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2012 ONSC 5629
Ontario Superior Court of Justice

Lancaster v. St. Catharines (City)

2012 CarswellOnt 12351, 2012 ONSC 5629, 222 A.C.W.S. (3d) 124, 3 M.P.L.R. (5th) 117

**Eleanor Lancaster, Appellant and Compliance Audit Committee
of the Corporation of the City of St. Catharines, Matthew Harris,
Mathew Siscoe, Lenard Stack and Brian Dorsey, Respondents**

J.W. Quinn J.

Heard: June 26, 2012
Judgment: October 9, 2012
Docket: St. Catharines 53579/12

Proceedings: affirming *Lancaster v. St. Catharines (City)* (2012), 2012 ONCJ 70, 2012 CarswellOnt 1595, 95 M.P.L.R. (4th) 113 (Ont. C.J.)

Counsel: Luigi De Lisio, for Appellant
Christopher C. Cooper, for Respondent, Compliance Audit Committee of the Corporation of the City of St. Catharines
Thomas A. Richardson, J. Patrick Maloney, for Respondents, Matthew Harris, Mathew Siscoe, Lenard Stack
Brian Dorsey, Respondent, for himself

Subject: Public; Property

Headnote

Public law — Elections — Candidates — Expenses

Appellant applied to Compliance Audit Committee ("committee") of city for compliance audit of campaign finances of three candidates — Audit committee dismissed applicant's application — Appellant appealed decision of audit committee — Appeal was dismissed — Appellant appealed — Appeal dismissed — Although it was unreasonable and error for committee and Ontario Court of Justice, respectively, to have found that Act had not been breached, it was correspondingly reasonable and correct not to proceed with audit.

Table of Authorities

Cases considered by J.W. Quinn J.:

Braid v. Georgian Bay (Township) (2011), 2011 ONSC 3618, 2011 CarswellOnt 4677, 83 M.P.L.R. (4th) 335 (Ont. S.C.J.) — considered

Chapman v. Hamilton (City) (2005), 2005 ONCJ 158, 2005 CarswellOnt 1914, 10 M.P.L.R. (4th) 120 (Ont. C.J.) — considered

Lyras v. Heaps (2008), 2008 ONCJ 524, 2008 CarswellOnt 6348, 51 M.P.L.R. (4th) 277 (Ont. C.J.) — considered

New Brunswick (Board of Management) v. Dunsmuir (2008), 372 N.R. 1, 69 Admin. L.R. (4th) 1, 69 Imm. L.R. (3d) 1, (sub nom. *Dunsmuir v. New Brunswick*) [2008] 1 S.C.R. 190, 844 A.P.R. 1, (sub nom. *Dunsmuir v. New Brunswick*)

2008 C.L.L.C. 220-020, D.T.E. 2008T-223, 329 N.B.R. (2d) 1, (sub nom. *Dunsmuir v. New Brunswick*) 170 L.A.C. (4th) 1, (sub nom. *Dunsmuir v. New Brunswick*) 291 D.L.R. (4th) 577, 2008 CarswellNB 124, 2008 CarswellNB 125, 2008 SCC 9, 64 C.C.E.L. (3d) 1, (sub nom. *Dunsmuir v. New Brunswick*) 95 L.C.R. 65 (S.C.C.) — followed

Statutes considered:

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

s. 256 — considered

Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.

Generally — referred to

s. 69(1)(m) — considered

s. 70(8) — considered

s. 71(1) — considered

s. 72 — considered

s. 77(a) — considered

s. 78(1) — considered

s. 78(1)(a) — referred to

s. 80(1)(a) — referred to

s. 80(2)(a) — referred to

s. 81(1) — considered

s. 81(5) — considered

s. 81(6) — considered

s. 81(7) — referred to

s. 81(14)(a) — referred to

s. 81(14)(b) — referred to

s. 81(15) — referred to

s. 81.1(2) [en. 2009, c. 33, Sched. 21, s. 8(44)] — considered

s. 81.1(4) [en. 2009, c. 33, Sched. 21, s. 8(44)] — considered

s. 92(5) — considered

APPEAL by appellant from decision reported at *Lancaster v. St. Catharines (City)* (2012), 2012 ONCJ 70, 2012 CarswellOnt 1595, 95 M.P.L.R. (4th) 113 (Ont. C.J.), which dismissed appeal of decision of audit committee.

J.W. Quinn J.:

Introduction

1 I have in front of me an appeal from a decision of the Ontario Court of Justice which dismissed an appeal of four denied applications requesting a compliance audit under the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched.

2 This proceeding principally revolves around three legal principles that govern the campaign finances of candidates in municipal elections: (1) Contributions from a contributor shall not exceed \$750 to any one candidate; (2) A candidate must complete and file a Financial Statement — Auditor's Report, in the prescribed form, reflecting his or her election campaign finances; and, (3) Corporations that are associated with one another under s. 256 of the *Income Tax Act (Canada)* are deemed to be a single corporation and, thus, one contributor.

