

**Notice of Decision
Town of Ajax
Compliance Audit Committee**

established under Section 88.37 of the *Municipal Elections Act, 1996 (the Act)*

IN THE MATTER OF an application for compliance audit under section 88.33(1) of the Municipal Elections Act, 1996;

AND IN THE MATTER OF the Town of Ajax's 2022 Municipal and School Board Election Joint Compliance Audit Committee Administrative Practices and Procedures in accordance with section 88.37(1) of the Municipal Elections Act, 1996;

Candidate:	Arthur Augustine
Applicant:	Brian Johnson
Application Number:	CAC-2023-01
Meeting Date:	February 5, 2024
Meeting Location:	Council Chambers, Town Hall 65 Harwood Ave. S. Ajax ON L1S 2H9

DECISION

Purpose of Meeting

The purpose of the meeting was to consider the findings of the auditor's report prepared by MNP LLP reviewing the campaign finances of Arthur Augustine, a candidate for Mayor in the Town of Ajax's 2022 Municipal Election.

This meeting was held in accordance with the provisions of the Town of Ajax's 2022 Municipal and School Board Election Joint Compliance Audit Committee Administrative Practices and Procedures (the "Procedures").

Delegations

Both the Applicant and Candidate appeared and made delegations to the Committee.

Decision

After reviewing the Auditor's Report and hearing oral submissions from both the Applicant and the Candidate, it is the decision of this Compliance Audit Committee that the matter of CAC-2023-01 not proceed to prosecution. Despite the clear violation of the Act, it is the Committee's determination that prosecuting the offence is not in the public interest. This determination is made on the basis that the candidate does not appear to have accepted any financial contributions from any member of the public, the candidate is well within both the permitted campaign expense and self-contribution limits established by the Act and the fact that the audit report did not identify any new information that might have resolved information gaps required to successfully prosecute the offence.

Reasons

On August 3, 2023, this Committee ordered an audit of the campaign finances of the Candidate based on allegations that the Candidate failed to properly account for contributions made and expenses incurred in the Financial Statement dated March 31, 2023 and filed with the Clerk of the Town of Ajax.

The completed audit, and short presentation provided to the Committee where questions from the Committee were answered, has identified several apparent contraventions of the Act, including:

- failure to open a campaign bank account, as required by Section 88.22(a);
- failure to deposit all contributions into a campaign bank account, as required by Section 88.22(b); and
- failure to pay all campaign expenses from a campaign bank account, as required by Section 88.22(d).

The Applicant and Candidate were both offered an opportunity to provide a written submission to the Committee. No written submissions were received from either party. The Applicant and Candidate were also in attendance virtually and offered the opportunity to appear as a delegation before the Committee.

In his remarks to the Committee, the Candidate identified that he self-funded his campaign, did not accept any contributions from members of the public and acknowledged that he failed to open the required bank account after encountering challenges opening the necessary campaign account with a local financial institution.

In his remarks to the Committee, the Applicant indicated that the audit clearly demonstrated that the Candidate failed to open the bank account required by the Act, undermining the public's ability to know if there were additional contributions received or expenses incurred during the Candidate's campaign.

The Committee plays a 'gatekeeper' function and at this juncture is tasked with determining, if an apparent contravention has occurred, whether it is in the public interest to commence legal proceedings. It is not the role of the Committee to determine whether the Candidate has actually violated the campaign finance rules.

The Committee, having discussed and deliberated the findings of the audit report which identified an apparent contravention, and oral submissions made by both the Applicant and the Candidate, has determined it is not in the public interest to commence legal proceedings. This determination is made on the basis that:

1. There is no evidence that the Candidate accepted financial contributions from any member of the public;
2. There is no evidence that the Candidate exceeded the campaign expense or self-contribution limits established by the Municipal Elections Act; and
3. The Auditor's Report was so barren as to not be useful to the Committee in bringing to light any new information that might be needed in support of a prosecution.

Firstly, as identified by the Candidate in his remarks to the Committee there is no evidence that he accepted contributions from any member of the public. Throughout the proceedings associated with this matter, the Candidate has been consistent in his assertions that he self-funded his campaign and did not accept contributions from members of the public to support his candidacy for the Office of Mayor in the 2022 municipal election. No evidence has been forthcoming from the audit that challenges this position.

Secondly, there is no evidence that the Candidate exceeded the campaign expense or self-contribution limits established by the Municipal Elections Act. The Auditor's Report and oral remarks provided to the Committee by the Auditor indicate that invoices were produced by the Candidate which substantiate the expenses reportedly incurred during the campaign period. These expenses totalling \$3,100.00 do not exceed the limit of \$80,333.10 documented on the Final Certificate of Maximum Permitted Expenses issued by the Clerk on September 23, 2022, or the self-contribution limit of \$24,637.20 documented on the Revised Final Certificate of Maximum Permitted Expenses issued by the Clerk on October 6, 2022.

Finally, the information documented in the Auditor's Report and the procedural steps undertaken in the course of the audit did not support the Committee in furthering their understanding of the principal issues at hand and are unlikely to have supported a successful prosecution, should the Committee have directed that legal proceedings be commenced against the Candidate. Pursuant to Section 88.33(15)(a) of the Act, auditors appointed to conduct an audit are equipped with broad powers to "have access at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board". These powers also include the power to issue summons pursuant to Section 33 of the Public Inquiries Act. Despite these

powers, the Committee heard that little effort was made by the Auditor to seek additional records from the Candidate, such as personal financial records including credit card statements or bank account transaction records, to document the expenses incurred, or contributions made to the Candidate's campaign, citing a desire to respect the privacy of the Candidate's personal financial information. This limitation has impeded the Committee from obtaining a full picture of the financial transaction(s) at issue and failed to provide supporting evidence that may have been required to support a prosecution.

For the reasons outlined above, it is the Committee's view that commencing legal proceedings would not advance the public interest. Notwithstanding the Committee's decision in this regard, the Committee would like to emphasize to the Candidate, and others who may in future seek public office in the Town of Ajax, the importance of adhering to the Act. Citizens expect their elected officials, and those who aspire to public office, to conduct themselves in accordance with the law and fulfill the obligations that are required of them. To this end, the Committee strongly encourages the Candidate and others seeking public office to seek the experience, knowledge and support of the Clerk and her staff should they have questions about their duties as candidates.

Dated this 12th day of February 2024.

Kelly Gravelle

[Kelly Gravelle \(Feb 22, 2024 12:59 EST\)](#)

Kelly Gravelle, Chair

K.Y. Chapman

[K.Y. Chapman \(Feb 21, 2024 19:53 EST\)](#)

Kalli Chapman, Member

Wm. J. Paul Jones

[Wm. J. Paul Jones \(Feb 20, 2024 16:49 EST\)](#)

Paul Jones, Member