Date: July 18, 2023

To: John D. Elvidge, City Clerk and
Amanda Wahl Compliance Audit Committee Administrator

Re: Application for Compliance Audit from Marjolein Winterink and Peter George
for the Candidate Ausma Malik

From: Ausma Malik - Candidate, and
Bruno Marchese – Candidate's Designate

We are writing to you in advance of the scheduled July 24, 2023, Election Compliance Audit Committee (the "Committee") meeting where two similar compliance audit applications will be reviewed. One application from Marjolein Winterink and the other from Peter George, both applying for a compliance audit of my 2022 Ausma Malik candidate's campaign finances. Note, only the application from Peter George presented a provision of the Municipal Elections Act (MEA) that Peter believes the candidate has contravened, Section 92(1)(a). The application from Marjolein seems to be missing text at the end of her explanation paragraph resulting in an incomplete sentence. We will assume that the provision of the MEA Marjolein believes the candidate to have contravened to be the same as what Peter's application presents.

Both applications have a remarkably similar description that outlines the nature of their concerns. Both applicants claim that the details of the expense description noted on Schedule 2 *"Salaries Fundraiser Services (Independent Contractor)"* "are not entirely clear", and therefore they are requesting a compliance audit.

From our perspective, and any reasonable person's perspective, the line item is entirely clear and describes exactly what the expense is. We are unsure as to why the clearly stated expense description is unclear to both applicants, and what "details" they further require to achieve clarity. During audit, the documentation to support the expense was closely reviewed by Chaplin & Co. LLP, Chartered Professional Accountants (who have performed over one hundred Ontario municipal campaign audits) who determined the expense to be correctly classified as a fundraising <u>activity</u> expense (not subject to the general spending limit). We believe that in the case of these two applications, the applicants not being "entirely clear" about clearly described expenses is ambiguous and lacks substance, and for this reason alone we request that the Committee reject both applications.

If the applicants are trying to suggest that a contractor providing fundraising services is not a fundraising <u>activity</u> expense (not subject to the general spending limit), we draw your attention to a similar compliance audit application made in 2011, for which the City of Toronto Election Compliance Audit Committee **rejected** the application. See compliance audit committee minutes and supporting documents here and APPENDIX A: https://secure.toronto.ca/council/agenda-item.do?item=2011.EA6.8.

The application for a compliance audit was made for this same general reason (claiming fundraising salary expenses should be classified as subject to the limit) was made against Councillor Michael Thompson back in 2011.

Legal defense prepared a response for the candidate and upon review by the Compliance Audit Committee the application was rejected accordingly. The decision was made by the Committee over a decade ago.

As explained, per the 2022 Ausma Malik campaign, a contractor was paid to provide fundraising services <u>exclusively</u>. This cost is correctly accounted for as a fundraising <u>activity</u> expense (not subject to the general spending limit). Given this reasoning, Section 92(1)(a) (more specifically section 88.20(6)) of the MEA has not been contravened by Ausma Malik in her 2022 campaign, and we request that the Committee reject both applications accordingly.

APPENDIX A

COMPLIANCE AUDIT COMMITTEE consideration on July 20, 2011

- This item was considered by Compliance Audit Committee on July 20, 2011 and was adopted with amendments.

EA6.8 - Compliance Audit Application by Justin Stasyshyn for the Election Campaign Finances of Michael Thompson

Decision Type:
ACTION
Status:
Amended

Statutory - Municipal Elections Act, SO 1996

Committee Decision

The Compliance Audit Committee rejected the compliance audit application.

Summary

Application for a Compliance Audit dated June 22, 2011 from Applicant Justin Stasyshyn for candidate Michael Thompson for City Councillor Ward 37.

Background Information

(June 15, 2011) Compliance Audit Application: Applicant Justin Stasyshyn, Candidate Michael Thompson
https://www.toronto.ca/legdocs/mmis/2011/ea/bgrd/backgroundfile-39501.pdf
(July 19, 2011) Candidate Submission by Michael Thompson re: compliance audit application by Justin Stasyshyn
https://www.toronto.ca/legdocs/mmis/2011/ea/bgrd/backgroundfile-39620.pdf

Communications

(July 12, 2011) E-mail from Communication from Jack B. Siegel, Blaney McMurtry, LLP Re: Compliance Audit Meeting July 20,2 011 representing Councillor Michael Thompson (EA.Main.EA6.8.1)
https://www.toronto.ca/legdocs/mmis/2011/ea/comm/communicationfile-23098.pdf
(July 20, 2011) E-mail from Michael Thompson, Canadidate for Election to Toronto City Council, Ward 37 (Background information is on file in the Office of the City Clerk - Compliance Audit Committee) (EA.New.PE6.8.2)

Motions

1 - Motion to Amend Item moved by John Hollins seconded by Virginia MacLean **(Carried)**

That the Committee reject the compliance audit application.

8a - Written submission on behalf of Michael Thompson

Summary

In the matter of an application by Jayme Turney under the Municipal Elections Act, 1996 to the City of Toronto Compliance Audit Committee, in respect to the Financial Statement of Michael Thompson, candidate for Election to the Toronto City Council, Ward37

Background Information

(July 19, 2011) Written submission on behalf of Michael Thompson
https://www.toronto.ca/legdocs/mmis/2011/ea/bgrd/backgroundfile-39623.pdf
Source: Toronto City Clerk at www.toronto.ca/council

TORONTO

Application for a Compliance Audit

1. An application for a compliance audit must be received by the City Clerk within 90 days after the latest of,
   - the filing date under section 78 of the *Municipal Elections Act, 1996, as amended* (the *Act*);
   - the candidate's supplementary filing date, if any, under section 78 of the *Act*;
   - the filing date for the final financial statement under section 79.1 of the *Act*; or
   - the date on which the candidate's extension, if any, under subsection 80(4) of the *Act* expires.
2. The applicant must be entitled to vote in a City of Toronto municipal election.
3. This application must be mailed or submitted in person to:
   - City Clerk's Office, City Hall, 1st Floor North, 100 Queen St. W., M5H 2N2
   - from Monday through Friday between 8:30 a.m. and 4:30 p.m.

Important: If an auditor's report finds that there is no apparent contravention to the *Act* and the committee finds that there are no reasonable grounds for this application Council is entitled to recover the auditor's costs from the applicant.

RECEIVED
CLERK'S DEPARTMENT

11 JUN 22 PM 4:01
CITY OF TORONTO

Applicant

Last Name: Stasyshyn	First Name: Justin
Applicant's full qualifying address within municipality	
Address [redacted]	
E-mail Address	Fax No.
Business Phone No.	Home Phone No.

I, JUSTIN STASYSHYN,

the applicant mentioned in this application, declare that I am presently legally entitled to vote in a City of Toronto municipal election, that the above is my qualifying address.

Sig[redacted]e June 15/2011

Candidate Information and Reason for Audit Request

Last Name	First Name	Nominated for the Office of: (check one)
THOMPSON	MICHAEL	☐ Mayor ☒ Councillor, Ward No.: 37

Your application must set out the reasons of your belief that this candidate contravened provisions of the *Municipal Elections Act, 1996* relating to his or her election campaign finances. Reasons may be stated here or attached to this application on a separate sheet.

See attached.

For Office Use Only

Received by: Linh Dang	Date Received: June 22, 2011

Personal information on this form is collected under the authority of the *City of Toronto Act (2006) s.137 and the Municipal Elections Act (1996) s. 81* for the purpose of applying for a compliance audit of a candidate's election campaign finances. Pursuant to the *Municipal Elections Act (1996)* s.88 this document is a public record, despite anything in the *Municipal Freedom of Information and Protection of Privacy Act (1990)*, and, until its destruction, may be inspected by any person at the City Clerk's Office at a time when the office is open. Questions about this collection can be directed to Elections Coordinator, 89 Northline Rd., Toronto, ON M4B 3G1, Telephone: 416-338-1111.

CAND327 – 2011/01

June 22, 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 the reasons motivating a request for a compliance audit of Michael Thompson. The following arguments are made in this submission:

    1) All that is required for compliance audit to be granted is that there be a "reasonable probability" of a single violation of the *Municipal Elections Act* (the "Act");

    2) A compliance audit may exceed the scope of the submission which requested it;

    3) The Act must be interpreted with a view to rigidly maintaining election spending limits in order to preserve fair elections and equal access to the democratic process;

    4) The Michael Thompson Campaign (the "Campaign") improperly categorized phone fund-raising efforts that lasted many months as a "fund-raising function";

    5) Alternatively, salaries for "fund-raisiers" are not proper "costs related to the holding of fund-raising functions";

    6) When the Campaign's expenses are properly classified, the Campaign has violated s. 76(4) of the Act by exceeding its prescribed spending limit.

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

2. Section 81(1) of the 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. There is little discretion in deciding whether to order a compliance audit once reasonable grounds are found to exist.[2]

3. It is useful to put the "reasonable probability" standard in context. The court in *Chapman v. Hamilton* does this by affirmatively citing the following extract from *R. v. Sanchez and Sanchez:*

> in addressing the requisite degree of certitude, it must be recognised that reasonable grounds is not to be equated with proof beyond a reasonable doubt or a prima facie case.[3]

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

[2] *Jackson v. Vaughan (City)* 2009 CanLII 10991 (O.N.S.C.) at para. 60; affirmed on appeal, 2010 ONCA 118 (CanLII)

[3] *R v. Sanchez and Sanchez* 93 C.C.C. (3d) 357, at page 10 cited in *Chapman v. Hamilton* 2005 ONCJ 158 at para. 41

If one conceives of a continuum of certitude, absolute certainty, a standard rarely used in law, would be at the very top. Beneath this, is the criminal standard of beyond a reasonable doubt, which still implies a high degree of certitude. The civil standard of proof, beyond a balance of probabilities, is next on the continuum. Roughly translated, this is equivalent to slightly greater than 50 % chance of a breach of the statute. The *prima facie*, or on its first appearance, standard is below the civil standard. It might be thought of as a 40 % probability of a breach of the statute. Both *Chapman v. Hamilton* and *Lyras v. Heaps*, state that the "reasonable probability" standard, the one to be used in assessing compliance audits, is less demanding than the *prima facie* standard. Thus, "reasonable probability" could be thought of as an equivalent to a 33 % chance of a breach of the statute. Therefore, should the Committee believe that there is a 33% chance that a breach of the Act occurred, it must order an audit.