Background

municipal election

3 On October 25, 2010, there was a municipal election in the City of St. Catharines. The individual respondents were candidates. Three of them were elected: Matthew Harris ("Harris"); Mathew Siscoe ("Siscoe"); and, Lenard Stack ("Stack"). The respondent, Brian Dorsey ("Dorsey"), was unsuccessful.

contribution limit

4 Section 71(1) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched. ("Act"), states that "a contributor shall not make contributions exceeding a total of \$750 to any one candidate in an election."

5 It has been said that "one very important component of the Act is to control the election expenses of the candidates" in municipal elections: see *Braid v. Georgian Bay (Township)*, [2011] O.J. No. 2818 (Ont. S.C.J.), at para. 12.

6 One way of controlling election expenses is to control revenue and that is accomplished somewhat by limiting campaign contributions. Supposedly, this has the effect of "levelling ... the playing field to prevent a candidate backed by deep pockets from outspending his or her opponents and thus potentially skewing the results of the election ... [and of ensuring] that elections cannot be 'bought'": see *Braid v. Georgian Bay (Township)*, *supra*, at paras. 12 and 22.¹

requirement to file Financial Statement — Auditor's Report

7 Section 78(1) of the Act requires all candidates (even if unsuccessful in the election) to file a Financial Statement — Auditor's Report, "in the prescribed form, reflecting the candidate's election campaign finances ..." The prescribed form is Form 4.

8 The Financial Statement — Auditor's Report ("Form 4") is to be filed "with the clerk with whom the nomination was filed" on or before the last Friday in March following the election.² The filing date here was March 25, 2011.

9 The individual respondents each filed a Form 4 with the Clerk of the City of St. Catharines (who acted as the election returning officer) and they did so in a timely manner.

Form 4

10 Form 4 is generated by the Ontario Ministry of Municipal Affairs and Housing. It is eight pages in length and consists of boxes, schedules and parts.

11 First, we have: Box A ("Name of Candidate and Office"); Box B ("Summary of Campaign Income and Expenses"); Box C ("Statement of Campaign Period Income and Expenses"); Box D ("Statement of Assets and Liabilities as at ..." (date to be inserted)³; Box E ("Statement of Determination of Surplus or Deficit and Disposition of Surplus"); Box F ("Declaration").

12 The "Declaration" reads,

I _____ a candidate in the municipality of _____ hereby declare that to the best of my knowledge and belief that these financial statements and attached supporting schedules are true and correct.

signature

It must be signed before the City Clerk or a Commissioner of Oaths.

13 Four schedules are found in Form 4:

- Schedule 1 is titled "Contributions" and it has two parts: "Part 1 — Contribution"; and, "Part II — List of Contributions from Each Single Contributor Totalling More than \$100." Part II has three tables: "Table 1: Monetary contributions from individuals other than candidate or spouse"; "Table 2: Monetary contributions from unions or corporations"; "Table 3: Contributions in goods or services."
- Schedule 2 — "Fund-Raising Function," has three parts: ⁴ "Part 1 — Ticket Revenue"; "Part II — Other Revenue Deemed a Contribution"; "Part III — Other Revenue Not Deemed a Contribution"; "Part IV — Expenses Related to Fund-Raising Function."
- Schedule 3 has the title "Inventory of Campaign Goods and Materials (From Previous Campaign) Used in Candidate's Campaign."
- Schedule 4 is headed "Inventory of Campaign Goods and Materials at the End of Campaign."

14 The final section of Form 4 is "Auditor's Report." It is to be completed where a candidate has received contributions or incurred expenses in excess of \$10,000.

penalties involving Form 4

15 The importance of the requirement to file a proper Form 4 is obvious from the penalty provisions of the *Act*.

16 If prosecuted under s. 92(5), a candidate who files a Form 4 "that is incorrect or otherwise does not comply with [s. 78(1)]" must forfeit "any office to which he or she was elected ..." ⁵

17 Forfeiture also results where a candidate "fails to file [a Form 4] ... by the relevant date." ⁶

Lancaster seeks compliance audit

18 Pursuant to s. 81(1) of the *Act*, an elector may apply for a compliance audit:

81(1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

19 On June 23, 2011, the appellant, Eleanor Lancaster ("Lancaster"), a St. Catharines elector with a long and productive history of community interest and involvement, applied to the respondent, Compliance Audit Committee of the Corporation of the City of St. Catharines ("Committee"), for an audit of the election campaign finances of Harris, Siscoe, Stack and Dorsey. Her applications (one for each of the individual respondents) stated:

... I have reasonable grounds to believe that these candidates, and some of their corporate contributors, have contravened some of the campaign finance provisions of the [Act].

20 The applications went on to detail "... obvious over-contributions by related or associated corporations" and to catalogue various shortcomings in the preparation of the Form 4s.

