



**CITY OF VAUGHAN**  
**COMPLIANCE AUDIT COMMITTEE**

**AGENDA**

Committee Room 242/243  
2<sup>nd</sup> Floor  
Vaughan City Hall  
2141 Major Mackenzie Drive  
Vaughan, Ontario

Wednesday, April 4, 2012

1:00 p.m.

- 
1. STATEMENTS FROM COMMITTEE MEMBERS
  2. CONFIRMATION OF AGENDA
  3. DISCLOSURE OF INTEREST
  4. ADOPTION/CORRECTION OF MINUTES
    - 4.1 Adoption of Report No. 4 of the Compliance Audit Committee – September 2, 2011.
  5. COMMUNICATIONS
  6. CONSIDERATION OF ITEMS REQUIRING DISCUSSION
  7. ADJOURNMENT

| <i>Members:</i>      | <i>Alternate Members:</i> |
|----------------------|---------------------------|
| Janet Andrews, Chair | Genevieve Grenier         |
| Ron Colucci          | Anton Karunakaran         |
| Mark Gannage         | Victor Lee                |

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COMPLIANCE AUDIT COMMITTEE – APRIL 4, 2012

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ITEM

1. **FROESE FORENSIC PARTNERS AUDIT OF THE CAMPAIGN FINANCES OF  
MICHAEL DI BIASE**

Report of Froese Forensic Partners.

4.1

**CITY OF VAUGHAN**

**REPORT NO. 4 OF THE**

**COMPLIANCE AUDIT COMMITTEE**

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The Compliance Audit Committee met at 10:33 a.m. on September 2, 2011.

Present: Janet Andrews, Chair  
Ron Colucci  
Mark Gannage

Also Present: Jeffrey A. Abrams, Secretary  
Chris Bendick, Solicitor  
Donna Winborn, Election Co-ordinator

The following item was dealt with:

**1 COMPLIANCE AUDIT APPLICATION – RICHARD LORELLO**

Mr. Carlo DeFrancesca, 87 Michelle Drive, Vaughan, L4L 9B9, appeared.

Mr. Richard Lorello, 235 Treelawn Boulevard, Vaughan, L0J 1C0, appeared.

**MOVED by Mark Gannage  
seconded by Ron Colucci**

**That the Application for a Compliance Audit, be rejected; and**

**That the following Communications be received:**

- C1 Mr. Anthony Niro, Time For Change Vaughan, dated August 30, 2011;**
- C2 Mr. Richard Lorello, Affidavit, dated August 31, 2011;**
- C3 Facebook page, dated October 14, 2011; and**
- C4 Facebook Event, dated October 25, 2011.**

**CARRIED**

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The meeting adjourned at 11:35 a.m.

Respectfully submitted,

Janet Andrews, Chair



**FROESE FORENSIC**  
partners ltd.

**Compliance Audit Report  
For the City of Vaughan  
Re: Michael DiBiase**

*March 15, 2012*



## Contents

|          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>Introduction.....</b>                    | <b>1</b>  |
|          | Background to the Compliance Audit.....     | 1         |
|          | Our Approach to the Compliance Audit .....  | 2         |
|          | Procedures Performed .....                  | 3         |
| <b>2</b> | <b>Overall Findings.....</b>                | <b>5</b>  |
|          | General .....                               | 5         |
|          | Contributions.....                          | 5         |
|          | Expenses.....                               | 6         |
|          | Financial Reporting.....                    | 7         |
|          | Other .....                                 | 8         |
| <b>3</b> | <b>Details in Support of Findings .....</b> | <b>9</b>  |
|          | Contributions.....                          | 9         |
|          | Expenses.....                               | 10        |
|          | Financial reporting.....                    | 13        |
|          | Other .....                                 | 15        |
| <b>4</b> | <b>Restrictions and Limitations .....</b>   | <b>18</b> |

**Appendix A – What the Act says about Financial Records and Reporting**



# 1 Introduction

## Background to the Compliance Audit

- 1.1 This Report is the result of a request for a compliance audit under Section 81 of the Municipal Elections Act, 1996 (“**the Act**”) in relation to the campaign finances of Local and Regional Councillor Michael DiBiase (“**DiBiase**” or “**the Candidate**”).
- 1.2 DiBiase filed for election as Local and Regional Councillor on September 7, 2010. Previously, DiBiase held a number of senior elected municipal positions and in 2006, ran unsuccessfully for the position of Mayor.
- 1.3 On March 24, 2011, DiBiase attested that the financial statement for the campaign period from September 7, 2010 to December 31, 2010 (the “**Financial Statement**”) was true and correct to the best of his knowledge and belief.
- 1.4 On June 21, 2011, Ms. Carrie Liddy (“**Ms. Liddy**” or “**the Applicant**”) submitted a request for a compliance audit to the City Clerk at the City of Vaughan (“**City**”). On June 29, 2011 and July 6, 2011, the Applicant submitted a supplementary affidavit and a second supplementary affidavit to the City Clerk respectively. The Applicant identified the following issues regarding the Financial Statement:
  - 1) That contributions were made to the DiBiase campaign from companies that appeared to be associated and were over the contribution limit of \$750;
  - 2) That the Financial Statement included a claim of a 2006 campaign deficit of \$2,120, which included the recount expenses that Mr. DiBiase incurred as a voter, resulting in overstating the deficit carried forward;
  - 3) That the Financial Statement failed to report the proper recount expenses and the recovery amounts of \$183,863.54 from the City of Vaughan in relation to the 2007 recount expenses;
  - 4) That the financial statement failed to report the source of contributions in relation to the settlement of liabilities of \$54,938.31 and did not properly report the recount expenses paid by the candidate of \$17,764.29 for the preceding election;
  - 5) That the 2006 carried forward deficit contained a reversal of costs that did not reconcile to the 2006 Financial Statement;



