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May 11, 2011.

Compliance Audit Committee
C/O City Clerk's Office
Toronto City Hall
13th fl. W., 100 Queen St. W.
Toronto ON M5H 2N2

To the Compliance Audit Committee:

1. Please find below additional reasons motivating a request for a compliance audit. The following arguments are made in this submission:

- 1) All that is required for a compliance audit to be granted is that there be a "reasonable probability" of a single violation of the *Municipal Elections Act*;
- 2) A compliance audit may exceed the scope of the submission which requested it;
- 3) Fundraising was only an incidental activity at several of Rob Ford's "fundraisers";
- 4) A compliance audit should ensure that the Rob Ford campaign properly assessed the fair market value of all goods and services purchased from Deco labels;

1. The Compliance Audit Committee must use a standard of "reasonable probability" to assess audit requests

2. Section 81(1) of the *Municipal Elections Act* states that an elector who has "reasonable grounds" that a candidate contravened the Act may request a compliance audit. But it is silent as to what standard the Compliance Audit Committee should use to evaluate these requests. Thankfully, Lane J. clarifies this in *Lyras v. Heaps* by writing:

In my view, where the statute requires "a belief on reasonable grounds," the jurisprudence applicable in other contexts indicates that the standard to be applied is that of an objective belief based on compelling and credible information which raises the "reasonable probability" of a breach of the statute.

The standard of a “prima facie case” in either its permissive or presumptive sense is too high a standard.¹

The Compliance Audit Committee must evaluate all audit requests on the basis of whether there is a “reasonable probability” of a breach of the statute. It is submitted that all submissions made in the submission dated May 5, 2011, and contained herein meet this low threshold.

2. A “reasonable probability” of a single breach of the *Municipal Elections Act* is sufficient to order a comprehensive compliance audit

3. The scope of a compliance audit is, to borrow the words of Lauwers J. in *Jackson v. Vaughan (City)*, “comprehensive and is not restricted to the matters referred to in the complaint.”² Further, Lauwers J. notes that “The trigger can be a single contravention.”³

The following cases are ones in which the audit exceeded the scope of the original requests:

Savage v. Niagara Falls (City), [2005] O.J. No. 5694 (B.W. Duncan, OCJ); *Chapman, supra*. In *Mastroguiseppe and Ruffolo v. City of Vaughan* (February 19, 2008), Newmarket, 49119990790000352-01-02 (O.C.J.)⁴

4. As stated above, the standard by which audit requests are evaluated by the Committee is whether there is a “reasonable probability” of a breach of the *Municipal Elections Act*. Once such grounds are established the committee has little discretion as to whether or not to order an audit. To sum up then, a “reasonable probability” of a single breach of the *Municipal Elections Act* must trigger a comprehensive compliance audit.

¹ 2008 ONCJ 524, [2008] O.J. No. 4243 at para. 26

² [2009] O.J. No. 1057 at para. 65 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)

³ [2009] O.J. No. 1057 at para. 65 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)

⁴ *Jackson v. Vaughan (City)* [2009] O.J. No. 1057 at para. 66 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)

3. Rob Ford miscategorized several of his events as fundraisers

5. According to s. 68(2.1)(a) of the *Municipal Elections Act*, a campaign may not exclude the costs of events which “are organized for such purposes as promoting public awareness of a candidate and at which the soliciting of contributions is incidental” from its expenditure limit.
6. The Rob Ford Campaign launched on March 26, 2010, with a major event that had been advertised to the public several days prior through the media and using invitations mailed to certain individuals in Mr. Ford’s City of Toronto envelopes as a celebration of then-councillor Ford’s 10 years of public service.⁵
7. Free admission and complimentary wine and cheese were advertised to attract people to the event.⁶ On March 25, 2010, Rob Ford officially registered as a candidate for mayor and the celebration was rebranded a campaign launch⁷. According to the *Toronto Star*, close to 2,000 people attended the launch and, based on campaign filings, cumulatively donated \$ 7,905 to the Rob Ford Campaign.⁸ The event cost \$ 34,371.72 to host.⁹
8. Given the promotion of the event as a free wine and cheese, the absence of ticket sales and the fact that the campaign launch cost more than three times as much to hold as was fundraised, it is submitted that a compliance audit should evaluate this event to

⁵ See appendix 15: David Rider Toronto Star. “Brotherhood of the Right 900 pounds worth of Fords set to shake up the race.” *Toronto Star*. March 23, 2010. Canadian Newsstand Major Dailies, ProQuest. Web. 11 May. 2011.

⁶ See Appendix 16: a copy of the invitation to the “complimentary wine and cheese with Councillor Rob Ford.”

⁷ See Appendix 17: David Rider Toronto Star. “Rob Ford Enters Mayor Race Vowing to Cut Council Seats.” *Toronto Star*. March 25, 2010. Web: <http://www.thestar.com/news/gta/torontomayoralrace/article/785077--rob-ford-enters-mayor-race-vowing-to-cut-council-seats>.

⁸ See Appendix 18: the Form 4, Schedule 2 records for the fundraising events referenced.

⁹ See Appendix 12 of the submission dated May 5, 2011.

determine if fundraising was the primary purpose of this event, as it is required to be to exclude the events costs from the campaign's expense limit.