21 I should point out that the only direct consequence or "penalty" that flows from an application under s. 81(1) is an audit. The results of the audit may trigger other sanctions found in the Act.

individual respondents asked to return excess contributions

22 On June 29, 2011, John A. Crossingham, a lawyer for three corporations who had contributed \$750 each to Stack's campaign — York Bancroft Corporation, Port Dalhousie Management Corporation and Lakewood Beach Properties Ltd. — wrote to Stack saying, in part:

... While the corporations are not obviously related, i.e. they do not have similar names, they are associated within the meaning of the *Income Tax Act*. Associated corporations are limited to one \$750 contribution for the group.

The [Municipal Elections Act] requires, in section 69(1)(m), that you, as 'a candidate shall ensure that a contribution of money made or received in contravention of the Act, is to be returned to the contributor as soon as possible after the candidate becomes aware of the contravention' ... We are, therefore, requesting that repayment cheques for \$750 each, payable to Lakewood Beach Properties Ltd. and York Bancroft Corporation, be sent to Crossingham, Brady ...

23 Similar letters were forwarded to, and received by, Harris, Siscoe and Dorsey, all of whom (along with Stack) promptly returned the excess contributions.

24 The letter from Mr. Crossingham, a senior counsel with considerable expertise in matters of municipal law, included in his letter (correctly, it will be seen) the opinion that if the excess contributions were returned to the contributor "as soon as possible" after learning that they contravene the Act, "you are then absolved from any repercussions."

composition of the Committee

25 The Committee is a specialized tribunal created by the Corporation of the City of St. Catharines under the authority of the Act, with the sole responsibility of hearing applications "relative to possible contravention of the election campaign finance rules": see *Terms of Reference for Niagara Compliance Audit Committee* (undated) ("*Terms of Reference*").

26 The Committee created its own rules of procedure, as directed by s. 81.1(4) of the Act.

27 A compliance audit committee is to have "not fewer than three and not more than seven members."⁷

28 Paragraph 8 of its *Terms of Reference* stipulates that the Committee is to be composed of members "from the following stakeholder groups: accounting and audit ... with experience in preparing or auditing the financial statements of municipal candidates; ... academic ... with expertise in political science or local government administration; ... legal profession with experience in municipal law; ... professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals ...; and ... other individuals with knowledge of the campaign financing rules of the [Act]."

29 Section 81.1(2) of the Act expressly forbids certain persons from sitting on a compliance audit committee: "employees or officers of the municipality ...; ... members of the council ...; ... or any persons who are candidates in the election for which ... [a compliance audit] committee is established."

30 The Committee consisted of three members: (1) a professional engineer with experience in accounting and audits who was president of a charitable organization and of a consulting company; (2) a Bachelor of Commerce graduate with experience in audit and compliance matters in the insurance industry; and, (3) a Certified General Accountant who worked in the audit division of Canada Revenue Agency.

31 Mr. Richardson, counsel for Harris, Siscoe and Stack, accurately points out in his factum: "The development of the law on compliance audit committees has changed significantly [since 2009]. In particular, the provincial legislature has removed the ability of a politically minded municipal council to [hear and decide applications for compliance audits] and has placed the decision-making in the hands of an impartial tribunal with expertise in auditing of financial statements in the municipal context."

Committee considers the applications

32 The Committee considered the four applications at a public meeting held on July 19, 2011.

33 Section 81(5) of the *Act* says only that a compliance audit committee "shall consider" the applications and decide whether they "should be granted or rejected." The *Act* is silent as to how this is accomplished. However, s. 7.2 of the *Terms of Reference* stipulates that the Committee is "to hear and determine all applications." And, the *Procedures for the Niagara Compliance Audit Committee* (undated) provide that candidates "may respond to the application in writing": see s. 5.7. Furthermore, when considering an application, s. 11.7 states that: "the applicant ... may address the Committee; the Committee may ... ask questions of the applicant; ... the candidate ... may address the Committee [and] may respond to the content of the applicant's address to the Committee; the Committee may ... ask questions of the candidate ..."

34 On July 19, 2011, the Committee entertained representations (oral and written) from Lancaster and from Harris, Siscoe, Stack and Dorsey.

35 The Committee heard and considered the four applications separately:

1. The Harris application

36 Lancaster pointed out to the Committee that the Form 4 from Harris (prepared by a Chartered Accountant) listed seven corporate contributions and included this information in respect of two of them:

Schedule 1 — Contributions

Part II — List of Contributions from Each Single Contributor Totalling More than \$100

Table 2: Monetary contributions from unions or corporations

Name	Address	President or Business Manager	Cheque Signatory	Amount
York Bancroft Corp.	125 Carlton Street, St. Catharines	Dan Raseta	Dan Raseta	\$750.00
Copper Cliff Properties	125 Carlton Street, St. Catharines	Dan Raseta	Dan Raseta	\$750.00

37 Lancaster contended that these two contributions obviously came from related or associated corporations (they have a common Address, President or Business Manager and Cheque Signatory).

38 Corporations are subject to the same contribution limits as individuals; and s. 72 of the *Act* states:

72. For the purposes of sections 66 to 82, corporations that are associated with one another under section 256 of the *Income Tax Act (Canada)* shall be deemed to be a single corporation.⁸

Therefore, it is a violation of the *Act* for associated corporations to collectively contribute in excess of \$750 to one candidate.