- 6) That the 2006 deficit, after reversing the recount expenses, became a surplus, which should have been remitted to the City and reported as such in the 2010 Financial Statement; and
  - 7) That the 2010 Financial Statement in fact had a surplus of approximately \$12,555.57 that should be remitted to the City.
- 1.5 The Applicant also identified a number of other issues in her second supplementary affidavit and throughout the course of our compliance audit. All have been considered, some have been reported on and others are commented on further in paragraphs 1.12 to 1.14.
- 1.6 On July 8, 2011, the Compliance Audit Committee met to consider the merits of the application and determined that a compliance audit of the Financial Statement be conducted for the 2010 election campaign finances of Michael DiBiase pursuant to Subsection 81(7) of the Act.
- 1.7 On August 24, 2011, Bruce Armstrong of Froese Forensic Partners Ltd (“FFP”) and Glen R. Davison, CA, were retained to conduct the compliance audit in accordance with the Act. Subsection 81(9) of the Act requires that the auditor prepare a report “*outlining any apparent contravention by the candidate.*” This Report contains our findings in relation to our compliance audit of the Financial Statement submitted by DiBiase.

### **Our Approach to the Compliance Audit**

- 1.8 The objective of our compliance audit is to report any apparent contraventions of the Act identified through the course of our compliance audit related to the Financial Statement filed by DiBiase. We have set out our understanding of a number of relevant sections of the Act as **Appendix A** to this Report.
- 1.9 The compliance audit addressed the issues that are relevant to the 2010 Financial Statement of the DiBiase campaign sworn by the applicant. The audit also addressed other matters identified through the compliance audit process, including:
- 1) Whether the fair market value of goods and services were reflected in the Financial Statement as contributions and expenses;
  - 2) Whether campaign expenses were appropriately supported by invoices or other supporting documentation and incurred as appropriate;
  - 3) Whether the Financial Statement was prepared in accordance with the Act and the Municipal Elections 2010 Guide.



## Procedures Performed

1.10 Our procedures related to the compliance audit included:

- 1) A review of the Compliance Audit Application and supplementary affidavits filed by the Applicant;
- 2) A review of the Financial Statement and supporting documents;
- 3) An ongoing review of the Municipal Elections Act, 1996 (“**the Act**”) and the Municipal Elections 2010 Guide (“**the Elections Guide**”);
- 4) Attendance on October 5, 2011 at a meeting with Alex Pizzimenti, CA (“**Pizzimenti**”), the campaign manager for DiBiase in order to pick up the accounting and financial documentation for the campaign. Also in attendance was Anthony Giordano, CA (“**Giordano**”), from Lanno Torelli LLP, the auditor of the 2010 DiBiase campaign;
- 5) Examination of the accounting and financial documentation provided and ongoing communications with the Candidate via Pizzimenti or Gillespie;
- 6) A detailed review of Giordano’s recalculation of the 2006 election deficit to be reported on the 2010 Financial Statement;
- 7) Performing corporate searches on corporate contributors who reached a maximum of \$750 contribution limit, contributors who shared similar addresses and contributors who are numbered companies;
- 8) Scheduling and attendance at an interview of DiBiase on December 12, 2011 in the presence of Pizzimenti, Giordano and Gillespie. A number of Undertakings were made at the time by DiBiase and/or Eric Gillespie (“**Gillespie**”), Counsel for the Candidate;
- 9) Ongoing meetings and discussions with Pizzimenti, in particular to follow-up outstanding requests, including a number of undertakings that were made by DiBiase when he was interviewed;
- 10) Contacting selected suppliers of the DiBiase campaign to obtain information in relation to the expenses incurred for the campaign;
- 11) A review of the Compliance Audit Report for the City of Vaughan Re: Michael DiBiase dated May 27, 2009 prepared by Ken Froese of FFP (formerly LECG Canada Ltd.) and Glen Davison;





- 12) A review of the Written Judgment of Justice Peter J. Wright delivered following the Oral Ruling dated February 28, 2011 in the matter "*The Corporation of the City of Vaughan v. Michael DiBiase*";
  - 13) Ongoing meetings with the Applicant, with the last meetings scheduled on February 9<sup>th</sup> and March 8, 2012 when additional concerns were articulated and discussed; and
  - 14) A review of a signed (but not sworn) affidavit of Nadejda Almaliah ("**Almaliah**"), provided by the Applicant.
- 1.11 We reviewed the calculation of the deficit carried forward from the preceding election as filed by DiBiase and agreed the amounts to the audit report as reported pursuant to the 2006 compliance audit. We relied on the results of the previous compliance audit and did not further verify the amounts against supporting documentation or financial records filed during the 2006 election.
  - 1.12 The Applicant also identified a number of issues in her second supplementary affidavit that we considered were beyond the scope of our compliance audit and in particular, her belief that Gillespie is in a conflict of interest position and should not be acting as counsel for the Candidate.
  - 1.13 Further, we have been provided with information by the Applicant alleging that the City of Vaughan has paid legal fees to Gillespie and others related to prior compliance audit and conflict of interest proceedings, in violation of the legal powers of the Municipality. We have not addressed these allegations as we concluded that this fell outside of the mandate for performing a compliance audit under the Act.
  - 1.14 During the final preparation of this report, additional matters continued to be brought to our attention by the Applicant. Certain of these have not been pursued further at this time as in particular, they would appear to be similar in nature to other matters that have been discussed in our report.



## 2 Overall Findings

### General

- 2.1 DiBiase and his campaign team cooperated fully with the compliance audit process and provided detailed explanations as requested. We found the DiBiase campaign records to be professionally maintained, organized, and consistent with the requirements of the Act.
- 2.2 DiBiase had run for previous elected positions in the past and most recently had campaigned for the position of Mayor in 2006.
- 2.3 The Financial Statement for the period September 7, 2010 to December 31, 2010 reported a current surplus / deficit of \$0 with total contributions of \$140,276.24 and a carried forward deficit of \$2,120 from the preceding election in 2006.
- 2.4 DiBiase had a campaign expense limitation of \$152,650.95. The Financial Statement reported campaign expenses subject to limitation of \$121,289.36 and expenses not subject to limitation of \$6,761.92.