9. Further, Mr. Chaleff-Freudenthaler attended the wine and cheese event and can attest to the incidental nature of the fundraising activity. At the event, Mr. Chaleff-Freudenthaler observed the following:

Upon being welcomed to the event by Mr. Ford, attendees were encouraged to sign up to become involved in the campaign. Two banks of volunteers were setup on either side of the room to take down the contact information of attendees. It is possible these volunteers were also taking donations but I did not receive a specific fundraising appeal before or while entering the event.

10. Another event classified as a fundraiser, but where fundraising may have been only an incidental activity, is what the Rob Ford Campaign refers to as the "Grand Baccus Event". That event saw \$ 2,920 received in donations at the door while it cost \$28,296.29 to hold.¹⁰
11. These examples of what may be campaign events posing as fundraisers to avoid being included under the campaign's expense limit stand in contrast were legitimate fundraisers such as the "Liberty Grand Event". This event raised \$ 68,322.50 by selling 271 tickets for \$ 250 each and accepting an additional \$ 572.50 at the door. Expenses totaled \$ 39,118.95, resulting in a net profit of \$ 29,203.55.¹¹
12. In conclusion, it is submitted that there were two classes of events categorized as fundraisers by the Rob Ford Campaign. The first category is comprised of legitimate events like the "Liberty Grand Event", which were designed for the sole purpose of raising money. The second category includes events at which fundraising was only an

¹⁰ See Appendix 18: the Form 4, Schedule 2 records for the fundraising events referenced.

¹¹ See Appendix 18: the Form 4, Schedule 2 records for the fundraising events referenced.

incidental activity. For these events costs far exceed income, no tickets were sold, and very little work was done in advance to create awareness of the fundraising component of the event. These events should be reclassified as campaign events and their costs should be counted towards the campaign's expense limit. Doing so would put Rob Ford well above the expense limit set by the City Clerk and thus would constitute of s. 76(4) of the *Municipal Elections Act*.

4. A compliance audit should ensure that the Rob Ford Campaign properly assessed the fair market value of all goods and services purchased from Deco Labels and Tags

13. Section 66(2)(1)(ii) of the *Municipal Elections Act* states that if a good or service is acquired at below market value, the difference in price is classified as a contribution. Over the course of the election period, the Rob Ford Campaign purchased \$211,624.32¹² worth of materials and services from Deco Labels and Tags, which is wholly owned by Doug Ford Holdings Inc. These expenses include virtually all printed materials and rent for the campaign's primary office. It is impossible to know without further documentation from Deco Labels and Tags whether the Rob Ford Campaign paid a fair market price for the materials and services it purchased. It is important that a compliance audit determine this because if the Rob Ford Campaign did receive a discounted rate from Deco Labels and Tags, the difference between the price paid and the fair market value of the goods and services would constitute a contribution under 66(2)(1)(ii) of the *Municipal Elections Act*. Since Deco Labels and Tags is corporation,

¹² This figure is the sum of all entries listed as "Deco Labels and Tags" on the Rob Ford Campaign monthly expense sheet, available at Appendix 12 of submission dated May 5, 2011.

such a contribution would contravene City of Toronto By-Law 1177-2009, which bans corporate donations.

5. Corrections related to the first audit request dated May 5, 2011

14. The two undersigned applicants submitted a first audit request that was dated on May 5, 2011. In this request all references to s. 76(1) of the *Municipal Elections Act* should be replaced by a reference to s. 76(2) of the Act. Section 76(2) prohibits candidates from incurring an expense outside of the campaign period, which is defined in s. 68(1) as commencing when the candidate files his/her nomination papers. Rob Ford incurred expenses from the Toronto Congress Centre on March 24, 2010, but did not become a candidate until March 25, 2010. Technically, this is still a violation of s. 76(1) as Mr. Ford was not yet a candidate. But it is more accurate to portray it as a violation of s. 76(2). The applicants regret the imprecise citation of the law.

15. In paragraph 25 of the original submission, the case *Jackson v. Vaughan (City)* is cited without noting that it was actually affirmed on appeal by the Ontario Court of Appeal in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII).

6. Conclusion

16. This additional submission raises the following issues:

- The standard of review for all audit requests is a “reasonable probability” of a breach of the *Municipal Elections Act*.
- A “reasonable probability” of a single breach of the *Municipal Elections Act* is sufficient to trigger a comprehensive compliance audit.

- The Rob Ford Campaign misclassified two events as “fundraisers” since fundraising was only an incidental purpose of these events and thus incorrectly excluded the costs of these events from the total spending limit. When these expenses are counted toward the spending limit, Rob Ford’s total spending exceeds this limit and thus this constitutes a further violation of s. 76(4) of the *Municipal Elections Act*.
- The Rob Ford Campaign purchased \$ 211,624.32 in materials and services from Deco Labels and Tags, which is owned by the Ford family, without providing any justification that all of these goods and services were purchased at fair market value. If they were not purchased at a fair market price, the difference between their cost and their fair market value constitutes a contribution. As Deco Labels and Tags is a corporation doing business in Ontario, any contribution from it would violate City of Toronto By-Law 1177-2009.

Both this submission and the one dated May 5, 2011, raise much more than “reasonable probabilities” that Mr. Ford’s campaign has violated numerous provisions of the *Municipal Elections Act*. Unquestionably, a compliance audit is warranted.

All of which is respectfully submitted:

Max Reed

Adam Chaleff-Freudenthaler