39 The minutes of the Committee for July 19, 2011 read:

... Harris ... stated that the Form 4 Financial Statement needs more clarity for candidates completing the form. He advised that as soon as he was aware that he received an over-contribution, he repaid the monies ...

2. *The Siscoe application*

40 The Form 4 completed by Siscoe showed three corporate contributions:

Schedule 1 — Contributions

Part II — List of Contributions from Each Single Contributor Totalling More than \$100

Table 2: Monetary contributions from unions or corporations

Name	Address	President or Business Manager	Cheque Signatory	Amount
Copper Cliff Properties Inc.	125 Carlton St., Box 29059, St. Catharines		Dan Raseta	\$500.00
Port Dalhousie Management Corp.	125 Carlton St., Box 29059, St. Catharines		Dan Raseta	\$750.00
York Bancroft Corp.	125 Carlton St., Box 29059, St. Catharines		Janice Raseta	\$500.00

41 It was submitted to the Committee by Lancaster that the above entries list contributions from associated corporations (the Address is the same and the individuals named under Cheque Signatory are husband and wife) and their contributions total more than the allowable limit of \$750. Also, the column for President or Business Manager is blank.

42 The minutes of the Committee record this response from Siscoe:

... Siscoe ... advised the Committee that he did accept cheques but promptly repaid them when he was made aware he should not have accepted them. He stated that he did due diligence and read his provincial candidate's guide, but is a first-time candidate and the guide is vague on this issue.⁹ He ... advised he understood what the limit was and he kept a record of the cheques he received, the majority of which were from friends. He also consulted with staff of the [City] Clerk's Department and other councillors and was told that it was ok to accept the corporate donations ...

3. *The Stack application*

43 In respect of the Stack application, Table 2 of Form 4 is blank (and, indeed, has a line drawn through it). Table 1 lists a mixture of individual and corporate contributions:

Schedule 1 — Contributions

Part II — List of Contributions from Each Single Contributor Totalling More than \$100

Table 1: Monetary contributions from individuals other than candidate or spouse

Name	Address	Amount
Tom Price	St. Catharines ON	\$500.00
Port Dalhousie Management Corp.	St. Catharines ON	\$750.00
Queenston Quarry Reclamation	R.R. 3 N.O.T.L.	\$750.00

Roseann Cormie	St. Catharines ON	\$500.00
Horizon Joint Venture	St. Catharines ON	\$750.00
David Roberts	St. Catharines ON	\$500.00
York Bancroft Corp.	St. Catharines ON	\$750.00
Baumgarti & Associates Ltd.	St. Catharines ON	\$200.00
Lakewood Beach Properties Ltd.	St. Catharines ON	\$750.00

44 Lancaster complained to the Committee that, with six of the above contributors being corporations, the failure to complete Table 2 means that information as to the President or Business Manager and the Cheque Signatory is missing from Form 4. In addition, Port Dalhousie Management Corp., York Bancroft Corp. and Lakewood Beach Properties Ltd. are associated corporations and their contributions collectively exceed the permissible limit.

45 According to the minutes of the Committee, Stack made the following representations:

... Stack ... advised the Committee that the errors he made on his financial statement were unintentional and the product of naivety and inexperience. When he was advised of the over-contributions, he reimbursed the monies ... after he filed his papers, he realized the error he made in listing the contributors on the form and tried to correct the fact, however, the [City] Clerk's staff told him he could not file a second form.¹⁰ He stated that he believed the [City] Clerk's staff should have caught the error when he was filing the papers ...

46 In an affidavit filed for the hearing of the appeal in the Ontario Court of Justice,¹¹ Stack deposed, at paras. 15 and 25:

15. Before accepting the donations, an individual from my campaign team called the City Clerk's Department. We were advised that there should be no concerns over the donations provided from each corporation so long as each corporation filed a separate tax return ...

25. I submitted my [Form 4] to the City Clerk's Department more than one week prior to the legislated deadline. At the time that I submitted my [Form 4] ... [the Acting Deputy Clerk] reviewed my report and said that everything appeared to be in order.

4. The Dorsey application

47 In the Dorsey application, Lancaster advised the Committee that Table 2 of Form 4 was not filled out and that the four contributors in Table 1 are corporations:

Schedule 1 — Contributions

Part II — List of Contributions from Each Single Contributor Totalling More than \$100

Table 1: Monetary contributions from individuals other than candidate or spouse

Name	Address	Amount
(illegible) Development	19 Timber Lane St. Cath.	\$100.00
Horizon J.V.	19 Timber Lane St. Cath.	\$100.00
Lakewood Beach Properties	10 Canal Street St. Cath.	\$750.00
York Bankcroft (sic)	P.O. Box 29059 Carlton Street St. Cath.	\$750.00

With Table 2 not having been completed, there are no particulars as to the President or Business Manager or the Cheque Signatory; and, Lancaster submitted, "Lakewood Beach Properties" and "York Bankcroft (sic)" are associated corporations.