### Contributions

- 2.5 DiBiase introduced a 'Contribution Form' into his 2010 financial reporting procedures whereby corporate and personal contributors were asked to provide details that could be audited, if necessary, when subsequent claims were made for a rebate from the City of Vaughan. Of most significance to our compliance audit procedures was a statement that corporate contributors were asked to fill out and sign declaring in part that the company "...is not associated with any other company making a combined contribution in excess of \$750.00..."
- 2.6 Despite the above control, and as discussed in paragraphs 3.1 to 3.6, we noted one instance of a \$250 over-contribution resulting from payments received from two (2) associated companies located at the same business address and having the same sole director/officer. In our opinion, the failure to identify the duplicate contributions, recorded in the campaign's financial records as being received from Anland Properties Incorporated and from Anjon Construction Limited, and the failure to return the excess contribution prior to finalizing the Financial Statement in March 2011, are apparent contraventions of Subsections 71(1) and 69(1)(m) of the Act.
- 2.7 At the time of the interview, DiBiase voluntarily offered to refund the over-contribution on being informed that the companies were possibly associated. On



February 22, 2012, the Candidate refunded \$500.00 by cheque from his personal account to Anland Properties Inc. and received a signed receipt.

- 2.8 We identified three (3) instances, as discussed in paragraph 3.7, in which there was no evidence that receipts were issued for campaign contributions that were received. In our opinion, these are apparent contraventions of Subsection 69(1)(e) of the Act, which requires that receipts be issued for all contributions.
- 2.9 We identified one (1) instance, as discussed in paragraphs 3.8 to 3.9, in which the contribution receipt issued did not match the contribution details recorded. In our opinion, this is an apparent contravention of Subsections 69(1)(e) and 69(1)(f) of the Act, which requires that receipts be issued for all contributions.

## Expenses

- 2.10 We have identified one instance, as discussed in paragraphs 3.12 to 3.13, where a campaign advertisement that was taken out in the Vaughan Citizen was subsequently never billed to the Candidate. The cost of a similar advertisement was \$401.15 and the omission resulted in an understatement of both campaign contributions and expenses. The failure to include these amounts is an apparent financial reporting contravention of Subsections 69(1)(d), 69(1)(f)(iii) and 67(2) of the Act. However, when the newspaper was contacted, FFP was advised that a free replacement advertisement was provided to the Candidate following receipt of a complaint about the quality of a previous advertisement. Accordingly, we have not included this item in the schedule of recommended adjustments as set out in paragraph 3.28.
- 2.11 DiBiase incurred expenses totalling \$15,293 to host an event "*to celebrate Seniors of Vaughan.*" Although not specifically meeting the criteria set out in Subsection 67(2) of the Act, we concluded that it is a valid campaign expense to promote the public awareness of the Candidate as outlined in Subsection 67(2.1) of the Act. In our opinion, there is no apparent contravention of the Act and the expense has been properly accounted for as an expense subject to DiBiase's authorized spending limit. This finding is discussed in more detail in paragraphs 3.14 to 3.16.
- 2.12 At least a portion (if not all) of the expenses incurred to produce the Rosh Hashana flyer in early September 2010 were incurred outside of the campaign period and in our opinion are an apparent contravention of Subsection 76(2) of the Act. These expenses are discussed in more detail in paragraphs 3.18 to 3.23 and the documentation provided indicate inconsistencies and therefore are inconclusive in determining the extent of the apparent contravention.



## Financial Reporting

- 2.13 In our opinion, as the recount expenses of the 2006 election were incurred in the capacity as a “voter” rather than as a candidate, these expenses and any corresponding contributions thus have to be reversed from the carried forward deficit. As a result, there is an opening surplus from the previous election of \$21,109.85. This finding is discussed in more detail in paragraphs 3.25 to 3.27.
- 2.14 The revised calculation of the deficit carried forward from the preceding election, due to a litigation judgment subsequent to the filing of the final Financial Statement, was an apparent contravention of Subsections 69(1)(k) and 78(1) of the Act by the candidate, where the Act requires the candidate to file the financial statements in the prescribed form reflecting the candidate’s election campaign finances.
- 2.15 There were a few items that were either not included in the Financial Statement or were mis-classified. The items in question are as follows and the effect on the Financial Statement has been summarized in paragraphs 3.27 and 3.28:
- 1) The replacement value of a large sign retained by the candidate from a previous election and used in the current election, as discussed in paragraph 3.10. This is both a contribution and an expense and the failure to include it is an apparent contravention of Subsection 67(2) of the Act;
  - 2) A reclassification of an amount from “brochures” to “sign” expenses, as discussed in paragraph 3.17;
  - 3) A reclassification of an amount from “voting day party/appreciation notice” to “brochures” expenses as discussed for the graphics component in paragraphs 3.20 and 3.21; and
  - 4) A reclassification of an amount from “advertising” to “voting day party/appreciation notices” expenses, as discussed in paragraph 3.17. In this instance, this became an expense not subject to the Candidate’s authorized spending limit.
- 2.16 In our opinion, these are apparent financial reporting contraventions of Subsections 69(1)(k) and 78(1) of the Act, which require that the Financial Statement be filed in the prescribed form.
- 2.17 We have calculated a revised excess of income over expenses of \$33,334.81 as set out in the schedule at paragraph 3.28. This is \$408.57 greater than the \$32,926.34 contribution made by the Candidate to his campaign. In accordance with the provisions of Subsection 79(7) of the Act, the candidate should refund the excess amount of \$408.57 to the City Clerk. These monies would in turn be held in trust until



2014 pursuant to Subsection 79(8) of the Act, pending a decision on whether the Candidate decides to run for elected office again.

- 2.18 Prior and subsequent to the changes noted in the preceding paragraphs, the Candidate remained within his allowable threshold of expenses subject to limitation.