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

4. 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."[4] Further, Lauwers J. notes that "The trigger can be a single contravention."[5]

   In the following cases the audit exceeded the scope of the original request:

   > *Savage v. Niagara Falls (City)*, [2005] O.J. No. 5694 (B.W. Duncan, OCJ); *Chapman, supra* [and] *Mastroguiseppe and Ruffolo v. City of Vaughan* (February 19, 2008), Newmarket, 49119990790000352-01-02 (O.C.J.)[6]

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[4] [2009] O.J. No. 1057 at para. 65 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)
[5] *Ibid.*
[6] *Ibid.* at para 66.

5. 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, <u>a "reasonable probability", or 33% chance, of a single breach of the *Municipal Elections Act* must trigger a comprehensive compliance audit.</u>

3. The Act must be interpreted with a view to rigidly maintaining election spending limits in order to preserve fair elections and equal access to the democratic process

6. Statutory interpretation is the technique by which statutes are defined and interpreted. Canadian courts have favoured a liberal approach to statutory interpretation that takes into account the purpose and the context of the act to be interpreted.[7] As the Supreme Court of Canada notes in *Rizzo*, "The words of an act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament."[8] Lauwers J. of the Ontario Superior Court applies this approach to the Act in *Jackson v. Vaughan (City)* which was affirmed by the Ontario Court of Appeal.[9] He states that the following citation from the Supreme Court of Canada case *Libman v. Quebec (Attorney General)* applies equally to the Act and is one of its central objects:

> To ensure a right of equal participation in democratic government, laws limiting spending are needed to preserve the equality of democratic rights and ensure that one person's exercise of the freedom to spend does not hinder the

[7] Ruth Sullivan, *Sullivan on the Construction of Statutes 5th ed*, (Toronto: Lexis Nexis, 2008)
[8] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paras. 20 and 21
[9] [2009] O.J. No. 1057 at para. 13.

communication opportunities of others. Owing to the competitive nature of elections, such spending limits are necessary to prevent the most affluent from monopolizing election discourse and consequently depriving their opponents of a reasonable opportunity to speak and be heard. [10]

7. As the Supreme Court notes in *Rizzo*, parliamentary intention is another guide to how a statute should be interpreted. The Ontario legislative Hansard, which has long been an acceptable method of demonstrating the legislature's intent, [11] reveals that the Legislative Assembly of Ontario intended for the Act to be interpreted restrictively. Upon introducing the revisions to the Act in 2009, Jim Watson, then Minister of Municipal Affairs and Housing, stated:

> We're trying to close some of those loopholes and tighten up some of the regulations so that there is no room for individual candidates to skirt the rules when it comes to fundraising or when it comes to reporting finances and contributions.[12]

8. <u>In sum, then, to ensure that the legislature's intention is achieved and the Act's object is realized, the Act should be interpreted restrictively with a view to promoting fair elections by ensuring that all campaigns abide by the same expense limit</u>. After all, as the Supreme Court of Canada held in *Figueroa v. Canada (Attorney General)*, which was also applied to the Act in *Jackson*[13], in order to preserve public confidence in democracy

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[10] [1997] 3 S.C.R. 569 at para. 47. Cited in *Jackson v. Vaughan* [2009] O.J. No. 1057 at paras. 17 and 19

[11] *R. v. Morgentaler*, [1993] 3 S.C.R. 463 at 484 and *Tschritter v. Alberta (Children's Guardian)* [1989] A.J. No. 230; (1989) 57 D.L.R. (4th) 579; at 484

[12] Jim Watson, Minister of Municipal Affairs and Housing, <u>November 4, 2009</u> at 1610 online at : <u>http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=2009-11-04&Parl=39&Sess=1&locale=en#PARA692</u>

[13] *Jackson v. Vaughan* [2009] O.J. No. 1057 at paras. 16 and 19

"it is of great importance that the integrity of the electoral financing regime be preserved." [14]

4. The Campaign improperly classified "Fundraising Campaign Activity" as a fund-raising function

9. All candidates for office are given an expense limit by the City Clerk. Section 75(5) of the Act sets out that the following types of expenses, which are actually listed in s. 67(2), may be excluded from the expenditure limit:

> 3. Audit and accounting fees [...]
> **5. The cost of holding fund-raising functions.**
> 6. The cost of holding parties and making other expressions of appreciation after the close of voting.
> 7. Expenses relating to a recount.
> 8. Expenses relating to proceedings under section 83 (controverted elections).
> 8.1 Expenses relating to a compliance audit.
> 8.2 Expenses that are incurred by a candidate with a disability, are directly related to the disability, and would not have been incurred but for the election to which the expenses relate. [emphasis added]

10. The Campaign excluded $ 15,100.70 in fund-raising expenses that are related to what is vaguely referred to as "Fundraising Campaign Activity" and dated April 22, 2010.[15] It is submitted that this "activity" is not a proper "fund-raising function" and consequently should not be excluded from the Campaign's spending limit. The term "fund-raising function" is defined in s. 1(1) of the Act as "an event or activity held by or on behalf of a candidate for the purpose of raising funds for his or her election campaign." *Jackson v. Vaughan (City)* is the only judicial decision to further refine this definition. [16] There, P.

[14] [2003] 1 S.C.R. 912 at para. 72
[15] See appendix 1: Michael Thompson Campaign Form 4 – Schedule 2.
[16] [2009] O.J. No. 1057

Lauwers J. approvingly cites the following definition taken from the *Municipal Elections 2006 Guide*:

> Fund-raising functions are events intended to raise money for a person's election campaign. Such activities include dinners, dances, garden parties, etc. for which there is an admission charge as well as auctions, button sales, etc. for which there may not be an admission charge. [17]

11. The *Municipal Elections 2010 Guide* prepared by the Ministry of Municipal Affairs and housing provides the same definition of "fund-raising functions".[18] So do the materials prepared by the City of Toronto for all candidates. All City of Toronto candidates were issued a copy of the 2010 City of Toronto Municipal Election Candidate's Guide. On page 44 of this guide a fund-raising function is defined as "...for the purpose of raising money for a candidate. Such events include dinners, dances, garden parties, etc. for which there is an admission charge, as well as events for which there is no admission charge such as auctions, etc." [19] Prior to the 2010 municipal election, the City of Toronto conducted numerous training sessions for candidates, many of which were at capacity, to inform candidates of the campaign's rules and regulations.[20] At this training, City staff delivered a presentation that presented this same definition as the accepted one for a fund-raising function.[21]

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[17] *Ontario Municipal Elections 2006 Guide* cited in: *Jackson v. Vaughn* [2009] O.J. No. 1057 at para. 77
[18] *The Municipal Elections 2010 Guide* – Ontario Ministry of Municipal Affairs available at: http://www.newmarket.ca/en/townhall/resourcelibrary/2010MinistryGuide.pdf - at page 29

[19] http://www.toronto.ca/elections/pdf/candidates-guide.pdf
[20] http://www.toronto.ca/elections/candidates/info-sessions.htm
[21] http://www.toronto.ca/elections/pdf/candidates-getting-started-presentation.pdf at page 27

12. These judicially accepted definitions, which were made available to all City of Toronto candidates, do not specifically set out criteria by which a fundraising effort may be classified as an "event". In other words, these judicially accepted definitions provide examples of events which are "fund-raising functions", but do not aid in the determination of whether non-traditional fundraising efforts can be classified as "fund-raising functions". Consequently, it is necessary to try to infer such criteria from the examples provided and to analogize between the examples provided and novel fundraising efforts that seek classification as "fund-raising functions".

13. All of the examples provided by the above definition have four common characteristics. All of the given events involve a good or service provided to the contributors. For instance, the contributor enjoys a meal at dinner, drinks at a reception, or the goods purchased at an auction. The Act allows campaigns to exclude the cost of providing these benefits to contributors from the spending limits. All of the given events have a defined physical location. For instance, it is usually possible to identify the physical location where an auction takes place. Similarly, the examples given have a defined duration of only a few hours. It is hard to conceive of a fundraising garden party or dinner that lasts longer than 24 hours. Finally, all of the examples given share a common purpose – to raise money for the candidate who hosts them.

14. On its schedule 2, the Campaign states that the event in question occurred solely on April 22, 2010.[22] However, an analysis of the Campaign's disclosed financial records

[22] See appendix 1: Michael Thompson Campaign Form 4 – Schedule 2

shows that the fund-raising expenses associated with staffing the "Fundraising Activity Campaign" function are for a period that runs from January-July 2010. This demonstrates that the "Fundraising Activity Campaign" was a long-term campaign, not an event.

15. Accordingly, it strains credulity to classify a long-term telephone fundraising campaign a "fund-raising function" as the *Municipal Elections Act* and the *Municipal Elections 2010 Guide* define it. Such a campaign provides no good or service to the contributor. Instead of enjoying a meal at a dinner, the contributor's dinner is interrupted by a fund-raising phone call. It is actually a series of many different events rather than one event. It has no single identifiable physical location. It lasts many months instead of many hours. Indeed, the only comparable factor between a dinner and long-term telephone fund-raising efforts is that both serve to raise money. Any other attempts to analogize between a garden party and long-term telephone fundraising efforts are unconvincing. Consequently, the $ 15,100.70 in expenses should be included in the Campaign's limit. This approach is consistent with the necessity to rigidly interpret the Act to preserve fair elections by ensuring that campaign spending limits are strictly enforced.

5. Alternatively, fund-raising salaries are not "costs of holding fund-raising functions" and thus should not be excluded from the campaign expense limit.

16. All candidates for office are given an expense limit by the City Clerk. Section 75(5) of the Act sets out that the following types of expenses, which are actually listed in s. 67(2), may be excluded from the expenditure limit:

> 3. Audit and accounting fees [...]
> **5. The cost of holding fund-raising functions.**

6. The cost of holding parties and making other expressions of appreciation after the close of voting.
7. Expenses relating to a recount.
8. Expenses relating to proceedings under section 83 (controverted elections).
8.1 Expenses relating to a compliance audit.
8.2 Expenses that are incurred by a candidate with a disability, are directly related to the disability, and would not have been incurred but for the election to which the expenses relate. [emphasis added]

17. If argument under heading four is not accepted, it is submitted that the Campaign improperly classified $ 14,500.00 in "salaries for fund-raising personnel".[23]

18. There are no previous cases that guide the interpretation of what expenses might be appropriately excluded from the spending limit because they are a "cost of holding a fund-raising function." As the Supreme Court of Canada holds in *Rizzo,* the words of an Act are to be interpreted in their ordinary sense, but in a manner that is consistent with the object and the legislature's intention. Having established the Act's object, and the legislature's intention, it is necessary to break down the phrase term by term.

