

Compliance Audit Committee Meeting
January 31, 2024
Written Decision Jolanta Pawlak

NIAGARA CATHOLIC DISTRICT SCHOOL BOARD
COMPLIANCE AUDIT COMMITTEE
established pursuant to Section 88.37 of the *Municipal Elections Act, 1996*

IN THE MATTER OF an Auditor's Report, dated January 17, 2024, prepared by MNP LLP, pursuant to subsection 88.33(12) of the *Municipal Elections Act, 1996*, regarding the election campaign finances of Candidate Jolanta Pawlak (the "**Auditor's Report**").

AND IN THE MATTER OF a meeting of the Niagara Compliance Audit Committee (the "**Committee**") held Wednesday, January 31, 2024 (the "**Meeting**").

PURPOSE

The purpose of the Meeting was to consider the findings outlined in the Auditor's Report. The Auditor's Report was undertaken in connection with the Committee's decision, dated June 22, 2023, to grant an application for a compliance audit requested by Christine Campbell (the "**Applicant**") in respect of the election campaign finances of Jolanta Pawlak (the "**Candidate**").

The Auditor's Report concludes that the Candidate appears to have contravened the campaign finances 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.

DECISION

On reviewing the Auditor's Report and hearing the presentation of Josh Epstein, MNP LLP, and on hearing the oral submissions from the Applicant, and on considering the provisions of the *Municipal Elections Act, 1996*, it is the decision of the Committee not 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:

1. This matter came before the Committee as follows:
 - a. The Candidate ran for the office of Trustee for St. Catharines/Niagara-on-the-Lake for the Niagara Catholic District School Board (the "**Board**"). She

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was not elected to office. The Candidate filed her Form 4 Financial Statement on January 19, 2023.

- b. The Committee received and considered an application for a compliance audit at its meeting held on June 22, 2023. The Committee decided to grant the application and order a compliance audit, for reasons issued June 22, 2023.
 - c. Pursuant to the Committee's decision, MNP LLP was appointed to conduct the compliance audit.
 - d. The Auditor's Report, provided to the Committee on January 17, 2023, identified apparent contraventions of the election campaign finance rules.
2. Subsection 88.33(17) of the *Municipal Elections Act, 1996* provides that where an auditor's report identifies apparent contraventions, the Committee must determine whether to commence a legal proceeding against the Candidate.
 3. At this juncture, the Committee is performing a gate-keeping function. The Committee is not making a determination on whether the Candidate has actually violated the campaign finance rules, nor does it have the authority to impose any penalties. Rather, the only role of the Committee is to determine whether it is in the public interest to commence a legal proceeding against the Candidate for the apparent contraventions.
 4. The Committee is of the view that the following factors are relevant to its determination of whether to commence a legal proceeding against the Candidate:
 - a. The evidence available to support a prosecution.
 - b. The severity of the apparent contravention.
 - c. Whether the apparent contravention is minor or trivial.
 - d. Whether the apparent contravention was committed deliberately or knowingly, or whether the apparent contravention was committed inadvertently.
 - e. Any potential explanations or defenses the Candidate has raised in respect of the apparent contravention.
 - f. Whether prosecution is required to censure the Candidate or to provide a deterrent to other candidates in the future.

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5. The Auditor's Report identified an apparent contravention in the nature of failing to accurately report campaign expenses and campaign contributions, contrary to clause 92(1)(b) of the *Municipal Elections Act, 1996*.
6. The Auditor's Report confirms that the Candidate incurred campaign expenses, and a related contribution from herself, in purchasing elections sign shared with another Board trustee candidate, Natalia Benoit.
7. The Auditor's Report, and the presentation of Mr. Epstein, noted that the Candidate initially refused to meet with the Auditor, on account of a medical condition, but she did respond to written interrogatories, through her agent.
8. The Candidate did not attend the Meeting personally or through her agent, although the Committee is satisfied, she was given proper notice of the Meeting.
9. Despite the apparent contraventions identified in the Auditor's Report, the Committee is of the opinion that it is not in the public interest nor does it serve the interest of justice to commence a prosecution. The Candidate is a first-time candidate for office and does not have a level of experience with or a sophisticated understanding of campaign finances rules. The Committee notes the nature of the apparent contraventions are relatively less severe; the Candidate failed to report a \$259 expense and contribution to herself that she shared with another candidate. The outcome in the event of a finding of guilt would likely be disproportionate to the expense of prosecution and not be impactful as a deterrent. The Committee is satisfied that the public record of this complaint and the findings of the Auditor are sufficient censure of the Candidate.
10. Therefore, the Committee hereby decides not to commence legal proceedings against the Candidate, pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*.

Dated this 5th day of February 2024 and approved by the following Members of the Committee:

Heather Salter 
Niagara Compliance Audit Committee Member

Murray Christie 
Niagara Compliance Audit Committee Member

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With the following Members of the Committee Dissenting:

Margo Pinder 
Niagara Compliance Audit Committee Chair

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