### **Other**

- 2.19 Between 2006 and 2010, the Michael DiBiase Charitable Foundation (“**the Foundation**”) made significant contributions to qualified donees, with the largest donations being made in the election years 2006 and 2010 when DiBiase was a declared candidate. Further details are set out in paragraphs 3.30 to 3.33. We are unable to make any determination as to the extent of the promotional and/or campaign benefit that was realized by the Candidate as a result of the timing, quantum or actual recipients of the qualified donations. Accordingly, we are unable to determine whether there is any apparent contravention of the Act related to the contributions to and donations from the Foundation.



### 3 Details in Support of Findings

#### Contributions

3.1 Contributions were received from two companies located at 127 Pine Valley Crescent, Woodbridge, as follows:

| Company Name                   | Address                                 | Cheque Date   | Contribution       |
|--------------------------------|---|---------------|--------------------|
| Anland Properties Incorporated | 127 Pine Valley Crescent,<br>Woodbridge | Oct. 20, 2010 | \$ 500.00          |
| Anjon Construction Limited     | 127 Pine Valley Crescent,<br>Woodbridge | Oct. 20, 2010 | 500.00             |
| <b>TOTALS</b>                  |   |               | <b>\$ 1,000.00</b> |

3.2 FFP conducted corporate searches and determined that Frances Gabriele (“Gabriele”) is the sole director and officer of each company.

3.3 We independently sent a letter requesting that these two (2) companies confirm their association and provide any supporting documentation regarding their association, but did not receive any replies. The records from DiBiase’s campaign did not include any contact numbers for these contributors.

3.4 We failed to receive any response from the companies and questioned the Candidate, who offered to refund the \$250 cumulative over-contributions to one of the contributors at the time of our interview with him in December 2011. Alternatively, Pizzimenti offered to intervene and contact Gabriele and/or his legal counsel directly in order to secure a response.

3.5 Pizzimenti contacted FFP on January 31, 2012, indicated that he had spoken with legal counsel for the two (2) companies and had been advised that Gabriele will not sign a letter responding to our outstanding query. Pizzimenti further indicated receiving advice from the legal counsel that the two companies are associated via common ownership.

3.6 We requested written confirmation of this advice and in reply received a letter from DiBiase and a copy of his personal cheque dated February 22, 2012, indicating that a full refund of the \$500 contribution received from Anland Properties Inc. had been made.

3.7 We identified three (3) instances in which there was no evidence that receipts were issued for campaign contributions, as follows:



| Contributor                | Cheque Date      | Amount             |
|----------------------------|------------------|--------------------|
| Genoveffa Commissq         | October 6, 2010  | \$ 500.00          |
| Frank Gerrard              | December 6, 2010 | 600.00             |
| Madison Homes Incorporated | November 5, 2010 | 750.00             |
| <b>Totals</b>              |                  | <b>\$ 1,850.00</b> |

3.8 A contribution of \$750 was received from Turnberry Green Homes II (“Turnberry II”) on October 14, 2010. The campaign recognized that Turnberry II was a partnership and accordingly allocated the contribution to the five (5) partners according to their ownership interest in the venture. The Financial Statement noted that \$251.25 was received from each of Lexington Green Enterprises Inc. and Lexington Green Realty Inc. The other three (3) partners were not specifically noted as their individual contributions were less than \$100, as follows:

- 1) Lexington Green Construction Inc. \$ 75.00
- 2) Lexington Green Holdings Inc. 82.50
- 3) Lexington Green Developments Inc. 90.00

3.9 The campaign issued only one campaign receipt for the full \$750 to Turnberry II.

3.10 The Financial Statement did not include the replacement value of a large campaign sign retained by the candidate from a previous election and used in the current election. The Candidate has attributed an estimated value of \$100 and has provided FFP with a written estimate dated February 22, 2012 as follows from Domenic Rubino, the CEO of SCL Imaging Corp.:

*“... as per the art work provided by your team, for the 2006 election campai[gn], the cost would be \$85.00, plus applicable taxes.”*

## Expenses

3.11 The DiBiase campaign incurred significant amounts in the form of advertising and brochures expenses. All supporting invoices were available and in many instances a proof copy of the actual product purchased was stapled to the respective supplier invoice. In every other instance, we were able to obtain and match up the corresponding promotional material.

3.12 We were provided with an advertisement dated October 17, 2010 (page 19 of the Vaughan Citizen) without a corresponding invoice. We contacted the supplier and have determined that the supplier did not charge the DiBiase campaign for this advertisement due to the poor quality of a previous advertisement that was placed in the newspaper by the campaign. The cost of a similar sized advertisement was



\$401.15 (including HST of \$46.15). The omission resulted in an under-reporting of an identical amount of both campaign contributions and expenses.

- 3.13 It was brought to our attention by the Applicant that the Vaughan Citizen may have granted a benefit to DiBiase during the campaign by relaxing their policy that all election advertisements have to be prepaid by cheque or credit card. We have reviewed the arrangements with the Vaughan Citizen, noted that twenty-two (22) advertisements<sup>1</sup> were placed at a cost of \$7,713 plus HST. It would appear that all but four (4) advertisements totalling \$1,143 plus HST were prepaid, as required and that the more expensive of the advertisements occurred after the election had been held. We have concluded that no financial benefit, or at most a nominal benefit, was conferred on the campaign as a result of any delay in making payment of the invoices until after the four (4) advertisements were run.
- 3.14 We reviewed the campaign expenses incurred in relation to fundraising and other events. In particular the DiBiase campaign held a special event on October 18, 2010 "to celebrate Seniors of Vaughan". The event was held at La Primavera Hospitality & Convention Centre with no admission charge. The cost of the event was \$15,293 consisting of the following charges:
- 1) Food and beverage for 585 adults at \$25 each;
  - 2) A disc jockey for \$318; and
  - 3) Printing of flyers of \$350.
- 3.15 Subsection 67(2) specifically considers "the cost of holding fund-raising functions" and "the cost of holding parties and making other expressions of appreciation after the close of voting" as expenses of the campaign that are not subject to the authorized spending limit. The cost of this event did not specifically fall into either of those expense categories.
- 3.16 DiBiase advised that he considered treating this event like a fundraiser, or even paying for the event personally but in further consultation with his campaign advisers, DiBiase elected to treat it as a campaign expense that was subject to the authorized spending limit. He advised that hosting an event of this nature in the past is not unprecedented and in those instances he has been criticized for not expensing the related costs.
- 3.17 We have determined that a number of adjustments were necessary resulting from our review of the documentation supporting the underlying expenses in the Financial Statement. The following expenses have been reclassified or included:

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<sup>1</sup> The number of advertisements excludes the "free" advertisement discussed in paragraph 3.12.