19. Webster's Dictionary of the English Language defines cost as "the price paid or to be paid for something."[24] The same dictionary defines holding, which in this context is the present participle of the verb to hold, as "to conduct, carry on, *to hold a meeting.*"[25] The term "fund-raising functions" is defined in s. 1(1) of the Act as "an event or activity held by or on behalf of a candidate for the purpose of raising funds for his or her election campaign." Using these definitions, it is possible to reformulate the phrase the "cost of holding a fund-raising function", albeit in a less succinct way, as expenses

[23] See appendix 1: Michael Thompson Campaign Form 4 – Schedule 2
[24] *New Lexicon Webster's Dictionary of the English Language*, (New York: Lexicon Publications 1987) at p. 220.
[25] *Ibid.* at p. 461

related to the conducting of an event that was intended to raise money for a candidate's election campaign. An interpretation of s. 67(2)(5) that is consistent with the object of the Act and the legislature's intention, demands that only those expenses that are directly related to the holding, or conducting, of the fund-raising function should be excludable from the limit. In other words, the test for each expense should be phrased as: but for the expense in question, could the event be conducted?

20. The City of Toronto *2010 Candidate's Guide* implicitly adopts this approach. It gives examples of expenses that may be excluded from the spending limit because they directly relate to the cost of holding fund-raising functions including: "Venue, Event advertising, Food and drink, Entertainment, and Other".[26] It does not offer examples of other appropriate expenses.

21. Similarly, prior to the 2010 municipal election, the City of Toronto conducted numerous training sessions for candidates, many of which were at capacity, to inform candidates of the campaign's rules and regulations.[27] At this training, City staff delivered a presentation that presented the exact same list of expenses that are found in the *2010 Candidate's Guide*.[28] Similar types of briefing materials have been relied on by courts to help interpret other sections of the Act. [29]

22. The common element of all the expenses enumerated by the *Candidate's Guide* is that they pertain directly to holding an event. In other words, they satisfy the suggested test:

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[26] *2010 Municipal Election Candidate's Guide*, City of Toronto, http://www.toronto.ca/elections/pdf/candidates-guide.pdf at page 86.

[27] http://www.toronto.ca/elections/candidates/info-sessions.htm

[28] http://www.toronto.ca/elections/pdf/candidates-getting-started-presentation.pdf at pages 28-29.

[29] *Jackson v. Vaughn* [2009] O.J. No. 1057 at para. 77

but for the expense in question, could the event be conducted? Take a fund-raising dinner as an example. The costs of the food, drink, the rental of the hall, and the salaries of the wait staff are all costs that directly relate to the holding of the event. Without these, the event could not have proceeded.

23. Salaries paid to fundraisers employed by the Campaign, however, are a different kind of expense. They are not costs of holding the event. To reprise the example of a fund-raising dinner, it could be held without this type of expense. In fact, many fund-raising dinners are held by many candidates who do not pay salaries to fund-raisers. Instead, salaries of fund-raisers whose sole purpose is to raise money are salaries of campaign staff and should be counted towards the spending limit just as the salary for the campaign manager or the office receptionist is.

24. The Ontario (provincial) electoral finance regime operates in a very similar manner to the one set out under the *Municipal Elections Act*. Section 1(1)(e) of the *Election Finances Act*[30] excludes the cost of fund-raising activities from the overall campaign spending limit. Further, section 23(1) defines a fund-raising activity as, "an event or activity held for the purpose of raising funds for the party, constituency association, candidate or leadership contestant registered under this Act by whom or on whose behalf the activity is held." This mirrors, almost exactly, the definition of a fund-raising function found under s. 1(1) of the *Municipal Elections Act*. Thus, the authorities that interpret the *Election Finances Act* should carry some weight in helping to interpret the *Municipal Elections Act*.

[30] R.S.O. 1990, CHAPTER E.7

25. Elections Ontario publishes a detailed set of guidelines that help political campaigns interpret the rules. Guideline PG01 gives examples of expenses that may be excluded such as, "all expenses directly related to fundraising which may include advertising, brochures, printing, catering, entertainment, postage, refreshments, hall rental, etc."[31] Thus, the provincial election finance regime supports a narrow definition of expenses that are excluded under this section.

26. All of the above narrow definitions are consistent with the object of the Act, which is to preserve fair elections and equal access to democratic institutions by ensuring that all candidates are subject to the same expense limit, and the Ontario legislature's intention to interpret the Act restrictively to "close loopholes" and "tighten regulations".

27. The importance of this regime lies in creating fair conditions for campaigns. Some grassroots campaigns are barely able to raise enough money to spend their limit. They must rely on scarce volunteer labour to assist in raising money instead of paid fund-raisers. Allowing campaigns to engage unlimited paid fund-raising staff creates an unequal playing field. Those campaigns that are well-funded are able to deploy their volunteer resources elsewhere.

28. Moreover, allowing salaries to be excluded from the limit creates an alternate method to pay campaign staff. Consider the hypothetical situation in which a campaign staffer is paid via fund-raising commissions for helping to raise money for one event, but also takes on additional duties throughout the course of the campaign. He or she could have

[31] Elections Ontario, *Election Finance Handbook*, "Guidline PG01: Registered Political Parties – Annual Financial Statements" at page 316 online"- http://www.elections.on.ca/NR/rdonlyres/DDF5F372-E453-44E7-9B07-2B7D9E415138/4220/EFBinderv0906261.pdf

been paid an entire campaign's salary for assisting with fund-raising and take on additional duties as required. As such, the staffer's salary is essentially entirely outside of the limit. If this practice is accepted, it will legitimatize a loophole by which candidates can pay salaries of campaign staff outside of the limit, severely compromising the effectiveness of the Act's regime.

29. In sum, to preserve fair elections, it is necessary to enforce a rigid interpretation of the campaign finance rules and not allow the exclusion of salaries for fund-raisers from a campaign's expense limit.

6. The Campaign violated s. 76(4) of the *Municipal Elections Act* by surpassing its expense limit

30. Section 76(4) of the *Municipal Elections Act* prohibits candidates from spending in excess of the expenditure limit set by the City Clerk. The Campaign's spending limit was $ 36,426.20 and it spent $ 34,813.91.[32] If the arguments under heading four are accepted, then the entire $ 15,100.70 in fund-raising expenses that were related to "fund-raising activities" should be counted toward the Campaign's spending limit. This would mean that the Campaign would have exceeded its spending limit by $ 13,488.41.

31. Alternatively, if only the arguments under heading 5, relating to the salaries for fund-raisers, are accepted, then the Campaign has wrongly excluded $ 14,500.00 from its spending limit and has consequently exceeded said limit by $ 12,887.71. Interestingly, $ 6000 of this was paid to Marcia Stiles "For services rendered."[33] A 2006 newspaper

[32] See Appendix 1: Michael Thompson Campaign Form 4

[33] See Appendix 2: Invoice from Marcia Stiles to Michael Thompson Campaign

article identifies Marcia Stiles as Michael Thompson's campaign manager.[34] It is possible that Marcia Stiles also managed Michael Thompson's 2010 campaign. Regardless, as stated above, salaries of professional fund-raisers are not proper "costs of holding fund-raising functions" and should not be excludable from the campaign spending limit.

7. Conclusion

32. All that is required for the Committee to order a wide-ranging compliance audit is a , "reasonable probability" , or a 33% chance, of a breach of the Act. In assessing this request, the Committee must interpret the Act according to its object and the Ontario legislature's intention. The most important court decision to discuss the Act's interpretation sets out that its object is to preserve fair elections by creating a level playing field in terms of expenses. The Ontario legislature's intention to have the Act interpreted restrictively is clear. In light of this interpretive guide, this Committee must strictly adhere to the accepted definition of a "fund-raising function" and not allow the Campaign to flout the rules by excluding the costs of "fund-raising activities". Alternatively, the Campaign should not be allowed to exclude salaries for professional fund-raisers from its spending limit.
33. When the Campaign's fund-raising expenses are properly categorized, it violates s. 76(4) of the Act because it is significantly above its prescribed spending limit. As such, a compliance audit is warranted.
34. Finally, it is submitted that the Campaign can't claim that its audited statements are incorrect without triggering an audit, as this would be a violation of the candidate's

[34] http://thevarsity.ca/articles/16742

obligation to under s. 78(1) of the Act to file a financial statement that reflects the candidate's election campaign finances. Moreover, under s. 92(5) of the Act a candidate who files a financial statement that is "incorrect" is subject to the penalties under s. 80(2) which include forfeiting the office to which he/she was elected. The gravity of the penalty associated with filing an incorrect statement shows that it is not excusable to simply make an error on a financial statement, but rather that such an error or mistake is an offence under the Act and is sufficient to trigger an audit in and of itself.

All of which is respectively submitted:

Justin Stasyshyn

APPENDIX 1

Ontario Ministry of Municipal Affairs and Housing

Financial Statement – Auditor's Report

Form 4

Municipal Elections Act, 1996 (Section 78)

Instructions

All candidates must complete Boxes A, B, C, D, E and F and Schedule 1. All candidates must complete Schedules 2, 3 and 4 as appropriate. Candidates who receive contributions or incur expenses in excess of $10,000 must also attach and Auditor's Report.

All surplus funds (after any refund to the candidate or his or her spouse) shall be paid immediately over to the clerk who was responsible for the conduct of the election.