48 The minutes of the Committee state that Dorsey was unaware that he had violated the *Act* until he received notice of the audit application by Lancaster. The minutes go on to mention:

... On June 29, 2011, [Dorsey] received an e-mail from Crossingham, Brady and on June 30, 2011 he received an e-mail from Dan Rosetta requesting the return of funds that had been an over-contribution. He stated that he promptly returned the funds on June 30, 2011. He indicated that when he accepted cheques from contributors he compared the signatures on cheques already received and he did, in fact, reject some cheques. [Dorsey] stated that the error he made completing the financial statement was unintentional.

powers of a compliance audit committee

49 Where a compliance audit committee decides to grant an elector's application, "it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances."¹² Thereafter, the auditor is required to submit a report to that committee.

50 If the report concludes that the candidate appears to have contravened a provision of the *Act* in respect of election campaign finances, the compliance audit committee may "commence a legal proceeding against the candidate for the apparent contravention."¹³ In addition, the compliance audit committee may "make a finding as to whether there were reasonable grounds for the application."¹⁴ The municipal council "is entitled to recover the auditor's costs from the [elector]" where reasonable grounds are missing.¹⁵

disposition by Committee

51 The Committee agreed that the four applications correctly identified excess corporate contributions. However, the minutes of July 19, 2011 show that, because those contributions "have been returned," the chairperson, in each instance, made "a motion to reject the application."

52 On the issue of associated corporations, the chairperson, according to the minutes, stated that "the rule of associated corporations is not a new rule and is not a valid excuse."¹⁶ She continued: "... taxpayers should not have to pay for an audit that would reveal that overpayments were made and the monies have already been returned ..."

53 The Committee was complimentary of Lancaster, saying, at one point, that she "has identified problems that exist with the system and this time is not wasted" and, later, that she "has done a great service to the electors of St. Catharines."

54 In dismissing the four applications, the conclusion in respect of each included the following:

... the Committee is not satisfied that reasonable grounds have been demonstrated that the candidate may have contravened the provisions of the *Municipal Elections Act*.

55 In the end, the Committee commented, "it doesn't take a compliance audit to identify over-contributions."

56 The Committee seems not to have paid much attention to the shortcomings in the completion of the Form 4s.

appeal to Ontario Court of Justice

57 Section 81(6) of the *Act* permits an appeal from the decision of the Committee to the Ontario Court of Justice and that court may make any decision the Committee could have made.

58 Lancaster launched such an appeal. It was heard by way of judicial review on November 24, 2011 and dismissed, in writing, on February 9, 2012.¹⁷

59 The notice of appeal named the Committee as the only respondent, but it also was served on Harris, Siscoe, Stack and Dorsey who, at their request, were granted added-party status by the Ontario Court of Justice such that they are now respondents in the proceedings.¹⁸

60 At paras. 6-15 of its well-written decision, the Ontario Court of Justice determined that the standard of review was reasonableness, not correctness, and that the Committee was "entitled to deference," commenting that the Committee "clearly does possess the necessary expertise to decide the initial application and is free from political influence."¹⁹

61 As to the standard of reasonableness, the Ontario Court of Justice referred to a passage from *New Brunswick (Board of Management) v. Dunsmuir*, [2008] 1 S.C.R. 190 (S.C.C.), at para. 47:

... certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions ... In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

62 Although s. 81(1) of the *Act* entitles an elector who "believes on reasonable grounds that a candidate has contravened a provision of this *Act* relating to election campaign finances" to apply for a compliance audit, the Ontario Court of Justice held, at para. 18, that the subjective belief of the elector "applies only to the commencement of this process" and that the test to be used by the Committee "was whether the Committee believed on reasonable grounds that a candidate had contravened" the *Act*. In doing so, the court relied upon this passage from *Lyras v. Heaps*, [2008] O.J. No. 4243 (Ont. C.J.), at para. 23:

... even if the appellant [elector] had what he considered reasonable grounds to ask for an audit, the Committee has considerably more information at their disposal. Having heard all the submissions and reviewed all the material before them, the Committee is in a better position than the appellant to determine whether, in fact, 'reasonable grounds' do exist to proceed with an audit. It is the role of the Committee to weigh the evidence and to make determinations of what weight should be accorded to the representations before it.

63 In defining "reasonable grounds," the Ontario Court of Justice again cited *Lyras v. Heaps*, *supra*, at para. 25:

... 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.

64 On the issue of contributions from associated corporations, the Ontario Court of Justice stated that while it was illegal for a contributor to make contributions to one candidate exceeding a total of \$750²⁰ and also illegal for associated corporations to do likewise,²¹ it was not a breach of the *Act* for a candidate to receive such contributions. The only obligation on the candidate is to return a contravening contribution "to the contributor as soon as possible after the candidate becomes aware of the contravention."²²

65 The court held, at para. 40, that because "each candidate had returned the excess money contributed in contravention of the *Act* as soon as possible after the candidate had become aware of the contravention ... the only reasonable conclusion that the Committee could have reached was that there were not reasonable grounds to believe that [Harris, Siscoe, Stack and Dorsey] had contravened the *Act*."