- 1) A reclassification of \$1,919.87 from advertising expenses to voting day party / appreciation notices expenses;
  - 2) A reclassification of \$20,046.20 from brochures expenses to signs expenses;
  - 3) A reclassification of \$226.00 from voting day/appreciation notice to Brochures expenses; and
  - 4) Inclusion of the contributed cost of the campaign sign from a previous election.
- 3.18 During our compliance audit, the Applicant brought it to our attention that she believed the Candidate had incurred advertising expenses prior to the campaign period. In particular, she advised being at a luncheon meeting with Nadejda Almaliah ("Ms. Almaliah"), when DiBiase presented himself, wished Ms. Almaliah a happy Rosh Hashanah, gave her a bundle of brochures and requested that she distribute them at her local synagogue. We noted that DiBiase registered his candidacy on September 7, 2010 and Rosh Hashanah occurred the next day. We also noted that the invoicing for the corresponding brochure occurred several weeks after the campaign period had commenced.
- 3.19 On February 8, 2012, the Applicant provided FFP with a signed (but not sworn) affidavit from Ms. Almaliah attesting that the luncheon meeting in question took place on September 2, 2010, that "...DiBiase gave me several boxes of pamphlets..." and "...informed myself and Ms. Liddy ... that he intended to register shortly..."
- 3.20 We have reviewed the promotional material and the related supplier invoices received from VEPGraphics (design) and Costa Printing (printing) dated November 25<sup>th</sup> and November 29, 2010 respectively. The total related costs for 8,500 Rosh Hashanah flyers were \$226 for the design and \$1,638.52 for the printing.
- 3.21 We have contacted the suppliers VEPGraphics and Costa Printing. We were advised by VEPGraphics that the greeting card design was delivered to the campaign on September 3, 2010. Costa Printing did not retain the order / delivery information, but advised that the order was rush due to the late registration of the candidate. Both suppliers indicated that the late invoicing date was a normal practice of the companies.
- 3.22 DiBiase has subsequently provided FFP with a copy of the "delivery receipt" dated September 7, 2010 from Costa Printing, for 5 boxes containing 8,500 Rosh Hashana fliers. We have verified the authenticity of this document with the supplier.
- 3.23 In our opinion, there are at least two (2) inconsistencies between the contents of the unsigned affidavit and the details subsequently determined:
- 1) The art work was done on September 3, 2010, clearly before the campaign period, but one day after the date of the alleged luncheon meeting; and



- 2) The flier were delivered (or picked up) on September 7, 2010 which was the date that DiBiase registered for the campaign.
- 3.24 What is unknown from the foregoing is whether the rush printing, referred to by Costa Printing, occurred before/after the commencement of the campaign period.

### Financial reporting

- 3.25 In Note 1 to the Financial Statement, the campaign auditor revised the opening deficit in the 2010 Financial Statement from \$74,822.60 to \$2,120.00.
- 3.26 However, the basis on which the deficit was calculated was flawed in our opinion for reasons, as follows:
- 1) The deficit carried forward from the previous election included significant amounts attributed to recount expenses;
  - 2) In the Court proceedings following the 2006 recount, Counsel for the Candidate raised as one of two defences that "*DiBiase's involvement in the post election re-count proceedings and litigation was as a voter and not as a candidate.*"<sup>2</sup>
  - 3) The Judge dismissed all charges against DiBiase and "*... concluded that either of the defences advanced are sufficient to allow me to find the Defendant, Michael DiBiase, not guilty...*"<sup>3</sup>
  - 4) Counsel for the Candidate further reiterated that "*the recount expenses were not incurred in Mr. DiBiase's capacity as a candidate but instead as a voter*"<sup>4</sup> in response to the request for a compliance audit;
  - 5) There were a number of expenses initially set up as accounts payable in the 2006 Financial Statement that were ultimately settled by reduced amounts; and
  - 6) The resulting surplus should be reduced to reflect all contributions received between January 1<sup>st</sup> and July 3, 2007 that were used to defray the recount expenses.
- 3.27 We calculated a revised surplus that should be carried forward to line 2 in the first page of the Form 4 Financial Statement for 2010, as follows:

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<sup>2</sup> Paragraph 13 of a Written Judgment by Justice Peter J. Wright following the Oral Ruling delivered in Court on February 28, 2011.

<sup>3</sup> Ibid, paragraph 19.

<sup>4</sup> Letter dated June 27, 2011 from Eric Gillespie to the Compliance Audit Committee.



| FPP's Revised 2006 Surplus/Deficit Calculations                     | Amount              |
|---|---------------------|
| Deficit as filed per 2006 election return                           | \$ (74,822.60)      |
| Add:  |                     |
| Recount expenses included above (incurred as a voter)               | 107,582.45          |
| Accrued expenses that were subsequently settled:                    |                     |
| Stale dated cheque  | 250.00              |
| Election sign removal fee   | 5,320.00            |
| Accrued professional fees   | 5,880.00            |
| Revised surplus from 2006 election – before contributions           | \$ 44,209.85        |
| Less: Personal contributions made by Mr. DiBiase in 2006            | -                   |
| Less: Contributions accepted January 1 to July 3, 2007 <sup>5</sup> | (23,100.00)         |
| <b>Revised surplus for Form 4 purposes</b>                          | <b>\$ 21,109.85</b> |