	YYYY	MM	DD		YYYY	MM	DD
For the campaign period from (day candidate filed nomination)	2010	1	20	**to**	2010	12	31

☑ Primary filing reflecting finances to December 31 (or 45th day after voting day in a by-election)

☐ Supplementary filing including finances after December 31 (or 45th day after voting day in a by-election)

Box A: Name of Candidate and Office

Name of Candidate Last Name	First Name	Middle Initial
THOMPSON	MICHAEL	

Mailing Address Suite/Unit No.	Street No.	Street Name
	94	APPLEFIELD DRIVE

City/Town	Province	Postal Code
TORONTO	ONTARIO	M1P 2Y3

Telephone No. (incl. area code) Business	Home.	Fax No.	Email Address

Name of office for which the candidate sought election	Ward Name or No. (if any)
COUNCILLOR	37

Name of Municipality

CITY OF TORONTO

Box B: Summary of Campaign Income and Expenses

1.	My spending limit (as issued by clerk) was	$ 36,426.20
2.	Surplus (or deficit) from previous election	$ -
3.	Total contributions received (from Schedule 1)	$ 84,300.00
4.	My total campaign expenses that were subject to the spending limit were (from Box C)	$ 34,813.91
5.	My total campaign expenses that were not subject to the spending limit were (from Box C)	$ 38,734.67
6.	Total of all campaign expenses (from Box C)	$ 73,548.58
7.	Election campaign surplus/deficit from current election (from Box E)	$ 11,065.55
8.	Contributions refunded to candidate or spouse (from Box E)	$ -
9.	Amount paid to clerk (from Box E)	$ 11,065.55

Box C: Statement of Campaign Period Income and Expenses

From YYYY	MM	DD	To YYYY	MM	DD	For Candidate
2010	1	20	2010	12	31	MICHAEL THOMPSON

INCOME

Candidate's Surplus from immediately preceding election released by the clerk	+	$ -			
Contributions from candidate	+	$ 900.00			
Contributions from spouse of candidate	+	$ -			
All other contributions	+	$ 83,400.00			
Revenue from fund-raising functions not deemed a contribution (from Schedule 2, Part III)	+	$ -			
Interest Income	+	$ 214.13			
Other (provide full details)	+				
1. Nomination filing fee from candidate.	+	$ 100.00			
2.	+	$ -			
3.	+	$ -			
Total Campaign Period Income			=	$ 84,614.13	C1

EXPENSES (Note: Include the value of contributions of goods and services)

Expenses Subject to Spending Limit

Advertising	+	$ 3,017.10			
Bank Charges	+	$ 183.55			
Brochures	+	$ 5,254.55			
Interest on Loan	+	$ -			
Inventory contributed to candidate's campaign (Schedule 3)	+	$ 900.00			
Meeting hosted	+	$ -			
Nomination filing fee	+	$ 100.00			
Office Expenses	+	$ 12,754.16			
Phone and/or Internet	+	$ 831.19			
Salaries and benefits/honoraria/professional fees	+	$ 4,000.00			
Signs	+	$ 6,773.36			
Other					
1.	+	$ -			
2.	+	$ -			
3.	+	$ -			
Subtotal	=	$ **34,813.91**			C2

Expenses Not Subject to Spending Limit

Accounting and Audit	+	$ 9,616.00			
Costs of fund-raising function (from Schedule 2, Part IV)	+	$ 21,262.72			
Expenses related to compliance audit	+	$ -			
Expenses related to controverted elections	+	$ -			
Expenses related to recounts	+	$ -			
Voting day party / appreciation notices	+	$ 7,855.95			
Expenses related to candidate's disability (provide details)	+				
1.	+	$ -			
2.	+	$ -			
3.	+	$ -			
Other (provide full details)					
1.	+	$ -			
2.	+	$ -			
3.	+	$ -			
Subtotal	=	$ **38,734.67**			C3
Total Campaign Period Expenses (C2) + (C3)			=	$ **73,548.58**	C4
Excess (Deficiency) of Income over Expenses (C1) - (C4)			=	$ **11,065.55**	

Box D: Statement of Assets and Liabilities as at 2010 / 12 / 31

Assets

Cash	+	$ 11,065.55		
Accounts Receivable	+	$ -		
Value of Inventory retained (from Schedule 4)	+	$ 1,147.00		
Other (provide full details)				
1.	+	$ -		
2.	+	$ -		
3.	+	$ -		
Total Assets			=	**$ 12,212.55**

Liabilities and Excess (Deficiency) of Income over Expenses

Accounts payable	+	$ -		
Borrowings, overdraft	+	$ -		
Other (provide full details)				
1.	+	$ -		
2.	+	$ -		
3.	+	$ -		
Total Liabilities			=	$ -

Box E: Statement of Determination of Surplus or Deficit and Disposition of Surplus

Part I - Determination of Surplus or Deficit

Amount of excess (deficiency) of income over expenses (from Box C)	+	$ 11,065.55	E1
Deduct: Any deficit carried forward by the candidate from immediately preceding election if the offices are with respect to the same jurisdiction	-	$ -	E2
Surplus (or deficit) for the campaign period (E1) - (E2)	=	$ 11,065.55	
Deduct: Any refund of contributions to the candidate or spouse (only if there is a surplus)	-	$ -	
Total Determination	=	$ 11,065.55	E3

Part II - Disposition of Surplus

If line E3 shows a surplus, the amount must be paid in trust, at the time the financial statements are filed, to the municipal clerk who was responsible for the conduct of the election.

Surplus paid to the municipal clerk of the municipality of Toronto.

Box F: Declaration

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

Declared before (clerk or commissioner)

in the City of Toronto

on (yyyy/mm/dd) 2011 /03 /04

Signature of Clerk or Commissioner

Signature of Candidate

2011 /03 /04

Date Filed in the Clerk's Office (yyyy/mm/dd)

Marie Elizabeth Elena Greig
a Commissioner, etc., Province of Ontario,
for the City of Toronto.
Expires March 14, 2013.

Schedule 1 - Contributions

Part I - Contribution

Contribution from a candidate	+	$ 900.00	
Contribution from a spouse	+	$ -	
Total from each single contributor totaling more than $100 • include all ticket revenue where ticket price exceeds $100 • include all good and services where value exceeds $100 • include all good and services where value exceeds $100		$ 82,800.00	
Total from each single contributor totaling $100 or less • include all ticket revenue where ticket price is $100 or less • include all good and services where value is $100 or less • do not include contributions from candidate or spouse	+	$ 600.00	
*Note: Goods and services must also be reported as expenses in Box C			
Less: Contribution returned or payable to the contributor	-	$ -	
Contribution paid or payable to the clerk	-	$ -	1A
Total Amount of Contribution	=	$ 84,300.00	
Total contribution from anonymous sources		$ -	1B
Amount of contributions paid or payable to the clerk (1A) + (1B)	=	$ -	

-

Part II - List of Contributions From Each Single Contributor totaling More than $100.00

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

Name	Address	Amount
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
		$ -
	Total	$ 82,800.00

☑ Additional information is listed on separate supplementary attachment

Form 4. Schedule 1, Part II, Table 1
Michael Thompson Campaign 2010

Name	Address		Amount
A Bacopoulos	54 Vintage Dr, Whitby, ON	L1R 2P4	250.00
A Rappaport	27 Yorkdowns Dr., Toronto, ON	M3H 1H7	250.00
A Ziering	B-50 West Beaver Creek Road, Richmond Hill, ON	L4B 1G5	500.00
Abdulkadir Mohamoud	84 Tawnberry Cir., Brampton, ON	L7A 0J8	250.00
Alana Mandronis	11 Newcastle Cres., Richmond Hill, ON	L4S 2C4	250.00
Albert Gasparrao	47 Thornbank Road, Thornhill, ON	L4J 2A1	750.00
Alek Nikolovski	780 Spadina Rd., Toronto, ON	M5P 2X6	250.00
Alfred Szeto	191 Grey Abbey Trail, Toronto, ON	M1E 1W2	250.00
Allan Freedman	79 Dudurin Cres., Thornhill, ON	L4J 6Z3	250.00
Alon Szpindel	34 Otter Cres., Toronto, ON	M5N 2W4	750.00
Alvin Jones	43 Barre Dr., Barrie, ON	L4N 7N8	250.00
Amand Mesko	200 Prail Avenue, Sarnia, ON	N7X 1A1	500.00
Ana Rocha	244 McMurchy Ave S., Brampton, ON	L6Y 1Z5	500.00
Angela Khalili	251 Milverton Blvd., Toronto, ON	M4J 1V6	300.00
Anil Puri	17 Riderwood Dr., Toronto, ON	M2L 2X4	750.00
Annie Raimondo	2 Fairhaven Dr., Etobicoke, ON	M9P 2P6	250.00
Antonietta Ceniti	134 Village gate Dr., Markham, ON	L6C 1W3	200.00
Arnis Budrevics	895 Don Mills Road, Toronto, on	M3C 1W3	500.00
Arthur Samuel Wakim	130 King St. W., Toronto, ON	M5X 1J5	250.00
Ashley Steinfeld	1603-102 Bloor St W., Toronto, ON	M5S 1M8	750.00
Athanasios Simos	2 Hepscott Terr, Scarborough, ON	M1W 1E1	500.00
Ayad Shammas	38 High Point Rd., Don Mills, ON	M3C 2R5	750.00
B Mirza	428 Margueretta St., Toronto, ON	M6H 3S5	250.00
Bai-Sen Cheng	3 Black Walnut Dr., Markham, ON	L3S 4A7	250.00
Barbara Whitehurst	513-6 Royal York Rd., Etobicoke, ON	M8V 2S7	250.00
Barry Zagdanski	142 Strathallen Blvd, Toronto, ON	M5N 1S7	250.00
Brian / Joannah Lawson	20 Rose Park Crescent, Toronto, ON	M4T 1P9	500.00
Brian Boychuk	76 Stafford St., Toronto, ON	M6S 2S7	500.00
Brian Chapnick	110 Arnold Crescent, Richmond Hill, ON	L4C 3R8	500.00
Brij Sharma	18 Nantucket Blvd., Toronto, ON	M1P 2N4	500.00
Bruce Isakow	250 Rosedale Heights Dr., Thornhill, ON	L4J 6Y7	750.00
Bryan Rowntree	1100 Eglinton Ave E, Toronto, ON	M3C 2A2	500.00
Carolyn Wiggan	1107-1400 Dixie Road, Mississauga, ON	L5E 3E1	250.00
Catherine Mackenzie	24 Tiago Ave., Toronto, ON	M4B 2A1	750.00
Charles Roach	688 St. Clair West, Toronto, ON	M6C 1B1	250.00
Charles Whitehurst	513-6 Royal York Rd., Etobicoke, ON	M8V 2S7	250.00
Chester Lew	1493 Royal Rose Crt, Mississauga, ON	L5V 1H4	750.00
Chris Hinn	49 Dianwood Ridge, Woodbridge, ON	L4L 6Y1	750.00
Christine Mandronis	153 Roe Ave., North York, ON	M5M 2J1	250.00
Claudio Poscoco	1305 Indian Road, Mississauga, ON	L5H 1S3	250.00
Costanzo Raimondo	2 Fairhaven Dr., Etobicoke, ON	M9P 2P6	250.00
Craig Thorburn	2800-199 Bay St., Toronto, ON	M5L 1A9	750.00
Crichton Buchanan	40 College St., Toronto, ON	M5G 2J3	250.00
Daniel Bordonali	96 Barbarry Cres, Richmond Hill, ON	L4E 4S6	250.00
Danuta Gumjecnk	2902 Lakeshore Blvd. W., Etobicoke, ON	M8V 1J1	150.00
Denise Mesko	1108-2285 Lake Shore Blvd. W., Toronto, ON	M8V 3X9	750.00
Dennis & Karen Kohn	301-5400 Yonge St., Toronto, ON	M2N 5R5	250.00
Dennis Lambert	8 Cranmore Crt., Brampton, ON	L6Z 2Z9	250.00
Derek Strang	7 Prentice Crt., Unionville, ON	L3R 2X6	500.00
Diane Cicirello	9 Greenvale Terr, Scarborough, ON	M1E 2B7	750.00
Diane Madden	59 Leander St., Brampton, ON	L6S 3M4	250.00
Dobrivoje Jovanovski	69 Burnett Avenue, North York, ON	M2N 1V4	250.00
Dr. John Philpott	3210-99 Harbour Square, Toronto, ON	M5J 2H2	250.00
Dr. W Cheong Cheung	12 Brian Cliff Dr., North York, ON	M3B 2G2	750.00
Edward Jagan	4 King Louis Cres., Scarborough, ON	M1T 2W8	750.00
Eileen Zahakos	26 Rothsay Road, Thornhill, ON	L3T 3J7	250.00
Ellias Assal	35 Linda Margaret Cres., Richmond Hill, ON	L4S 2B6	500.00
Emad Rozik	65 Risebrough Ave., Toronto, ON	M2M 2E2	750.00
Emily Kalisse	126 Fifth Avenue, Woodbridge, ON	L4L 6Z4	750.00

