



CITY OF HAMILTON

**DECISION of the
ELECTION COMPLIANCE AUDIT COMMITTEE**
established under Section 81.1(1) of the *Municipal Elections Act, 1996*
**A COMPLIANCE AUDIT APPLICATION RESPECTING THE ELECTION
CAMPAIGN FINANCES OF LLOYD FERGUSON, CANDIDATE, WARD 12**

With respect to the meeting held on July 13, 2015 to deal with the application submitted by Ms. Vivian Saunders concerning the Financial Statement of Lloyd Ferguson:

The Candidate may not have correctly calculated the inventory using replacement value as required by the *Municipal Elections Act, 1996* (MEA); however the candidate did make his best estimate and the variance would not have resulted in exceeding the spending limit.

The Applicant's statement that total campaign expenses and post campaign day expenses appear excessive and could therefore be indicative of misallocation is speculative and is not supported by substantive evidence.

In relation to the concerns about associated corporations, there was evidence heard by the Committee during the public hearings that satisfied the Committee that the corporations are not associated with one another as under Section 72 of the MEA.

In relation to the concerns about corporations being valid, there were no compelling reasons for the Candidate to investigate these contributors.

In regards to the returned contributions, the MEA does not restrict a candidate (at their discretion) from returning any contributions.

Accepting a contribution from a contributor who exceeds the \$5,000 contribution limit is not a contravention of the MEA by the Candidate unless he has explicit knowledge of that fact and does not return the contribution as soon as possible. The Applicant did not

establish this on reasonable grounds. The Committee is of the opinion that the Candidate was not aware of possible excess contributions.

The Committee was informed by the Manager of Elections that the Candidate did pay the City of Hamilton his campaign surplus in the amount of \$76.04.

In regards to the nomination filing fee, the Candidate correctly included the fee in both Income and Expenses.

The attachment to Form 4 was missing some names, including authorized representatives; however they were subsequently submitted to the Committee which satisfied the Committee.

The Committee notes that a partner in the accounting firm which audited the Candidate's financial statement provided a personal contribution of \$750; however the MEA does not address such a contribution.

The Committee is in agreement that there has been a contravention of the MEA, namely with respect to the missing Form 4 information, and as such has the authority to order a compliance audit. In the Superior Court rulings of *Lancaster v. Compliance Audit Committee et al.*, 2013 ONSC 7631 and *Vezina v. Parrish*, 2013 ONSC 2368, it was held the ordering of compliance audit is discretionary.

The Committee, after considering all of the evidence and submissions, finds that a compliance audit is not warranted.

Dated at the City of Hamilton July 28, 2015

Written and approved by the following Committee Members:

Ross Anderson, Chair

Barry Gilbert, Vice Chair

John Klein

Linda Lister