

NOTICE OF DECISION AND WRITTEN REASONS

THE CORPORATION OF THE TOWN OF OAKVILLE 2022-2026 MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE established pursuant to Section 88.37 of the *Municipal Elections Act, 1996*

IN THE MATTER OF an application for a compliance audit made pursuant to subsection 88.33(1) of the *Municipal Elections Act, 1996*;

AND IN THE MATTER OF a Meeting of the Compliance Audit Committee (the “Committee”), held Tuesday, August 1, 2023.

PURPOSE

The Committee held a meeting on Tuesday, August 1, 2023 at 4:00 p.m. to consider an Application for a Compliance Audit (the “Application”), submitted by Gobinder Randhawa (the “Applicant”) with respect to the 2022 Town of Oakville Municipal Election and the campaign finances of Nav Nanda, Candidate for the office of Ward 7 Town and Regional Councillor (the “Candidate”).

DECISION

On reviewing the documents and materials submitted by the Applicant and the Candidate, including the Candidate’s Form 4 Financial Statement and accompanying Auditor’s Report, filed March 24, 2023, and on hearing the oral submissions from the agent for the Applicant, Mr. Singh, and the oral submissions from the agent for the Candidate, Mr. Mastrangelo, and on considering the provisions of the *Municipal Elections Act, 1996*, it is the decision of the Committee to grant the Application in accordance with subsection 88.33(7) of the *Municipal Elections Act, 1996* and to order a compliance audit in accordance with subsection 88.33(10) of the *Municipal Elections Act, 1996*.

REASONS

The reasons for the decision are as follows:

1. The Applicant applied for a compliance audit of the election campaign finances of the Candidate in connection with her election campaign for the office of Ward 7 Town and Regional Councillor in the 2022 Municipal Election.
2. As a preliminary matter, the Candidate’s agent, Mr. Mastrangelo, raised the threshold issue of whether the Applicant had standing to make the Application. Mr. Mastrangelo argued that because the Applicant was not an eligible voter in Ward 7, the ward in which the Candidate ran for office, he was not entitled to make the Application under subsection 88.33(1) of the *Municipal Elections Act, 1996*. Mr. Mastrangelo submitted that this alone was enough to dismiss the Application as a matter of law.

3. The essence of the Candidate's position is that subsection 88.33(1) of the *Municipal Elections Act, 1996* should be interpreted as limiting the ability to make an application for a compliance audit to only those individuals who are entitled to vote in the particular ward in which a candidate ran for office. Mr. Mastrangelo did not however refer the Committee to any authority on this point.
4. With a view to the plain and ordinary meaning of subsection 88.33(1), read in its entire context, and noting the important public purpose underlying the *Municipal Elections Act, 1996*, the Candidate's interpretation cannot be accepted.
5. Subsection 88.33(1) of the *Municipal Elections Act, 1996* provides that "an elector who is entitled to vote in an election" may make an application for a compliance audit. The word "elector" is not defined, however, section 17 of the *Municipal Elections Act, 1996* deals with the qualifications of a person to be an elector. Section 17 primarily requires that the person must either reside in or be the owner or tenant of land in a municipality in order to be an elector. Section 17 does not speak to wards. In addition, subsection 88.33(1) does not contain any language which refers to a specific race in a municipal election. It uses the general language "an election," not the specific language "the election," or the election for a specific office on the council.
6. The Candidate's suggested interpretation would also undermine the important public purpose of the compliance audit regime, which is to ensure transparency and public scrutiny of those who run for public office, and provide a mechanism for the public to hold candidates accountable for their campaign finances.
7. The Committee is of the opinion that subsection 88.33(1) should be interpreted as allowing an elector of the municipality to pursue an application, and that there is no limitation on which ward the elector must reside in. As such, the Committee finds that the Applicant is an eligible elector of the Town of Oakville and had standing to make the Application.
8. The Applicant raised the following arguments for why he believed the Candidate had contravened the campaign finance rules set out in the *Municipal Elections Act, 1996*:
 - a) The Candidate failed to report expenses associated with a campaign launch event held on September 18, 2022 at a Boston Pizza location as a "meeting hosted" in her financial statement;
 - b) The Candidate failed to report expenses for a "Breakfast and Vote" event held on October 8, 2022 as a "meeting hosted" in her financial statement;
 - c) The Candidate failed to report expenses relating to the salary or honorarium given to the Candidate's election campaign manager;
 - d) The Candidate failed to report expenses related to an event held on Voting Day at a Boston Pizza location to celebrate the Candidate's election;