Erica Ruddock-Rhoden	482 Laurentian Ave, Mississauga, ON	L4Z 2K5	250.00
Esther Sarick	305-95 Barber Greene Road, Toronto, ON	M3C 3E9	750.00
Frank Leo	1 Hartsdale Drive, Toronto, ON	M9R 2S1	750.00
Frank Walwyn	1600-130 King St. W., PO Box 480, Toronto, ON	M5X 1J5	250.00
Fred Dalakis	14 Erica Road, Thornhill, ON	L4J 2G1	750.00
Freida Babatsikos	5 Manorpark Crt., Toronto, ON	M2J 1A1	250.00
Gary Freeman	320 King St. E, Toronto, ON	M5A 1K6	250.00
Gavin Cheung	14 Royal Oak Dr., Don Mills, ON	M3C 2M2	750.00
Geoffrey White	253 Haddington Ave., Toronto, ON	M5M 2R1	500.00
George Persichilli	1255 Kennedy Road c/o Snow City Cycle Marine, Toronto	M1P 2L4	750.00
Gerald Miller	114 Windham Trail, Aurora, ON	L4G 5L6	250.00
Giovanni Ferrara	54 Gooderham Dr., Scarborough, ON	M1R 3G7	300.00
Gordon Crann	127 Gamble Ave., East York, ON	M5J 2P2	750.00
Gus Mantia	155 Nantucket Blvd., Scarborough, ON	M1P 2P2	750.00
Gyan Jain	4 Peebles Ave., Toronto, ON	M3C 2N8	750.00
Harry Floros	7 Mosedale Cres., Toronto, ON	M2J 3A3	500.00
Harvey Diamond	46 Snowdon Ave., Toronto, ON	M4N 1A6	750.00
Harvey Wise	58 Farnham Ave., Toronto, ON	M4V 1H4	500.00
Heather Elfassy	43 Country Lane, North York, ON	M2L 1E1	500.00
Hitesh Parmar	90 Sherwood Forest Dr., Markham, ON	L3P 1R1	400.00
Hovic Boyadjian	305 Weldrick Road E., Richmond Hill, ON	L4C 0R7	750.00
Ikram Freed	1211-40 Panorama Crt., Etobicoke, ON	M9V 4M1	250.00
Ilona Unger	418-77 Maitland Place, Toronto, ON	M4Y 2V6	750.00
Irena Wywial	27 Tamarack Circle, Toronto, ON	M9P 3T9	250.00
Jamie Besner	17-2111 Lake Shore Blvd., Toronto, ON	M8V 4B2	250.00
Jeffrey Feldberg	47 Owen Blvd, Toronto, ON	M2P 1G2	750.00
Jeffrey Goldman	369 Spadina Rd., Toronto, ON	M5P 2V7	250.00
Jianing Huang	305-32 Clegg Road, Markham, ON	L6G 0B2	750.00
Joel Mandelbaum	506-7 Bishop Ave., Toronto, ON	M2M 4J4	150.00
John Barrington	7 Lexington Drive, Markham, ON	L3P 6V3	250.00
John Christoforidis	27 Ellington Dr., Scarborough, ON	M1R 3X6	750.00
John Gallagher	106 Phyllis Ave, Toronto, ON	M1M 1Y1	250.00
Jonathan Catsaris	27 Trinnell Blvd, Scarborough, ON	M1L 1S4	750.00
Joseph Rubin	25 York Downs Dr., North York, ON	M3H 1H7	250.00
Joseph Siman	111 Judge Road, Toronto, ON	M8Z 5B9	500.00
K. Kajendran	608-8 Mondeo Drive, Scarborough, ON	M1P 2L6	250.00
Kanchan Jain	4 Peebles Ave., Toronto, ON	M3C 2N8	750.00
Karen Diamond	68 Warren Road, Toronto, ON	M4V 2R5	150.00
Karin Eaton	52 Harding Blvd., Scarborough, ON	M1N 3C9	250.00
Katie Hinn	49 Dianwood Ridge, Woodbridge, ON	L4L 6Y1	750.00
Khalil Syed	44 Griffiths Drive, Ajax, ON	L1T 3J7	250.00
Kiran Naz	743 Saint Clarens Ave., Toronto, ON	M6H 3X2	250.00
Kumert Chow	78 Walnut Grove Cres., Richmond Hill, ON	L4S 1Z2	250.00
Lazaros Mallinos	92 Long Island Cres, Markham, ON	L3P 7L5	250.00
Leonard Copetti	85 Katherine Cres., Stouffville, ON	L4A 1K5	250.00
Leslie Igel	36 Sandringham Dr., North York, ON	M5M 3G3	500.00
Lionel Miskin	2 Allview Crescent, Toronto, ON	M2J 2R3	250.00
Lou Carlini	44 Minglehaze Dr., Etobicoke, ON	M9V 4W8	750.00
Mamadou Bah	11 Berger Ave., Markham, ON	L6B 0B6	250.00
Mansoor Kanani	30 Lagnua Cres., Markham, ON	L3S 3G6	750.00
Marilana Di Mambro	338-10520 Yonge St., Unit 35B, Richmond Hill, ON	L4C 3C7	250.00
Mark Jones	74 Bevdale Road, Toronto, ON	M2R 1L7	250.00
Marla Brown	900-5075 Yonge St., North York, ON	M2N 6C6	500.00
Marienna Muthulingam	28 Boyce Ave, Scarborough, ON	M1J 1K5	750.00
Mary Koumoudouros	14 Walling St., Etobicoke, ON	M9P 3E9	500.00
Mary Lennox	25 Archstone Stree, Whitby, ON	L1R 0G8	250.00
Miguel Singer	42 Alexandra Wood, North York, ON	M5N 2S1	250.00
Mike Abbott	15 Shore Ave., Whitby, ON	L1R 2L8	250.00
Mira & Robert Igel	403-7300 Yonge St., Thornhill, ON	L4J 7Y5	750.00
Mirza Ashraf	428 Margueretta St., Toronto, ON	M6H 3S5	250.00
Mohammed Bouhajib	5313 Champlain Trail, Mississauga, ON	L5R 2Y6	750.00
Murray Goldman	1 Strathearn Blvd, Toronto, ON	M5P 1S6	500.00
Mustaque Ladhani	127 Lansbury Dr., Scarborough, ON	M1V 3R9	750.00

Nancy Hawley	19 Agnes Lane, Toronto, ON	M4L 3Z3	250.00
Nancy Jain	57 Tranby Ave, Toronto, ON	M5R 1N4	250.00
Nancy So	2418 Dufferin St., Toronto, ON	M6E 3S8	250.00
Nick Babatsikos	5 Manorpark Crt., Toronto, ON	M2J 1A1	250.00
Norm Godfrey	70 Larkfield Dr., North York, ON	M3B 2H1	250.00
Norman Hathaway	17 Sword Street, Toronto, ON	M5A 3N3	250.00
Pasquale Palleschi	53 Warfield Dr., Toronto, ON	M2J 3S4	500.00
Paul Christie	186 Bingham Ave, Toronto, ON	M4E 3R5	250.00
Paul Didur	40 Waller Ave., Toronto, ON	M6S 1B9	500.00
Paul Scrivener	28 Bannatyne Drive, Toronto, ON	M2L 2N9	150.00
Paul Sutherland	372 Broomfield Rd., Grafton, ON	K0K 2G0	250.00
Peter Mandronis	99 Morbank Dr., Scarborough, ON	M1V 2M1	750.00
Peter Swinton	52 Harding Blvd., Scarborough, ON	M1N 3C9	250.00
Peter Zahakos	26 Rothsay Road, Thornhill, ON	L3T 3J7	250.00
Quinton Johnstone	1202-390 Bay St., Toronto, ON	M5H 2Y2	500.00
Rachhpal Singh	568 Highglen Ave, Markham, ON	L3S 4M4	600.00
Rafael Gomez	301-1101 Pharmacy Ave, Scarborough, ON	M1R 2H2	250.00
Rambir Perhar	57 Stoneybrook Crescent Cres., Markham, ON	L6E 2B8	750.00
Richard Murdoch	11 Jonathan Dunn Way, North York, ON	M2N 7A8	250.00
Rick Impera	1251 Kennedy Road, Scarborough, ON	M1P 2L4	250.00
Robert Blazevski	39 Strathallen Blvd., Toronto, ON	M5N 1S8	150.00
Robert Grant	32 Kappele Ave., Toronto, ON	M4N 2Z1	250.00
Rochelle Feldberg	8 Bridle Heath Gate, Toronto, ON	M3B 2B4	500.00
Roger Keeley	38 Albert St., Markham, ON	L3P 2T5	250.00
Romano Guglielmi	4-10462 Islington Ave., Kleinberg, ON	L0J 1C0	200.00
Ron Herczeg	82 Birch Ave., Toronto, ON	M4V 1C8	750.00
Rong Wu	305-32 Clegg Road, Markham, ON	L6G 0B2	750.00
Rosemary Cheung Cheung	1210-38 The Esplanade, Toronto, ON	M5E 1A5	750.00
Samuel Sarick	305-95 Barber Greene Road, Toronto, ON	M3C 3E9	750.00
Sandra Mandronis	99 Morbank Dr., Scarborough, ON	M1V 2M1	750.00
Sara Gelgor	369 Spadina Rd., Toronto, ON	M5P 2V7	250.00
Scott Kurtzman	4304-210 Victoria St., Toronto, ON	M5B 1V8	500.00
Sharon Anderson	34 Timgren Dr., Scarborough, ON	M1R 3R5	500.00
Spiros Papathanasakis	291 Carlton St., Toronto, ON	M5A 2L6	750.00
Stefan Wisniowski	221 Glenrose Ave, Toronto, ON	M4T 1L1	750.00
Stella Colagiacomo	12300 10th Concession Rd., Kleinburg, ON	L0J 1C0	750.00
Stephen Brash	102 Ina lane, Stouffville, ON	L4A 0L8	500.00
Steve Orrell	3205-2045 Lake Shore Blvd. W., Toronto, ON	M8V 2Z6	500.00
Sunhil Mehan	2409-33 Charles St. E., Toronto, ON	M4Y OA2	750.00
Susan Lambert	8 Cranmore Crt., Brampton, ON	L6Z 2Z9	250.00
Sushrat Mehan	2409-33 Charles St. E., Toronto, ON	M4Y OA2	750.00
Suzanne Posocco	1305 Indian Road, Mississauga, ON	L5H 1S3	250.00
Syed Bilgrami	19 Durie Lane, Thornhill, ON	L3T 5H4	250.00
Terry Tsianos	9 Elmbank Road, Vaughan, ON	L4J 2B6	750.00
Thomas Kohn	104 Hillmount Ave, Toronto, ON	M6B 1X6	250.00
Tina Lew	1493 Royal Rose Crt, Mississauga, ON	L5V 1H4	750.00
Tom Flood	79 Chaplin Cres, Toronto, ON	M5P 1A4	750.00
Tom Gribilas	10 Simsbury Court, Markham, ON	L3R 3G7	500.00
Tony Gabriele	52 Caribou Road, North York, ON	M5N 2A5	500.00
Tony Kiriakou	2072 Larwrence Ave E., Toronto, ON	M1R 2Z5	750.00
Vince DiSanto	104 Home Rd., Downsview, ON	M3K 1M3	250.00
Viola Kouroupis	50A Beresford Ave., Toronto, ON	M6S 3A8	500.00
Waleuska Lazo	47 Owen Blvd, Toronto, ON	M2P 1G2	750.00
Walter Pelech	2208-99 Harbour Square, Toronto, ON	M5J 2H2	300.00
Wayne Habbib	26 Houston Cres., Toronto, ON	M2J 3H8	250.00
William Wiener	37 Strathearn Rd., Toronto, ON	M6C 1R2	250.00
Yani Zhao	2208-18 Lee Centre Drive, Scarborough, ON	M1H 3H5	500.00
Zahra Tifou	84 Tawnberry Cir., Brampton, ON	L7A 0J8	250.00
Zdena Mesko	200 Praill Avenue, Sarnia, ON	N7X 1A1	500.00
Zinnat Dewji	PH#5-3 Concorde Place, Toronto, ON	M3C 3K7	750.00
Zoi Athas	53 Avonwick Gate, North York, ON	M3A 2M8	250.00
			82,800.00