3.28 The effects of the revised surplus, the reclassifications, as well as the inventory contributed from the previous election are set out in the following table:

| Campaign Period Income and Expenses   | As Filed          | Adjustments        | As Adjusted       |
|---|-------------------|--------------------|-------------------|
| <b>Income</b>   |                   |                    |                   |
| Candidate's surplus from immediately preceding election released by the clerk | -                 | 21,109.85          | 21,109.85         |
| Contributions from Candidate  | 32,426.34         | 500.00             | 32,926.34         |
| All other Contributions   | 107,850.00        | (500.00)           | 107,350.00        |
| Inventory contributed from previous election                                  | -                 | 100.00             | 100.00            |
| <b>Revised Campaign Period Income</b>   | <b>140,276.24</b> | <b>21,209.85</b>   | <b>161,486.09</b> |
| <b>Expenses</b>   |                   |                    |                   |
| <b>Subject to spending limit and not adjusted</b>                             | <b>35,976.41</b>  | <b>-</b>           | <b>35,976.41</b>  |
| <i>Other expenses adjusted as follows:</i>                                    |                   |                    |                   |
| Advertising   | 34,269.72         | ( 1,919.87)        | 32,349.85         |
| Brochures   | 38,068.59         | ( 19,820.20)       | 18,248.39         |
| Inventory contributed to candidate's campaign                                 | -                 | 100.00             | 100.00            |
| Signs   | 12,974.64         | 20,046.20          | 33,020.84         |
| <b>Revised expenses subject to the spending limit</b>                         | <b>121,289.36</b> | <b>( 1,593.87)</b> | <b>119,695.49</b> |

<sup>5</sup> There was an additional Form 4 Financial Statement filed to December 31, 2007. However the only changes post-July 3, 2007 related to a refund of a campaign contribution received in 2006.



| Campaign Period Income and Expenses                       | As Filed          | Adjustments      | As Adjusted       |
|---|-------------------|------------------|-------------------|
| Not subject to spending limit and not adjusted            | 2,260.00          | -                | 2,260.00          |
| <i>Other expenses adjusted as follows:</i>                |                   |                  |                   |
| Voting day party / appreciation notices                   | 4,501.92          | 1,919.87         | see below         |
| Appreciation notices – VEPGraphics                        | -                 | ( 226.00)        | 6,195.79          |
| <b>Revised expenses not subject to the spending limit</b> | <b>6,761.92</b>   | <b>1,693.87</b>  | <b>8,455.79</b>   |
| <b>Total Campaign Period Expenses</b>                     | <b>128,051.28</b> | <b>100.00</b>    | <b>128,151.28</b> |
| <b>Excess (Deficiency) of Income over Expenses</b>        | <b>12,224.96</b>  | <b>21,109.85</b> | <b>33,334.81</b>  |

3.29 The following table details the Statement of Determination of Surplus or Deficit as filed by Mr. DiBiase with our audit adjustments and differences:

| Part I – Determination of Surplus or Deficit  | As Filed     | Adjustments   | As Adjusted               |
|---|--------------|---------------|---------------------------|
| Excess (Deficiency) of Income over Expenses   | 12,224.96    | 21,109.85     | 33,334.81                 |
| Deduct: Any deficit carried forward by the candidate from immediately preceding election if the offices are with respect to the same jurisdiction | ( 2,120.00)  | 2,120.00      | -                         |
| Surplus (or deficit) for the campaign period  | 10,104.96    | 23,229.85     | 33,334.81                 |
| Deduct: Any refund of contributions to the candidate or spouse (only if there is a surplus)   | ( 10,104.96) | ( 22,821.28)  | ( 32,926.24) <sup>6</sup> |
| <b>Total Determination</b>  | <b>0.00</b>  | <b>408.57</b> | <b>408.57</b>             |

## Other

3.30 For several years, the candidate has operated a registered charity entitled The Michael DiBiase Charitable Foundation Inc. (“**the Foundation**”). Typically, the Foundation holds sports related events and raises monies that are periodically handed out to local charities. FFP has reviewed the annual T3010 charitable tax returns for the 2006 to 2010 calendar years. Based on that limited review, FFP has determined the following:

- 1) The Foundation held a fundraising golf event in July 2006 while DiBiase was the Mayor of the City. Approximately \$160,000 was raised for charities through this event;

<sup>6</sup> DiBiase recorded “Contributions from Candidate” of \$32,426.24 in the Financial Statements. With the additional refund of the excess contribution being made from his personal account in February 2012, total contributions made by the Candidate have been increased to \$32,926.24. As there is a surplus at the end of the election campaign, the Candidate may refund to himself an amount that does not exceed the lesser of (a) the relevant contributions, or (b) the surplus, in accordance with Subsection 79(6) of the Act.



- 2) The Foundation distributed \$157,077 in 2006 and \$79,528 in 2007. There was no distribution in 2008 or 2009;
- 3) No fundraising events were held between 2007 and 2010;
- 4) Approximately \$200,000 was available for distribution during 2008 and 2009;
- 5) In early 2010, the Foundation was subjected to questioning in the Media in relation to holding significant amounts of cash without making any distributions to charities;
- 6) During 2010, the Foundation distributed \$166,000 or approximately 85% of the available cash to charities;
- 7) The comprehensive listing of qualified donees appended to the 2006 and 2010 annual returns does not agree with the aggregate amounts listed as having been distributed;
- 8) The following is a summary of these listings of qualified donees that we have been able to determine for 2006, 2007 and 2010:

| Qualified Donee   | 2006           | 2007          | 2010           |
|---|----------------|---------------|----------------|
| Vita Nova Foundation                                      | \$ 5,000       | \$            | \$             |
| 283 Woodbridge Legion Air Cadets                          | 2,830          |               |                |
| Vaughan Health Care Foundation                            | 70,000         | 79,528        |                |
| Alternative Integrating People                            | 5,000          |               |                |
| Just the Little Lights ... Org                            | 5,000          |               |                |
| Shining Through Centre for Children with Autism           | 5,000          |               | 5,000          |
| Filipino Canadian Charitable Foundation                   | 5,000          |               |                |
| Vaughan Community Information Service                     | 5,000          |               |                |
| York Centre for Children & Youth                          | 5,000          |               |                |
| Earth Rangers Foundation                                  | 5,000          |               |                |
| The Stephanie Lanni Foundation                            |                |               | 10,000         |
| Mens Sana -- Families for Schizophrenics                  |                |               | 7,500          |
| Vaughan Food Bank   |                |               | 10,000         |
| Elsbeth Hwyworth Centre for Women                         |                |               | 5,000          |
| Korean Community Centre for Multiculturalism              |                |               | 2,500          |
| Alternatives Integrating People with Cognitive Challenges |                |               | 10,000         |
| Human Endeavour   |                |               | 5,000          |
| Community Home Assistance to Seniors                      |                |               | 5,000          |
| Lubavitch Flamingo  |                |               | 5,000          |
| <b>Total per the qualified donees listing schedule</b>    | <b>112,830</b> | <b>79,528</b> | <b>65,000</b>  |
| <b>Difference, not identified</b>                         | <b>44,347</b>  | <b>-</b>      | <b>100,000</b> |



| Qualified Donee                                    | 2006       | 2007      | 2010       |
|--|------------|-----------|------------|
| Total gifts to qualified donees per the tax return | \$ 157,077 | \$ 79,528 | \$ 166,000 |

- 3.31 In September 2011, the Foundation held another fundraising golf event. At this point, we have not seen any details regarding funds raised and/or subsequently distributed to charities.
- 3.32 We do not know the recipient(s) of the amounts that were not accounted for separately in 2006 and 2010 and have not followed it up further as the annual charitable returns are at all times subject to Canada Revenue Agency, Charities Division ("CRA") review. If it was ever determined that any of the unidentified amounts were paid to non-qualifying donees, the sanctions available for CRA to impose could be quite punitive.
- 3.33 We are unable to make any determination as to the extent of the promotional and/or campaign benefit that was realized by the Candidate as a result of the timing, quantum or actual recipients of the qualified donations.



## 4 Restrictions and Limitations

- 4.1 This Report was prepared for the City of Vaughan in relation to the compliance audit regarding the 2010 election campaign finances of Michael DiBiase requested by the Compliance Audit Committee. This report is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through use of this Report for a purpose other than as described in this paragraph.
- 4.2 Although we reserve the right, we will be under no obligation to review and/or revise the contents of this Report in light of information which becomes known to us after the date of this Report.
- 4.3 This Report is respectfully submitted by Bruce Armstrong of FFP and Glen R. Davison. We were assisted in the compliance audit by Grace Lau of FFP.

Yours truly,

A handwritten signature in black ink, appearing to read 'Bruce Armstrong', with a long, sweeping horizontal flourish extending to the right.

**Bruce Armstrong, FCA, CFE**  
Managing Director  
Froese Forensic Partners Ltd.

A handwritten signature in black ink, appearing to read 'Glen R. Davison', written in a cursive style.

**Glen R. Davison, CA**  
License #5774

**What the Act says about Financial Records and Reporting**  
**Re: Michael DiBiase**  
**Appendix A**

**What the Act Says About Financial Records**

- 1.1 Subsection 69(1) of the Act, under the heading “Duties of candidate”, requires candidates to:
- 1) Open one or more bank account in the name of the candidate’s election campaign exclusively for the purposes of the election campaign (69(1)(a));
  - 2) Deposit all contributions into campaign bank account(s) (69(1)(b));
  - 3) Make all payments of expenses from the campaign bank account(s) other than the nomination filing fee (69(1)(c));
  - 4) Value all contributions of goods and services (69(1)(d)); and
  - 5) Retain receipts for all expenses (69(1)(g) and (h)) for the term of office of the members of council or until their successors are elected.
- 1.2 The Municipal Elections 2010 Guide, under “Best Practices” in the section entitled “Candidate Financial Duties – Checklist”, includes the establishment of a petty cash fund to:
- “handle minor expenses and obtain invoices to support all payments from the fund. At any time the cash on hand plus the total amount of invoices should equal the original amount of the petty cash fund. The fund can be replenished periodically by a cheque drawn on the campaign account in an amount equal to the total amount of the invoices.”*
- 1.3 As the petty cash fund is funded through a cheque or cheques from the campaign bank account, use of a petty cash fund does not negate the need for a campaign bank account. However, it does support the practice of paying minor campaign expenses using cash, while obtaining and retaining invoices for expenses paid using petty cash funds.
- 1.4 The Guide’s suggestion that a petty cash fund is a “best practice” is a reasonable interpretation of the Act.
- 1.5 Subsection 78(1) of the Act, under the heading “Financial Statement and Auditor’s Report”, states that *“on or before 2 p.m. on the filing date, a candidate shall file with the clerk with whom the nomination was filed a financial statement and auditor’s report, each in the prescribed form, reflecting the candidate’s election campaign finances”*.