66 Regarding the issue of corporate contributions erroneously shown as contributions from individuals and the related issue of failing to list the President or Business Manager and Cheque Signatory for corporate contributions, the Ontario Court of Justice rejected a strict liability approach to the completion of Form 4 and seems to have concluded that it was reasonable for

the Committee to have viewed unintentional errors as not being contraventions of the *Act*. Reference was made once more to *Braid v. Georgian Bay (Township)*, *supra*, at paras. 28 and 29, which I will repeat, in part:

[28] In my opinion this dichotomy between a strict liability for complete failure to file and a more lenient approach where the document is filed but incorrect in some way, is entirely consistent with the aims of the *Act*. Failure to file leaves the public no ability to examine the expenses of a candidate. Such a failure leaves the interested person ... with no starting point from which to begin an examination. It strikes at the very heart of the *Act's* purpose.

[29] Filing a document that is flawed in some way is quite a different proposition. In contractual language there has been substantial compliance. Even a flawed financial statement provides a starting point for an examination of the candidate's expenses. The direction to the Court in subsection 92(6), that the draconian penalty of forfeiture does not apply where a candidate has made a mistake while acting in good faith, is a recognition that mistakes happen ...

67 The Ontario Court of Justice concluded that the decision of the Committee passed the test of reasonableness and dismissed the appeal.

Discussion

the grounds of appeal to the Superior Court of Justice

68 The notice of appeal to this court contains six grounds, the first two of which deal with the standard of review adopted by the Ontario Court of Justice. I was informed during argument that Mr. De Lisio, counsel for the appellant, now concurs with Mr. Richardson that the standard properly used by the Ontario Court of Justice was that of reasonableness.²³ Therefore, these two grounds of appeal, effectively, are abandoned.

69 The third ground of appeal alleges that the Ontario Court of Justice erred in:

(c) finding that the test to be applied by the Committee was whether the Committee believed on reasonable grounds that a candidate had contravened a provision of the *Act* relating to election campaign finances and when that test was to be applied;

70 Mr. De Lisio submits, on this appeal, that the test for ordering an audit is whether the elector who applies for a compliance audit believes on reasonable grounds that a candidate has contravened the *Act*. I must disagree. In my opinion, the belief of the elector is relevant only to the extent that it justifies making the application in the first instance.²⁴ Thereafter, what is important is whether the Committee, after considering the application in accordance with s. 81(5), shares that belief. The basis for the belief of the elector, as amplified at the hearing before the Committee, determines whether reasonable grounds exist.

71 It was correct in law for the Ontario Court of Justice to have concluded as it did on the third ground.

72 Yet, a finding of reasonableness does not automatically mean that an audit is warranted. In other words, even where the Committee is satisfied that the *Act* has been breached, or probably breached, it is not compelled, after considering all of the circumstances, to appoint an auditor (and it is upon this principle that the appeal ultimately founders).

73 The fourth ground of appeal states that the Ontario Court of Justice erred in:

(d) finding that section 17.1 (sic) of the *Act* in deciding (sic) there was no contravention of the *Act* by receiving campaign contributions in excess of \$750 from associated corporations;

74 Doing the best that I can with the awkward opening words of the fourth ground — "section 17.1" certainly seems to be a typographical error and presumably should read "section 71(1)" — I gather it is intended to allege that the court erred when it determined that receipt of contributions in excess of \$750 from associated corporations did not amount to a contravention of the *Act*.

75 Receiving a contribution that contravenes the *Act* is not illegal. The illegality arises when, in the words of s. 69(1)(m) of the *Act*, a candidate fails to return the contribution "as soon as possible after the candidate becomes aware of the contravention." I would add (although it is not necessary to do so for the purposes of this case) that the duty to return the contribution also crystallizes when the candidate *should have become aware* of the contravention. So, the essence of the illegality is not in receiving contravening contributions, but in keeping them.²⁵

76 The wording of s. 69(1)(m) is clear and unambiguous. One cannot read into the language of that provision anything beyond the ordinary and natural meaning of the words used; and there is nothing elsewhere in the *Act* to contradict or even cloud that meaning.

77 I see no error in the handling of the fourth ground by the Ontario Court of Justice.

78 I would add that I agree with Mr. De Lisio in his argument that candidates must undertake corporate searches "of all non-individual contributors" or "make inquiries" of those contributors where "there exists a compelling reason to do so": see *Chapman v. Hamilton (City)*, [2005] O.J. No. 1943 (Ont. C.J.), at para. 51. Here, compelling reasons were present. The need for inquiry was obvious.²⁶

79 The fifth ground of appeal alleges that the Ontario Court of Justice erred in:

(e) finding that the obligation of a candidate is simply to return a contribution of money made in contravention of the *Act* as soon as possible after the candidate becomes aware of the contravention and that if he does, the candidate is not contravening the *Act*;

80 The fifth ground is largely an extension or restatement of the fourth ground. Receiving illegal campaign contributions cannot sensibly be construed to contravene any provision of the *Act*. As others have correctly commented, if this were not so, a contributor could sabotage the election of a candidate merely by making an illegal donation. Consequently, the only obligation upon a candidate is to return the contravening contribution as soon as possible. Had the excess campaign contributions here not been returned, the *Act* would have been breached and an audit appropriate.

