

September 6, 2024

To: Joint Compliance Audit Committee

Re: Application, audit, and hearing regarding Joe Ingino's 2022 election finances

Submitted by: Derek Giberson, on behalf of the joint applicants

Members of the Compliance Audit Committee,

This correspondence is in response to the audit on Mr. Ingino's 2022 election campaign finances performed by MNP, Report JCAC-24-01.

Summary

The audit, in general, confirms that Mr. Ingino committed significant violations of the *Municipal Elections Act* and that his campaign was generally fraught with problems of questionable record-keeping and lack of transparency.

However, and unfortunately, the audit performed by MNP appears to contain significant deficiencies that may give the erroneous appearance that Mr. Ingino was not in violation of the *Act* in areas where he was clearly non-compliant.

This correspondence will provide detail in each area noted above.

Nonetheless and most importantly, with confirmation of serious violations of the *Act*, it is with the strongest urging that the Committee is requested to appoint a prosecutor, in accordance with Section 88.33(17) of the *Act* and parts 16.6 and 16.8 of the 2022 Municipal & School Board Election Joint Compliance Audit Committee Administrative Practices and Procedures, to bring the matter where it belongs: before the courts to determine the appropriate response under provincial law.

Mr. Ingino is a veteran political candidate having run in at least 3 municipal elections and has no grounds to plead ignorance or inadvertent error in this matter. His conduct requires the attention of our courts to prevent future misconduct and to defend the integrity of our democratic systems.

Areas of Agreement with the Audit

1. Conclusion 5.2.1: That Mr. Ingino contravened Section 88.22(1)(a)(b) and (d) of the *Act* as he failed to open a campaign account, received donations that were not deposited to a campaign account, and incurred expenses that were not paid from a campaign account. This is consistent with Mr. Ingino's own admission at the June 8, 2023 Compliance Audit Committee meeting.
2. Conclusion 5.2.2. That Mr. Ingino contravened Section 88.9(1) and 92(1)(b) of the *Act* in accepting over-contributions by two individuals. Although not noted in the MNP Report, Mr. Ingino's later revised financial statement only served to cast further doubt on his activities than to clarify this contravention.
3. Conclusion 5.2.3. That Mr. Ingino contravened Section 92(1)(b) of the *Act* as his initial

statements did not contain the correct Campaign Period. As noted in the July 11, 2023 Addendum sent to this Committee, this point is of marginal significance to the original application.

Areas of Concern in the Audit

Rates used to calculate Mr. Ingino's spending

4. In the initial application to the Committee, our application claimed that Mr. Ingino's advertising placed in The Central far exceeded both the amounts reported and the limits placed by the Act – by an enormous amount.
5. Part 4.25 in the final statement shows a fundamental misunderstanding of the facts of the case, when it states "Mr. Giberson confirmed that the rates used as part of the calculation in the Application was consistent with the rates on The Central website." This is incorrect. The rate card used to calculate Mr. Ingino's election advertising totals was the rate card he sent directly to all candidates repeatedly throughout the campaign.
6. However, MNP's audit determined that the reported \$3,000 in Mr. Ingino's campaign financial return accorded with a so-called "Elections Rate Card" (4.26 of Report) that was provided by Mr. Ingino. This was a severely flawed basis for calculating Mr. Ingino's advertising costs.
7. Part 4.26 accepts Mr. Ingino's claim at face value that his so-called "Elections Rate Card," with drastically reduced rates, was sent to "all candidates." This is false. Any candidates we have polled did NOT receive the "Elections Rate Card," a rate card that only surfaced when he was forced to appear before the Compliance Audit Committee one year after the election campaign period.
8. The "Elections Rate Card" is problematic and brings matters back to the crux of this particular claim, for the following reasons:
 - a) This rate card was not the rate card distributed to the majority (if any) of the candidates running during the election period in question;
 - b) This rate card was only produced upon claims of irregularities in Mr. Ingino's election financials, a year after the election period;
 - c) A candidate cannot simultaneously have control of an advertising medium while also providing special discounts to themselves;
 - d) Regarding (c), a standard of fair market value principles must be used to determine whether any unusual and possibly inappropriate benefit is being extended to some election candidates and not others.
9. In particular with regards to the preceding, the Decision dated July 20, 2023 of the Compliance Audit Committee states the following:

"...it is the decision of this Compliance Audit Committee that the matter of JCAC 23-09 (City of Oshawa) proceed to audit... Specifically: a number of financial questions remain regarding the respondent's advertising;... and, **questions arise regarding the fair market value of that advertising and the advertising rates provided to various candidates to advertise in the Central Newspaper.**" *(emphasis added)*
8. The questions of "fair market value" and "advertising rates provided to various candidates"

were specifically highlighted by the 3-panel Committee due to their significance in this review.

9. As noted in 7(a) above, determining how to calculate the value of Mr. Ingino's advertising expenses is not done in an arbitrary way, and of critical importance, not in a manner based on the sole discretion and framing of Mr. Ingino, which appears to be how the Report calculates the values, despite serious concerns around the veracity, origination point, and inconsistent valuation of Mr. Ingino's produced documentation.
10. Whether or not Mr. Ingino could produce a receipt for \$3,000 to himself for advertising is of marginal significance to the claim itself; in fact, all such a receipt would do, and indeed most of Mr. Ingino's discussions with MNP based on the Report, is validate that he was providing *himself* with a special rate that differed *significantly* from the rate that was sent to a multitude of candidates from May through August 2022 on multiple occasions.
11. As a result, the section 4D Allegation No.2 of MNP's Report is missing fundamental components necessary, as outlined above, to arrive at an appropriate conclusion, if the rate calculations are based only on Mr. Ingino's retroactive and self-interested claim of a special "Elections Rate Card." This lies at the very concern expressed by the Committee in their Decision. Deep skepticism is absolutely necessary in this situation, due to his conflict of interest as both the advertiser and controller of the advertising medium.
12. Further, in the Report, based on an interview with a Mr. Espinosa in 4.35(a), he claims that "all registered candidates would have received a solicitation email with the Elections Rate Card" yet it seems like no outreach was made to a sample of candidates to corroborate this claim. It is especially significant given that we are aware of at least two candidates through the Compliance Audit process who stated unequivocally that they only *ever* received the standard rate card on multiple occasions – a preliminary indication that there may be evidence that is contrary to Mr. Espinosa's claim and would completely upset the basis of choosing the Elections Rate Card in determining the actual value of Mr. Ingino's advertising.
13. In section 4.36, the Report states that Mr. Espinosa informed MNP that 4 candidates purchased advertisements using the Elections Rate Card, and in 4.37 MNP found only one candidate reporting advertising expenses to The Central. However, neither of these do anything to corroborate the actual rates being charged to candidates and types of ads provided in return. In the former, it is simply a person (Mr. Espinosa) making a claim (since they conveniently have destroyed their records in the intervening time), and in the latter, it is confirmation only that *some type* of advertising was purchased. It provides no strength to Mr. Ingino's claim that the Elections Rate Card was actually in play in any serious manner, as compared to the many times he sent the Standard Rate Card to candidates throughout the election period.
14. The so-called "Elections Rate Card" is unreliable in source and suffers from immense issues of credibility, besides potentially (if it ever existed during the campaign period) providing access to "a different, reduced campaign advertising cost not available to all candidates," to quote a core concern of *the Committee* directly.
15. For all the reasons above, the Standard Rate Card must be used as the basis for calculating the value of Mr. Ingino's advertising. The audit performed by MNP failed to do so, and as a result did not investigate this Committee's concern regarding fair market value.