Table 2: Monetary contributions from unions or corporations

Name (Legal and Carrying on Business As)	Address	President or Business Manager	Cheque Signatory	Amount
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -
				$ -

☐ Additional information is listed on separate supplementary attachment

Total $ -

Table 3: Contributions in goods or services (Note must also be reported as expenses in Box C)

Name	Address	Goods or Services	Amount
Michael Thompson	See Box A	Campaign signs (see schedule 3).	$ 900.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -

☐ Additional information is listed on separate supplementary attachment

Total $ 900.00

Total Part II Contributions $ 83,700.00

Schedule 2 - Fund-Raising Function

☐ Additional schedule for each event or activity held is/are listed on separate supplementary attachment(S)

Date YYYY	MM	DD	Description of event of activity
2010	04	22	Fundraising Event at the Lobby Restaurant and Bar

Admission charge (per person)* (may not exceed individual contribution limit) *If admission charge per person is not consistent, attach complete breakdown of all ticket sales.	$ 250.00	2A
Number of tickets sold	195	2B

Part I - Ticket Revenue

Lines: (2A) x (2B) (include in Schedule 1)	$ 48,750.00

Part II - Other Revenue Deemed A Contribution

Provide Full details (e.g., revenue from goods sold in excess of fair market value)

1.	+	$ -
2.	+	$ -
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part II Revenue (include in Schedule 1)	=	$ -

Part IIII - Other Revenue Not Deemed A Contribution

Provide Full details (e.g., contributions of $10.00 or less; revenue from refreshment sold at cost)

1.	+	$ -
2.	+	$ -
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part III Revenue (include in Box C)	=	$ -

Part IV Expenses Related to Fund Raising Function

Venue		$ -
Event Advertising		$ 220.00
Food and drink		$ 5,347.02
Entertainment		$ 500.00
Other (provide full details)		
1. Ticket printing for event	+	$ 95.00
2.	+	$ -
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part IV Expenses (include in Box C)	=	$ 6,162.02

Schedule 2 - Fund-Raising Function

☐ Additional schedule for each event or activity held is/are listed on separate supplementary attachment(S)

Date YYYY	MM	DD	Description of event of activity
2010	04	22	Fundraising Campaign Activity

Admission charge (per person)* (may not exceed individual contribution limit) *If admission charge per person is not consistent, attach complete breakdown of all ticket sales.	$ -	2A
Number of tickets sold	-	2B
Part I - Ticket Revenue Lines: (2A) x (2B) (include in Schedule 1)	$ -	

Part II - Other Revenue Deemed A Contribution
Provide Full details (e.g., revenue from goods sold in excess of fair market value)

1. Contributions received as a result of fundraising campaign activity.	+	$ 35,550.00
2.	+	$ -
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part II Revenue (include in Schedule 1)	=	$ -

Part IIII - Other Revenue Not Deemed A Contribution
Provide Full details (e.g., contributions of $10.00 or less; revenue from refreshment sold at cost)

1.	+	$ -
2.	+	$ -
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part III Revenue (include in Box C)	=	$ -

Part IV Expenses Related to Fund Raising Function

Venue		$ -
Event Advertising		$ -
Food and drink		$ -
Entertainment		$ -
Other (provide full details)		
1. Salary for fundraising campaign personnel	+	$ 14,500.00
2. i-Phones and cell phone services for personnel.	+	$ 600.70
3.	+	$ -
4.	+	$ -
5.	+	$ -
6.	+	$ -
7.	+	$ -
8.	+	$ -
Total Part IV Expenses (include in Box C)	=	$ 15,100.70

Schedule 3 - Inventory of Campaign Goods and Materials (from Previous Campaign)

Description	Date Acquired (yyy/mm/dd)	Supplier	Unit Value	Quantity	Total Value
Large Signs	2006	2006 Michael Thompson Municipal Campaign	$ 9.80	75	$ 735.00
Small Signs	2006	2006 Michael Thompson Municipal Campaign	$ 3.30	50	$ 165.00
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
Total Value of Inventory from Previous Campaign Used in Candidate's Campaign					$ 900.00

Schedule 4 - Inventory of Campaign Goods and Materials at The End of Campaign

Description	Date Acquired (yyy/mm/dd)	Supplier	Unit Value	Quantity	Total Value
Large Signs	2010/10/10	Rainbow Sign Mftg.	$ 7.35	106	$ 779.10
Small Signs	2010/10/10	Rainbow Sign Mftg.	$ 2.83	130	$ 367.90
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
			$ -	-	$ -
Total Value of Inventory of Campaign Goods and Materials					$ 1,147.00

Auditor's Report
Municipal Elections Act, 1996 (Section 78)

A candidate who has received contributions or incurred expenses in excess of $10,000 must attach an auditor's report. The report must be done in accordance with generally accepted auditing standards and must:

- set out the scope of the examination.
- provide an opinion as to the completeness and accuracy of the financial statement and whether it is free of material misstatement.

AUDITOR'S REPORT
PURSUANT TO SECTION 78 OF THE MUNICIPAL ELECTIONS ACT, 1996

To: ULLI S. WATKISS, Clerk, City of Toronto

I have audited the Financial Statement of Michael Thompson, candidate, for the campaign period from from 1 / 20 / 2010 to 12 / 31 / 2010 relating to the election held on October 25, 2010, including the Statement of Campaign Period Income and Expenses, the Statement of Assets and Liabilities as at December 31, 2010 and the Statement of Determination of Surplus or deficit and Disposition of Surplus. This financial information has been prepared by Michael Thompson, the candidate, in accordance with the accounting requirement of sections 66 to 68, and section 79 of the Municipal Elections Act, 1996 and the accounting guidelines issued by the Ontario Ministry of Municipal Affairs and Housing.

The Candidate's Responsibility for the Financial Statement
The candidate is responsible for the preparation of the financial statement and such internal control as prescribed by Section 69(1) of the Municipal Elections Act, 1996.

Auditor's Responsibility
My responsibility is to express an opinion on the financial statement based on my audit. I conducted my audit in accordance with generally accepted auditing standards. Generally accepted auditing standards require that I comply with ethical requirements, and plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial information. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial information, whether due to fraud or error. IN making these risk assessments, the auditor considers internal control relevant to the preparation and fair presentation of the financial information in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of express an opinion on the effectiveness of the internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimated made by management, as well as evaluating the overall presentation of the financial information.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

Basis for Qualified Opinion
Due to the inherent nature of the transactions of electoral campaigns, the completeness of contributions and other revenue and expenses is not susceptible to satisfactory audit verification. Accordingly, my verification of these amounts was limited to the amounts recorded in the campaign's accounting records and I was not able to determine whether any adjustments might be necessary to contributions and other revenue and expenses. As well, the Municipal Elections Act, 1996 does not require me to report, nor was it practical for me to determine, that contributions reported include only those which may be proper retained in accordance with the provisions of the Act.

Qualified Opinion
In my opinion, except for the possible effects of the matter described in the Basis of Qualified Opinion paragraph, the Financial Statement of Michael Thompson is prepared, in all material respect, in accordance with the accounting requirements of the Municipal Elections Act, 1996 and the accounting guidelines issued by the Ontario Ministry of Municipal Affairs and Housing.

Basis of Accounting
Without modifying my opinion, I draw attention to the basis of accounting of the Financial Statement, which is as set out in Form 4. As a result, the Financial Statement may not be suitable for another purpose.