81 The final ground of appeal states that the Ontario Court of Justice erred in:

(f) finding that the contravention of the *Act* by councillors Stack and Dorsey and Siscoe did not constitute a contravention of the *Act*.

82 This ground is curiously worded. However, I understand that Lancaster is alleging that the *Act* was contravened and, after some prodding, it came out during argument that the section said to be breached is s. 78(1). There is merit to this ground.

83 The duty imposed by s. 78(1) to file a Form 4 includes the implied requirement that the document be filled out completely, correctly and in accordance with the *Act*; otherwise, s. 78(1) would have little meaning.

84 Both the Committee and the Ontario Court of Justice conflated the issues of contravention and intention. Contraventions of the *Act* should be determined on the basis of strict liability, irrespective of intention.²⁷ Absence of intention will be reflected in the consequences of the contravention. To conflate contravention and intention invites ignorance as a defence to breaching the *Act*. Ignorance of the *Act* is not a defence; neither is relying on the ignorance of others.

85 Importantly, even where there is a breach of the *Act*, the Committee has the authority to decline appointing an auditor. The Committee is doing more than considering if the *Act* has been breached; it is deciding whether an audit is warranted.

86 It was unreasonable for the Committee to have concluded that Siscoe, Stack and Dorsey did not contravene the *Act* and it was an error in law for the Ontario Court of Justice to have held likewise. To find that the *Act* was not breached is to understate

the importance of Form 4 and the scrupulous care that should be exercised in its completion. The omissions in the Form 4s of Siscoe, Stack and Dorsey were contraventions of the *Act*.

Summary

receiving contributions from associated corporations does not contravene Act

87 It is undisputed that Harris, Siscoe, Stack and Dorsey accepted illegal campaign contributions from associated corporations. Similarly, it is undisputed that they returned those contributions as soon as possible after learning of the illegality. Thus, they fully complied with the *Act*. In law, nothing more was required of them. There was no contravention of the *Act* and, obviously, it follows that it was reasonable for the Committee to have made that finding and to have declined to appoint an auditor and it was correct for the Ontario Court of Justice to have agreed with that result.

88 I offer the thought that it would be helpful if Form 4 were amended to contain some guidance as to the definition of "associated corporations" rather than forcing candidates into the offices of tax lawyers and chartered accountants for guidance. The definition would not be (and likely could not be) exhaustive. But here, even the most rudimentary definition would have alerted Harris, Siscoe, Stack and Dorsey to the likelihood that they were confronted with associated corporations.

improper completion of Form 4

89 A significant error or omission in the completion of Form 4 will amount to a contravention of the *Act*.

90 The only notable aspect of the Harris Form 4 is that two associated corporations are listed in Table 2. As this information is factually accurate, it cannot be said that his Form 4 is incorrect. Therefore, Harris did not contravene the *Act* when his Form 4 was completed.

91 Siscoe, Stack and Dorsey did not properly fill out or complete the Form 4 that each filed. Their omissions were glaring.²⁸ (1) Siscoe left entirely blank the column for President or Business Manager in Table 2. This is a significant omission and amounts to a breach of the *Act* (his listing of associated corporations, by itself, is not a breach because it is factually accurate); (2) Although Stack received corporate contributions, he did not record them in Table 2. This means that crucial particulars regarding the President or Business Manager and Cheque Signatory are missing so as to constitute a contravention of the *Act* (the fact that corporate contributions are wrongly set out in Table 1 is not a contravention because, again, the information in the entries is not *per se* inaccurate); (3) Dorsey also did not fill out Table 2 and, instead, included his corporate contributions in Table 1. My comments in respect of Stack apply to Dorsey.

92 It was unreasonable of the Committee not to have concluded that the *Act* had been breached by Siscoe, Stack and Dorsey and it was an error in law for the Ontario Court of Justice to have upheld that conclusion.

breach of Act does not necessarily lead to an audit

93 The Committee is not bound to appoint an auditor in the face of a breach or contravention of the *Act*. The Committee is entitled to look at all of the circumstances to determine whether an audit is necessary. The uncontradicted information received by the Committee was that the omissions in the Form 4s were unintentional.²⁹

94 There is not a flicker of further information to be obtained from an audit. To have directed an audit, would have amounted to a speculative expedition and ended up revealing what already was known.

95 Therefore, it was reasonable for the Committee to have declined to appoint an auditor and correct for the Ontario Court of Justice to have concurred.

Conclusion

96 Although it was unreasonable and an error for the Committee and the Ontario Court of Justice, respectively, to have found that the *Act* had not been breached, it was correspondingly reasonable and correct not to proceed with an audit. The appeal, therefore, is dismissed.