Overlooked violation

16. In part 4.37 of the MNP Report, it is noted that MNP "...sampled 31 campaign financial statements submitted by other candidates... we identified one financial statement that contained a mention of The Central as part of their advertisement expense for [Lina] Fouroughy."
17. A very quick review of the Fouroughy statement observes the following on the last page in "Table 4, Contributions by other than candidate in goods and services":

"Mr. Joe Ingino; Two advertisements in The Oshawa Durham Central Newspaper... Value \$100"
18. This cannot be stated more clearly: this is not legal under municipal election law in Ontario. Mr. Ingino's newspaper (whether the financial statement lists it under his name or under his newspaper's name is immaterial, it is a business entity providing the service) cannot donate ads as a donation of "goods and services." For reference, see 88.8 (3) of the Municipal Elections Act.
19. Surprisingly, in the act of coming across this item on the financial statement, one would assume that the MNP audit team would have added the discovery to the list of violations of the Act committed by Mr. Ingino – but it is instead used to assist in reaching the conclusion that he didn't violate the parts of the Act related to campaign spending limitations.

Additional areas of audit deficiencies

20. Part 4.28 states that I was asked for additional publications with advertisements beyond those in the submission to the Committee in the digital agenda package for July 13, 2023, and that I replied that I did not. That is only partially true and ignores what my response did state (which exists in email record in May 2024): that, in addition to the digital samples, I turned over a large volume of physical copies directly to the City Clerk staff at the conclusion of my remarks and that they would have them in their possession. I am unclear on whether the MNP received these physical records (based on their questions, it seems like they didn't) and whether or not they subsequently requested them from the City Clerk's office after I provided this information.
21. Part 4.29 again contains inaccuracies and even what appears to be self-contradictory statements: in it, I appear to state that The Central sent out "special rate cards on at least four other occasions," while also stating that I "did not receive a special election rate card." This makes no sense: the crux of this part of the key claim against Mr. Ingino is very clearly based on the claim that he provided all candidates (myself included) with a standard rate card multiple times over several months, and never appears to have sent out some mysterious so-called "Elections Rate Card" that we have been able to trace (until a year later just in time for a hearing against him).
22. The same section also states that I "was aware of one other candidate (Rosaldo Russo) who had received the Elections Rate Card." This is inaccurate. I have no and have never had any dealings or correspondence with Mr. Russo, and do not know what special correspondence he may have had with Mr. Ingino. At the time of preparing our submission to the Committee, the candidate's representative I was in touch with regularly was Roger Bouma, who worked with another candidate during the election. He confirmed that their records of emails with rate cards matched my experience.

23. Further to the previous, I wasn't receiving individual separate emails throughout the election campaign period from The Central: Mr. Ingino consistently put all candidates' emails in the "To:" field of his emails so it was directly visible to all who was receiving the same standard rate card in question. It was never the "Elections Rate Card"; it was always the same standard rate card.
24. Part 4.34 states that the MNP team "did not confirm with The Central whether payment was received for [Mr. Ingino's] invoice." This is a stunning admission – why not? This is at the heart of the claims against Mr. Ingino, and MNP did not seek out further documentation as to whether a payment was made by him to the publication? And after observing just prior in 4.33 that he said he paid in cash?

Other

Regarding 4C Allegation No. 1, 4E Allegation No. 3, and 4F Allegation No. 4 in the audit Report, we reserve comment at this time. In each, MNP did not find evidence of a contravention of various sections of the Act.

As a final note, the concerns raised in this correspondence were raised with various members of the MNP team at various times. Their Report was sent to the Applicants on August 16, 2024, and by August 17 they were in receipt of many of the concerns contained herein. No reply was received and subsequently, they were again contacted on August 22 at which time they replied that they stood by their Report but provided nothing to address the concerns raised. They were again contacted on August 28 with both the original concerns and additional concerns that became apparent on another review of the audit Report, which elicited no response. A final attempt was made on September 4 and a reply similar to the one on August 22 was received, with nothing addressing any of the concerns. This is provided so that the Committee is aware that the Applicant made numerous efforts to resolve these concerns prior to both the public issuance of the Report and before bringing the concerns to the attention of the Committee.

It is reiterated that while there are deficiencies in the Report, the Report's findings are more than sufficient to appoint a prosecutor. I will be delegating at the Committee meeting and will make myself available to address questions if requested.

Regards,

Derek Giberson