- e) The Candidate failed to report expenses for internet and phone charges used in her campaign, including those incurred by volunteers; and
 - f) The Candidate failed to report expenses related to website hosting services for her campaign website.
9. The Committee heard submissions from Mr. Mastrangelo, the Candidate's agent, explaining each of the alleged contraventions of the *Municipal Elections Act, 1996*. The Committee accepts most of the Candidate's explanations in response to the allegations raised.
 10. The primary issue of interest to the Committee was the alleged omission of costs related to website hosting services from the Candidate's financial statement.
 11. The Applicant alleged that the Candidate failed to accurately report the cost of website hosting services for her dedicated campaign website. The Applicant provided the Committee information that demonstrated the Candidate's website was created and hosted using an online platform called NationBuilder, which is a paid service. The Applicant submitted that it would be reasonable to suspect that NationBuilder would charge a fee for website hosting services, and that the Candidate's reported expense for "advertising" of \$864.54 appeared "significantly low."
 12. The Applicant also referred to an invoice related to the Candidate's campaign website, which the Applicant submitted contained omissions for the costs of hosting and maintaining the campaign website for the duration of the campaign.
 13. The invoice referred to by the Applicant was included in the Candidate's written response submissions, dated July 26, 2023. The invoice from Mr. Bhupinder Malhotra, dated December 16, 2022, in the total amount of \$864.54, records amounts charged to the Candidate for website management services and other disbursements. The amount of this invoice reflects the entry for "advertising" expenses on the Candidate's financial statement. On the face of the invoice, there are five entries for "website maintenance." However, the Committee observed that the invoice did not include any costs for website hosting charges.
 14. Mr. Mastrangelo advised the Committee that the Candidate's campaign website was designed by the Candidate's children, who are "tech savvy" but do not otherwise work professionally in website design or a related field, and was posted in May 2022. Mr. Mastrangelo further advised that in August 2022, when website activity began, the Candidate started being billed by Mr. Malhotra for website maintenance, and "nothing more than website maintenance."
 15. The Committee asked Mr. Mastrangelo what costs were incurred for website hosting, which is distinct from website maintenance. Mr. Mastrangelo advised that the invoice from Mr. Malhotra was an "all in amount." The Committee also asked Mr. Mastrangelo whether Mr. Malhotra was billed directly for website hosting. Mr. Mastrangelo was unable to provide an answer, but advised that he would inquire

into the matter and provide an answer. Mr. Mastrangelo later advised by email that “the campaign understands that Mr. Malhotra’s invoices included both website hosting and website maintenance.”

16. The Committee asked Mr. Mastrangelo further questions about his submissions on costs that are negligible, such as personal cell phone or internet usage, related to the court’s decision in *Lyras v. Heaps*, 2008 ONCJ 524, and asked for his opinion on whether costs which are not related to a person’s ordinary personal life, like the hosting of a campaign website, would not be negligible. Mr. Mastrangelo submitted that an analogy should be drawn to the contribution rules pertaining to cash donations under \$25, which do not have to be recorded, and that the intention of the *Municipal Elections Act, 1996* is not to track small amounts related to a person’s ordinary use of cell phone or internet. The Committee does not accept this submission. While individual contributions of under \$25 need not be itemized in a candidate’s financial statement, the total aggregate value of those contributions must be reported. This submission also does not provide guidance on the omission of expenses which directly related to a candidate’s election campaign, not their personal life, such as website hosting costs for a candidate’s campaign website.
17. The Committee is of the opinion that there are reasonable grounds to believe that costs were incurred for website hosting in relation to the Candidate’s campaign website. The website was created using the NationBuilder platform, which is not a free service. It appears that Mr. Malhotra may have been billed for these costs, but the Candidate did not declare any related expense in her financial statement. These costs are nevertheless a campaign expense within the meaning of subsection 88.19(1) of the *Municipal Elections Act, 1996*.
18. Clause 92(1)(b) of the *Municipal Elections Act, 1996* requires a candidate to file an accurate financial statement which reflects all of the candidate’s campaign expenses and contributions.
19. Based on the collective weight of the information filed with the Committee and the advisements and submissions of the parties, the Committee is of the opinion that there is compelling and credible information which raises a reasonable probability that the Candidate failed to properly record all campaign expenses in her financial statement, namely, the costs of website hosting.
20. In light of the foregoing, it is unnecessary for the Committee to assess the other grounds advanced by the Applicant.
21. On that basis, the Committee hereby grants the Application pursuant to subsection 88.33(7) of the *Municipal Elections Act, 1996*, and authorizes the appointment of an auditor to conduct a compliance audit of the election campaign finances of the Candidate in accordance with subsection 88.33(10) of the *Municipal Elections Act, 1996*.

Dated at the Town of Oakville this 2nd day of August, 2023 and approved by the following Members of the Committee:

Evan Read, Chair

Ryan Chen, Member

Melissa Coulson, Member

Camille Glover, Member

Karen Landry, Member

Amrita Sidhu, Member

Zachary Spicer, Member