97 I thank everyone for their helpful arguments.

98 I hope that costs will not be an issue but, if they are, counsel should contact the trial co-ordinator to obtain a date for submissions.

Appeal dismissed.

Footnotes

- 1 It is a cold commentary on the perceived quality of politicians that our legislature thinks one can actually "buy" a candidate for the sum of \$751 (the mid-range cost of two decent seats at an NHL game).
- 2 Section 77(a) and s. 78(1)(a) of the *Act*.
- 3 The Form 4 filed on behalf of Harris is the only one where a date was inserted.
- 4 This is becoming tedious, but I am committed to completing the process.
- 5 Section 80(2)(a) of the *Act*.
- 6 Section 80(1)(a) and s. 80(2)(a) of the *Act*.
- 7 Section 81.1(2) of the *Act*.
- 8 Section 256 of the *Income Tax Act (Canada)* contains five definitions of associated corporations, but (and I am grossly oversimplifying here) the gist of them is that one corporation is associated with another where one controls, directly or indirectly, the other or where they are controlled, directly or indirectly, by the same person or group of persons who are related or hold a certain shareholder percentage.
- 9 If Siscoe was referring to the *Ontario Municipal Elections 2010 Guide*, it is more than vague: it is unhelpful.
- 10 As long as the time limit under s. 77(a) has not expired, a candidate should be permitted to file an amended Form 4 and if the *Act* does not permit such a filing it should.
- 11 The minutes of the Committee are not (and are not meant to be) a comprehensive transcription of everything that was said on July 19, 2011. I am told that this affidavit (and the others filed with the Ontario Court of Justice) only contains information that was before the Committee.
- 12 Section 81(7) of the *Act*.
- 13 Section 81(14)(a) of the *Act*.
- 14 Section 81(14)(b) of the *Act*.
- 15 Section 81(15) of the *Act*.
- 16 Although the wording here is a touch awkward, I assume it was meant that there is no excuse for a candidate being unaware of the concept of associated corporations and of the prohibition against collective contributions exceeding \$750.
- 17 The *Act* does not provide for a hearing *de novo*. The Ontario Court of Justice is not authorized to examine this matter anew. All of the information before the Ontario Court of Justice was available to the Committee and so the task of that court was to decide if such information reasonably supported the decision of the Committee; and the material before me is the same as in the Ontario Court of Justice.
- 18 No one raised a concern about the role of the Committee as a party in an appeal of a decision of the Committee. The role adopted, without opposition and with my acquiescence, was one where counsel for the Committee supported the position argued by Mr. Richardson and abstained from delivering a factum or other materials and from making submissions. The Committee is not a "party" in the usual meaning of that term and, therefore, must suffer a reduced level of participation in the appeal. That level was not fully articulated here. Despite my concern that the Committee should not be dealing with the merits of the appeal in any manner, in the circumstances, I will leave this issue alone, except to say that the fact counsel for the Committee supports the position of Mr. Richardson does not, in law, add weight to that position.
- 19 A view which seems to be unchallenged.
- 20 Section 71(1) of the *Act*.
- 21 Section 72 of the *Act*.

- 22 Section 69(1)(m) of the *Act*.
- 23 Counsel are in agreement that my function is to determine whether the Ontario Court of Justice was correct in law in concluding that the disposition by the Committee was reasonable. Therefore, I must keep my eye on both standards of review.
- 24 Which becomes crucial when costs are being contemplated under s. 81(15) of the *Act*.
- 25 One might rightly query whether a donation by cheque — only contributions of \$25 or less may be in cash: see s. 70(8) — is "received" when physically received or only when deposited in a bank account. To avoid that problem, candidates should scrutinize all cheques and perform their due diligence before depositing the cheques. Other questions arise as to the implications where the cheques are received and deposited by a campaign worker and not by the candidate personally. But I digress.
- 26 I think that any one of the corporate circumstances in this case was sufficient, on its own, to call for inquiry or investigation: (1) common President or Business Manager; (2) common Cheque Signatory; (3) common Address; (4) family relationship evident from (1) and/or (2).
- 27 I respectfully disagree with the contrary viewpoint expressed in *Braid v. Georgian Bay (Township)*, *supra*, at paras. 28 and 29.
- 28 Siscoe, Stack and Dorsey were careless in completing Schedule 1 of Form 4 and did not approach this responsibility with the necessary seriousness and attention. Notwithstanding the eye-glazing nature of Form 4, one would expect a politician to have a tolerance, if not an affinity, for paperwork.
- 29 Mr. Richardson submits that, in the Ontario Court of Justice, the appellant, through her counsel, had the opportunity to cross-examine the individual respondents, but did not do so and, consequently, there being no contradictory evidence, the truth of the statements and explanations of Harris, Siscoe, Stack and Dorsey are unchallenged. However, if the hearing in the Ontario Court of Justice is not meant to be *de novo*, should that court entertain any evidence that was not part of the hearing before the Committee?

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