## What the Act Says About Contributions

- 1.6 Subsections 70(1) and 70(2) of the Act provide that a contribution should only be made to or accepted by a candidate within his or her election campaign period.
- 1.7 Subsection 69(1)(e) states that it is the duty of the candidate to issue receipts for every contribution.
- 1.8 The Act only permits contributions from an individual normally resident in Ontario, a corporation that carries on business in Ontario, a trade union that holds bargaining rights for employees in Ontario, and the candidate and/or his or her spouse or same-sex partner (Subsection 70(3)).
- 1.9 Subsection 70(8) of the Act does not permit contributions of cash in excess of \$25 to be either made by contributors or accepted by the candidate.
- 1.10 The Act states that contributions may only be made from money that belongs to the contributor (Subsection 74(1)). It does not address whether one cheque may be issued on behalf of two or more individuals or entities. We have interpreted the Act to permit contributions on another's behalf where there is supporting documentation, such as a letter, advising the candidate that the funds are contributed on the other party's behalf, using the other party's funds.
- 1.11 The Act permits contributions from associated corporations but only to the same contribution level as applies to a single corporation. Associated corporations are defined in Section 72 of the Act by reference to Section 256 of the Income Tax Act (Canada). The Income Tax Act relies on the concept of control, either directly or indirectly, by the same corporation, individual or related group of individuals. Control relates primarily to share ownership, not to the position an individual holds within a corporation – such as an Officer and/or Director. Corporate searches identify Officers, Directors and Administrators of a corporation but do not identify shareholders. As a result, the ability to identify associated companies relies in large part on information available only from the contributor.
- 1.12 The concepts of associations and control in Section 256 of the Income Tax Act (Canada) are addressed in Interpretation Bulletin IT-64R4, which reviews the basic rules for determining association, addressing both “de jure control” and “de facto control”. The factors to consider in determining de facto control are set out in part in paragraph 23 of Interpretation Bulletin IT-64R4.
- 1.13 Corporations may file their income tax returns as non-associated corporations but be associated as a result of de facto control. In this circumstance, where combined contributions exceed \$750, in our opinion any apparent contraventions of the Act related to the over-contribution would be incurred by the contributor and not the candidate.

- 1.14 The evaluation of de facto control involves consideration of factors such as the level of influence family members can exert over other family members in relation to control over corporate decisions. In our opinion this type of evaluation cannot reasonably be performed as part of a compliance audit. Accordingly, our compliance audit procedures extended only to consideration of whether companies prepare their income tax returns as associated companies and the structure of their share ownership, not to consideration of de facto control.
- 1.15 The Act, by identifying only corporations, apparently does not permit contributions from unincorporated income trusts, limited and general partnerships, unincorporated co-tenancies, and other legal but non-corporate entities through which business is conducted in Ontario.
- 1.16 Subsection 66(3) of the Act requires that the value of goods and services provided as a contribution, by someone in the business of supplying the goods and services, be valued at *“the lowest amount the contributor charges the general public in the same market area for similar goods and services provided at or about the same time.”*
- 1.17 Where a contribution is made or received in contravention of the Act, paragraph 69(1)(m) requires that the contribution be returned to the contributor *“as soon as possible after the candidate becomes aware of the contravention”*. Paragraph 69(1)(n) also requires that a contribution not returned to the contributor is paid to the City Clerk.

### **What the Act Says About Expenses**

- 1.18 Subsection 67(1) of the Act states that *“costs incurred for goods and services by or on behalf of a person wholly or partly for use in his or her election campaign are expenses”* [underlining added].
- 1.19 Subsection 67(2) specified the following amounts are expenses:
1. *The replacement value of goods retained by the person from any previous election and used in the current election.*
  2. *The value of contributions of goods and services.*
  3. *Audit and accounting fees.*
  4. *Interest on loans under section 75.*
  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.*

9. *The nomination filing fee referred to in section 33.*

- 1.20 Item 2. of subsection 67(2) sets out amounts that are expenses, and campaign expenses include “*the value of contributions of goods and services*”. Accordingly, any contribution of goods or services is also a campaign expense of the same amount.
- 1.21 Subsection 76(1) provides that “*an expense shall not be incurred by or on behalf of a candidate unless he or she is a candidate*” and subsection 76(2) states that “*an expense shall not be incurred by or on behalf of a candidate outside his or her election campaign period.*”

## **What the Act Says About Fundraising Events**

1.22 Paragraph 5 of subsection 67(2) of the Act includes “*the cost of holding fund-raising functions*” as a campaign expense.

1.23 Subsection 67(2.1) states that costs of holding fundraising functions 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.”*

1.24 The Municipal Elections 2010 Guide included the following guidance:<sup>1</sup>

*“Fundraising functions are events or activities held by or on behalf of a candidate for the primary purpose of raising money for the candidate’s 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.”*

*“A campaign event at which incidental fundraising takes place does not qualify as a fundraising function.”*

1.25 The candidates were required to file financial statements that included a schedule detailing each fund-raising activity (Schedule 2 of the form).

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<sup>1</sup> Page 29 of the Ontario Municipal Election 2010 Guide.

## What the Act Says About Surplus / Deficits from a Previous Election Campaign

- 1.26 Subsection 79(1) of the Act states that *“a candidate has a surplus if the total credits exceed the total debits, and a deficit if the reverse is true.”*
- 1.27 Paragraph (b) of subsection 79(3) of the Act includes any deficit from a previous election campaign<sup>2</sup> of the candidate as part of the total debits in determining the surplus / deficit of the current election campaign.
- 1.28 The Ontario Municipal Election 2010 Guide provides the following information in relation to the surplus/deficit calculation of the election campaign:<sup>3</sup>

*“The surplus (deficit) position is to be calculated as follows:*

- 1. Determine the excess (deficiency) of income versus expenses.*
- 2. Deduct from this amount any deficit from the immediately preceding election if the offices are in the same jurisdiction.*
- 3. The resultant amount is the surplus (deficit) of the campaign period.”*

- 1.29 The Ontario Municipal Election 2010 Guide also addresses the surplus of a campaign:

*“When filing the financial statement, a candidate with a campaign surplus must pay the entire surplus to the clerk who was responsible for conducting the election.”*

*“Prior to paying over any surplus monies to the clerk, a candidate is entitled to refund any contributions made to the campaign by the candidate or his or her spouse.”*

*“The clerk is required to place the candidate’s surplus monies in a trust fund for use by the candidate if the candidate incurs expenses related to a recount, an application for a controverted election, or a compliance audit. If the surplus is not needed for these expenses, the surplus becomes the property of the municipality or school board.”*

- 1.30 Thus, any surplus from the preceding election is the property of the municipality or school board and is carried forward to the current election as *“Candidate’s surplus from immediately preceding election released by the clerk”* reported under income in Form 4.

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<sup>2</sup> If the campaign (i) related to an office of the same council or local board as the present campaign, and (ii) was in the previous regular election of a subsequent by-election.

<sup>3</sup> Page 35 of the Ontario Municipal Election 2010 Guide.