Signature B. Nayman

Professional Designation of Auditor

Chartered Accountant, Licensed Public Accountant

Municipality		Date (yyyy/mm/dd)	
Toronto		2011 / 03 / 20	

Contact PersonLast Name		
Last Name	First Name	Licence No.
Nayman	Bernard	3826

Address			
Suite/Unit No.	Street No.	Street Name	
710	1110	Finch Avenue West	
City / Town		Province	Postal Code
Toronto		Ontario	M3J 2T2
Telephone No. (incl. area code)		Fax No.	Email Address
416-665-1530		1-866-265-3054	bernard@electionfinances.com

APPENDIX 2

Sandra Stevens

INVOICE

8 Rannock Street, Suite 209
Scarborough, ON

DATE:
6/16/10

INVOICE #
2010 - 0010

Bill To:
Michael Thompson Campaign

DESCRIPTION	AMOUNT
Fundraising services rendered (Jan - May 2010)	6,500.00
TOTAL	$ 6,500.00

THANK YOU FOR YOUR BUSINESS!

Sandra Stevens

INVOICE

8 Rannock Street, Suite 209
Scarborough, ON

DATE:
7/30/10

INVOICE #
2010 - 0011

Bill To:
Michael Thompson Campaign

DESCRIPTION	AMOUNT
Fundraising services rendered (Jun - Jul 2010)	1,500.00
TOTAL	$ 1,500.00

THANK YOU FOR YOUR BUSINESS!

INVOICE

TO

Michael Thompson 2010 Campaign

DATE

May 17th, 2010

FROM

Marcia Stiles

For Services rendered

$10,000.00

[illegible] [illegible]
[illegible] [illegible]

IN THE MATTER OF AN APPLICATION BY JUSTIN STASYSHYN UNDER THE *MUNICIPAL ELECTIONS ACT, 1996* TO THE CITY OF TORONTO COMPLIANCE AUDIT COMMITTEE IN RESPECT OF THE FINANCIAL STATEMENT OF MICHAEL THOMPSON, CANDIDATE FOR ELECTION TO TORONTO CITY COUNCIL, WARD 37.

WRITTEN SUBMISSIONS ON BEHALF OF MICHAEL THOMPSON

This application is one of three applications (the "Applications") brought in respect of the candidacies of individuals who were elected to Toronto City Council, each of whom are represented by the undersigned. This correspondence constitutes the response on behalf of Michael Thompson.

For the convenience of the Compliance Audit Committee (the "Committee"), this submission is divided into two portions, the first addresses issues raised that are common to at least two of the applications, and is identical in respect of all three responses. The second portion is unique to the responding candidate referenced above.

PART 1 - COMMON ISSUES

Background

1. The Applications advance a number of propositions which, if accepted, would affect the exercise of the Committee's authority and discretion in deciding upon the disposition of these matters. In particular, the Applications assert:

   (a) That the Committee is required to adopt a "standard of certitude" that equates a reasonable probability of a breach of the *Municipal Elections Act, 1996* (the "Act") with a 33% chance that such a contravention may have occurred;

   (b) That a single contravention of the Act may entitle the Committee to direct a compliance audit, the scope of which would cover all aspects of the election finances of a particular campaign;

   (c) That it is necessary that the Act be interpreted restrictively in order to ensure fairness in the electoral process.

   (d) That the reference, in ss. 67(2) of the Act, to "the cost of holding fund-raising functions" is to be construed as applying only to discrete events such as dinners, dances, garden parties, etc., and that, accordingly, monies spent by the respective candidates and reported within this rubric, did not, to the Applicants' understanding, fall within this narrow construction, and were wrongfully excluded from the Candidates' expenses subject to the spending limit, as reported in their financial statements.

2. While it may be correct that a single finding of a compliance audit committee, to the effect that an apparent contravention of the relevant provisions of the Act has been identified, can give rise to a compliance audit of potentially unlimited scope, the balance of the Applicants' assertions outlined above are wrong or misconceived, as explained below.

The "Belief on Reasonable Grounds" threshold

3. Subsection 81(1) of the Act provides as follows:

> "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."

4. Subsection 81(5) of the Act provides as follows:

> "Within 30 days after receiving the application, the [compliance audit] committee shall consider the application and decide whether it should be granted or rejected."

5. On a plain reading, it may be seen that the question of "belief on reasonable grounds" is a threshold question – a condition precedent for an application to be brought. An application that does not evidence a belief on reasonable grounds is not proper, and if the Committee finds that such a belief is not evidenced on the material before it, then it should dismiss the application on that basis. In contrast, the language of subsection 81(5), which confers the decision-making power upon the Committee, contains no such direction or standard. Rather is it a question for the Committee to "decide whether [the application] **should** be granted or rejected".

6. If, as the Applicants suggest, the Committee has "little discretion" to decide whether to hold a compliance audit, there is little point in having a Compliance Audit Committee with specialized expertise, at all. In fact the court decision they rely upon for this proposition is based upon the legislation as it existed prior to the passage of extensive amendments in 2009, and is directed to the decision of a non-expert municipal council that could make such a decision at that time.[1] Moreover, the point made by the court was little more than an editorial comment, upon which the outcome of the case did not turn; in lawyers' parlance, an "obiter dicta" - a thing said in passing.

7. In contrast, the Courts have acknowledged that this Committee (differently constituted) is entitled to a higher level of deference than a City Council in two cases to date,[2] and the expertise giving rise to that deference is such that the Committee is entitled to exercise a

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[1] *Jackson v. Vaughan (City)* 2009 CanLII 10991 (ONSC)

[2] *Harrison v. Toronto District School Board*, unreported, OCJ, June 19, 2008 and *Lyras v. Heaps* 2008 ONCJ 524 (CanLII)

acting in concert with the Commissioner of Canada Elections (the "Commissioner"), who applies a test of whether the public interest justifies a prosecution.[5]

13. Similarly, the Ontario *Election Act* provides in subsection 98.1(1) that "(n)o prosecution shall be instituted under this Act without the Chief Electoral Officer's consent." In this respect, Counsel is unaware of any particular guiding principle applied by that official, but understands that this question is very much within the unique expertise of this Committee.

14. It is submitted that this "gatekeeper" function is intended to provide a check against the potential for frivolous or politically-driven charges against candidates for elected office, who, by virtue of the public office which they hold or have sought and the risk of vindictive behaviour before, during or after a campaign that may be vociferously contested, might otherwise be subject to private prosecutions that seek less to enforce the law than to embarrass or weaken a political opponent.

15. Prior to 2010, this was equally the case under the Act, and this function, whether it had as gatekeeper the municipal council or local board, was found by the Superior Court in *R. v. Hall*[6] to be the legislative intention behind the compliance audit application process:

> " 21. Given the Legislative intention, that is, to ensure the legitimacy of attacks on elected officials and, I infer, other candidates, by electors, it is my view that s. 81 of the Act is, in its purpose and effect, a provision to screen allegations by electors of election campaign finance wrongdoing by candidates and elected officials, especially where the allegations are determined by an auditor and/or a council to be frivolous, vexatious or otherwise devoid of merit."

16. In *R. v. Hall*, the Court found that the nature of the Act was then structured such that a voter could not initiate a charge against a candidate other than through the section 81 process. This specific constraint informs much of the judicial decision-making under the Act prior to the present election cycle.[7]

17. But this "only means" constraint was statutorily overridden by the Province with the enactment of subsection 81(17) of the Act, as part of the 2009 amendments:

> "This section does not prevent a person from laying a charge or taking any other legal action, at any time, with respect to an alleged

---

[5] See for example,
http://www.elections.ca/content.aspx?section=pol&document=page13index&dir=thi/ec20227&lang=e and http://www.elections.ca/content.aspx?section=med&document=feb0499&dir=pre&lang=e

[6] [2003] O.J. No. 3613

[7] See *Chapman v. Hamilton*, 2005 ONCJ 158 (CanLII) at ¶39 ("unequivocally a condition precedent"), *Mastroguiseppe v. Vaughan (City)*, [2008] O.J. No. 5734 at ¶33-34 "only remedy"), *St. Germain v. Bussin* [2008], O.J. No. 408 at ¶34, *Savage v. Niagara Falls (City)* [2005], O.J. No. 5694 at ¶11,

contravention of a provision of this Act relating to election campaign finances."

18. The amendment represents a complete paradigm shift from the previous case law. In effectively overruling *Hall*, the legislature has changed the context of a compliance audit request. It is no longer the only means by which an elector may pursue a prosecution for a perceived contravention. Now it is the only means by which such a voter may cause the municipality to carry out an audit of the candidate at its own expense, invoke the extraordinary powers of a commission under the *Public Inquiries Act* and potentially cause the municipality to prosecute the perceived contravention, all the while fully insulating the complainant from any potential civil action for malicious prosecution where a conviction is not obtained.

19. Under both paradigms, the Committee was a "gatekeeper," but it is submitted that the nature of the gatekeeping has now changed. Previously, the gate was one through which all complainant-driven prosecutions must pass, now it is one through which only the compliance audit driven path of prosecution must pass. In this context, the Committee can and should adopt a higher threshold for making a decision that can result in a substantial expenditure of public funds. It is suggested that the Commissioner of Canada Elections' test of "in the public interest" has an intrinsic appeal.

20. In short, it is respectfully submitted that the Committee should engage in a two stage process. First, it should consider whether the application reflects "an objective belief based on compelling and credible information which raises the "reasonable probability of a breach of the statute," and secondly, whether the conduct of a compliance audit of the financial affairs of the subject councillor is in the public interest.

Interpretation of the Act

21. It has been said that this Act creates genuine and considerable ambiguity, and that is "not pretty legislation."[8] It must therefore be read most carefully.

22. While it is a truism that electoral law must strive to create a "level playing field," it does not follow from this proposition that the law should be applied "restrictively"

23. To the contrary, Part VI of the Legislation Act, 2006 deals with statutory interpretation. Section 64 of that Act directs that Ontario Acts be interpreted as being remedial in these terms:

> "An Act shall be interpreted as being remedial and shall be given such fair, large and **liberal** interpretation as best ensures the attainment of its objects." [emphasis added]

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[8] Vaughan (City) v. Di Biase [2011] O.J. No. 1364 at ¶27 - 37

Fund-Raising Functions

24. The Applicants' argument regarding fund-raising function is, in fact, predicated upon obiter dicta contained in the *Jackson*[9] decision and municipal election guideline language based upon the language of the Act as it stood in 2006; not as is was amended in 2009.

25. Prior to the 2009 amendments, the definition of "fund-raising function" contained in the Act was as follows:

> "fund-raising function" means **an event** intended to raise money for a person's election campaign; [emphasis added]

26. This is the definition that was in place and applied in the writing of the *Municipal Elections 2006 Guide* approved of by Justice Lauwers in the Jackson[10] decision.

