having exceeded the general spending limit applicable to his campaign, as discussed further below.
11. Second, the Candidate's apparent contraventions are serious and threaten to undermine the important public policy goals animating the campaign finance regime. This includes, but is not limited to, maintaining a level playing field amongst all candidates, and ensuring proper records are kept of campaign finance activities so as to enable a high degree of public scrutiny. Accepting unlawful contributions, including in the form of cash and by bank drafts from a single contributor allegedly on behalf of other individuals, threatens the principle that elections finances be transparent and bear high scrutiny. Further, neglecting to record campaign expenses, even where a corresponding contribution is reported, demonstrates carelessness in preparing the Financial Statement. Lastly, failing to report the value of proper campaign expenses associated with the Grandparent's

Day 2022 event fundamentally undercuts the principle of transparency and the level playing field that the *Municipal Elections Act, 1996* seeks to preserve.

12. The Committee is particularly concerned with the omission of the monetary value of campaign expenses (and related contributions) associated with the Grandparent's Day 2022 event. As discussed in the Auditor's Report, the Candidate's general spending limit in the 2022 Municipal Election was \$14,159.60, and the Candidate's Financial Statement reported that he spent \$14,017.10. However, adjusted to include even one campaign expenses associated with that event, the Candidate would have exceeded the general spending limit. Had the Candidate's Financial Statement accurately reported such expenses, section 88.23 of the *Municipal Elections Act, 1996* provides that the Candidate would have been subject to the automatic penalty of forfeiture of his office as Ward 11 Councillor. The Committee makes no observations about whether this was done deliberately to avoid such consequences.
13. Third, the Committee was offered no credible basis to suggest that the Candidate exercised a level of due diligence to avoid the apparent contraventions identified in the Auditor's Report. The Candidate and Mr. Harmar, at several points, referred to the apparent contraventions as "honest mistakes" or errors made in "good faith." The Committee notes that the *Municipal Elections Act, 1996* sets out strict liability offences, to which a due diligence defence may be offered. Under the scheme of the statute, inadvertence or an error in judgement in good faith are not defences to charges, but only assist a candidate in avoiding certain penalties (i.e., forfeiture of office, disqualification). In any event, the Committee was not presented with credible evidence that would establish the Candidate exercised all reasonable care or took all the objectively reasonable steps that may be expected of an experienced candidate in a municipal election in order to avoid offending the statute through his campaign activities.
14. Lastly, the Candidate, both in written submissions and through his legal counsel, conceded that certain actions did occur, but has not expressed any contrition or remorse for the apparent contraventions. When asked by the Committee if the Candidate would concede that he contravened the *Municipal Elections Act, 1996* by accepting the cash contribution in excess of the \$25 limit, Mr. Harmar, on behalf of the Candidate, acknowledged that this happened but decline to offer a concession, and the Candidate did not respond.

Conclusion

15. Based on the foregoing, the Committee has determined that it is in the public interest to commence a legal proceeding against the Candidate for the apparent contraventions identified in the Auditor's Report. As such, the Committee hereby decides to commence a legal proceeding against the Candidate pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*, and authorizes the appointment of a prosecutor.