27. But the 2009 amendments changed this definition to read as follows:

> "fund-raising function" means **an event or activity** held by or on behalf of a candidate for the purpose of raising funds for his or her election campaign;

28. It is a fundamental rule of statutory interpretation that each word of a statutory pronouncement is to be given meaning; no word is superfluous. If two words are used in a definition, they cannot mean the same thing. Moreover it is also presumed that amendments to statutory language are enacted to effect change. This is referred to as the "presumption of purposeful change"[11]. Accordingly, in adding the words, "or activity" to the statutory definition of "fund-raising function", it is evident that the Legislature intended, for the purposes of this legislation, to modify both the dictionary definition of a "function" and the previous statutory definition.

29. Another notable amendment enacted in 2009 is the addition of subsection 67(2.1) to the Act:

> (2.1) For greater certainty, the cost of holding fund-raising functions under paragraph 5 of subsection (2) does not include costs related to,
>
> (a) events or activities that are organized for such purposes as promoting public awareness of a candidate and at which the soliciting of contributions is incidental; or
>
> (b) promotional materials in which the soliciting of contributions is incidental.

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[9] See footnote 1

[10] See footnote 1

[11] *Sullivan on the Construction of Statutes, 5th Ed.*, (2008) LexisNexis, at pp. 216, 579.

30. It is submitted that, when read together, the intention of these two amendments is clear. It is not to create an artificial barrier between fund-raising methodologies such as dinners, dances and auctions on the one hand, and the use of paid fund-raising staff or consultants on the other; this, it is submitted, is a distinction without a difference. Rather the legislative intent is to ensure that candidates be prevented from cloaking a campaign activity in a fictitious guise of fund-raising, in order to take an event OR activity outside of the spending limits that are so necessary to ensure a level playing field in a campaign.

31. It is simply incorrect in this context, for the Applicants to assert that reliance, whether judicially approved or not, should be placed upon language written and included in a 2006 municipal elections guide[12], despite the fact that this wording does not appear to have been revised in the wake of the 2009 amendments. The inescapable fact is that the law was changed.

32. Moreover the very presence of clause 67(2.1)(b) further highlights the fact that the Legislature's concept of a "fund-raising function" is broader that that of the Applicants. The plain implication of this provision is that the costs of bare promotional materials (i.e. not merely those which promote an event) in which the soliciting of contributions is a substantial purpose are costs of holding fund-raising functions. Pursuant to subsection 76(5), such expenses are not subject to the spending limit. Hence, direct mail solicitations plainly fall within the statutorily defined concept of a fund-raising function, and their cost, whether or not tied to a personally attended event, is not subject to the maximum expenses set out in the Act[13].

33. The Legislature's intention, in fact, is quite clear: it is to establish a transparent election spending regime that applies a consistent spending limit to candidates, but which excludes from that limit, the costs incurred in raising the money required to pay those expenses.

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[12] Such guides, do not, in any event, constitute a statement of the law that the Committee should take into account. They are summaries and interpretations of the legislation. The 2010 Ministry Guide in facts contains the following caution on the cover: "This guide is prepared for information purposes only. Reference should always be made to the relevant legislation and regulations."

[13] See also, in this respect, Elections Ontario Guideline G31.05, which cautions that mail solicitations "must not be a disguised form of campaigning," lest the cost of the mailing thereby become an expense subject to the spending limit. As noted in the Applications, the statutory definition upon which this Guideline rests is substantively identical to the definition in the Municipal Elections Act, 1996.

PART 2 – THE ALLEGATIONS IN RESPECT OF MICHAEL THOMPSON

34. The essence of the Applicant's claim is that the costs of fund-raising functions reported by Mr. Thompson in his Financial Statement of March 24, 2001, specifically the amount of $15,100.70 reported as "Fundraising Campaign Activity" (on the second Schedule 2 attached to the Statement) is alleged to be improperly reported as such because it appears not to relate to a distinct personal attendance event, but rather to salaries and telephone expenses paid to, and incurred in respect of, fundraising campaign personnel.

35. The relevant invoices are all attached at Tab 1 of this submission, and are as follows:

Invoiced Expense	Fundraising Services Payment
Dave McLaughlin (musical performance)	$500.00
Sandra Stevens	$6,500.00
Sandra Stevens	$1,500.00
Marcia Stiles	$6,000.00
TOTAL	$14,500.00

36. As discussed above, there is simply no requirement that "the cost of holding fund-raising functions," be interpreted so narrowly as to be limited to personal attendance events. The definition of such functions include "activities" – things that are done for the purpose of raising funds for the candidate's election campaign. Functions, therefore, may include both "events" as contemplated in the old definition, and "activities" – a more generic term, with greater scope.

37. Rather than posit grounds for a belief on reasonable grounds that a contravention has taken place, the Application amounts to little more than advocacy in support of a particular point of view. With all due respect to the Applicant, the rhetoric about level playing fields that pervades the Application should be ignored. The threshold is to demonstrate belief on reasonable grounds that a contravention occurred. Moreover, there is nothing "unlevel" about a playing field that allows anyone to engage paid fundraising staff. Any candidate is entitled to do this; it is submitted that in fact, and at all levels of political activity in Canada, most do. A paid fundraiser is worth nothing unless the person raises an amount in excess of what he or she is paid. Accordingly, the Applicant's submission about grassroots campaigns being unable to raise sufficient money rings somewhat hollow.

38. The true "level playing field" rule connecting fundraising to spending limits is subsection 67(2.1) of the Act. To fall outside such limits the solicitation of contributions cannot be incidental to the expenditure.

39. The Application may indirectly allude to this notion in the argument about allowing fundraising salaries to create an alternate method of paying campaign staff. Plainly, the demonstrable engagement of an employee ostensibly as a fund-raiser, but whose responsibilities are so campaign-advocacy based as to make any fundraising function merely incidental, would give rise to a potential contravention if the related salary expense is declared to be exempt from the spending limit.

40. But there is a complete and total absence of such evidence in the present application. The argument in paragraph 28 of the Application is, on its terms, based upon a "hypothetical situation". In contrast to this, the invoices selected by the Applicant for inclusion with the Application show $8,000.00 for fund-raising services paid to Sandra Stevens, and the allocation[14] of $6,000 of the $10,000 charged by Marcia Stiles to fundraising.

41. Marcia Stiles was, in fact, the campaign manager, and worked exclusively on fund-raising from the beginning of the campaign period until the commencement of the active public campaign in late summer of 2010. Throughout that period, there was no "campaign" in the colloquial sense. The entire focus of the candidate's re-election effort at that time was to raise money. The total payments made to Ms. Stiles by the campaign have been allocated separately to fund-raising and campaign activities and this allocation was subject to audit.

42. As the Court in *Lyras v. Heaps*[15] found, mere speculation and conjecture are insufficient to give rise to a basis for ordering a compliance audit. The suggestion that the payments allocated as such to Ms. Stiles for fund-raising services were for anything other than this falls short even of that notion, and is merely based upon a hypothetical scenario. It cannot constitute "reasonable grounds."

PART 3 – CONCLUSIONS

43. Any assessment of reasonable grounds for belief that a contravention has occurred must be based upon a full, fair and coherent reading of the legislation within the context of the above analysis. It is respectfully submitted that no such grounds have been raised by the application, and that, accordingly, this Committee should dismiss the Application for a compliance audit of the campaign of Michael Thompson.

44. In the alternative, if any potential contravention is seen by the Committee to have been made out, the matter is a result of no more than a misunderstanding as to the nature of what Schedule 2 is intended to elicit, with no compromise of the spending limit or the

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[14] See the email correspondence at Tab 2, from the campaign auditor, Bernard Nayman, confirming that the allocation of $6,000 of this invoice as a fundraising expense.

[15] See footnote 2

transparency principle. It would therefore constitute a case in which the Committee may properly exercise its discretion and decline to order a compliance audit.

All of which is respectfully submitted,

Jack B. Siegel
Blaney McMurtry LLP
Barristers & Solicitors
1500-2 Queen Street East
Toronto, Ontario M5C 3G5
Tel: 416-593-2958
Fax: 416-596-2043

TAB 1

Dave McLaughlin
Saxophonist/Performer
1647 Whites Road North
Suite 102
Pickering, ON
L1V 6X1

905-421-9861
dmclaughlin@hotmail.com

DATE	INVOICE #	DUE DATE
22/04/10	3701	Upon receipt

Customer Information

Michael Thompson Election Campaign 2010
2139 Lawrence Avenue East
Toronto, ON
M1R 3A4

Description	Amount
Performance at the Michael Thompson Campaign 2010 Fundraiser on April 22nd, 2010.	$500.00
Subtotal	$500.00
Payments/credits	0.00
Total	$500.00
Balance Due	$500.00

Sandra Stevens

INVOICE

8 Rannock Street, Suite 209
Scarborough, ON

DATE:
6/16/10

INVOICE #
2010 - 0010

Bill To:
Michael Thompson Campaign

DESCRIPTION	AMOUNT
Fundraising services rendered (Jan - May 2010)	6,500.00
TOTAL	$ 6,500.00

THANK YOU FOR YOUR BUSINESS!

Sandra Stevens

INVOICE

8 Rannock Street, Suite 209
Scarborough, ON

DATE:
7/30/10

INVOICE #
2010 - 0011

Bill To:
Michael Thompson Campaign

DESCRIPTION	AMOUNT
Fundraising services rendered (Jun - Jul 2010)	1,500.00
TOTAL	$ 1,500.00

THANK YOU FOR YOUR BUSINESS!

INVOICE

TO

Michael Thompson 2010 Campaign

DATE

May 17th, 2010

FROM

Marcia Stiles

For Services rendered

$10,000.00

6000.- FUNDRAISING
4000.- SALARY/BENEFITS

TAB 2

Bernard

To: Jack B. Siegel

Subject: RE: City of Toronto Compliance Audit

Good morning Jack:

Further to our meeting, my records show the following:

1. Sandra Stevens was paid $8,000 for sund raising services. There were no other payments made to her during the campaign.

2. Marcia Stile was paid a total of $10,000. Of this amount $6,000 was allocated as fund raising expenses and $4,000 as salary. There was no other payment made to her.

I trust this is the information you require. Do not hesitate to get in touch with me if you require further information.

Regards,

Bernard

From: Jack B. Siegel [mailto:jsiegel@blaney.com]
Sent: July-11-11 3:21 PM
To: bernard@electionfinances.com
Subject: City of Toronto Compliance Audit

I have been retained to represent one of your clients in respect of a Coty of Toronto election Compliance Audit application.

Could you please contact me at your earliest convenience.

Thanks,

Jack Siegel

Jack B. Siegel

Direct TEL 416.593.2958
Direct FAX 416.596.2043
jsiegel@blaney.com

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

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