

COMPLIANCE AUDIT COMMITTEE – APRIL 4, 2012

COMMUNICATIONS

Distributed April 4, 2012

Item No.

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| C1. | Mr. Bruce Armstrong, dated April 2, 2012. | 1 |
| C2. | Ms. Carrie Liddy, dated April 4, 2012. | 1 |

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Please note there may be further Communications.

April 2, 2012

COMPLIANCE AUDIT COMMITTEE
APRIL 4, 2012Ms. Donna Winborn
Election Coordinator
City Clerk's Office
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON
L6A 1T1ITEM - 1

Dear Ms. Winborn:

ADDENDUM TO COMPLIANCE AUDIT REPORT FOR THE CITY OF VAUGHAN
RE: LOCAL AND REGIONAL COUNCILLOR MICHAEL DIBIASE

1. This letter is an Addendum to our compliance audit report concerning the campaign finances of Local and Regional Councillor Michael DiBiase dated March 15, 2012. This Addendum addresses clarifications and modifications to our Report and issues that were raised by the Applicant, Ms. Carrie Liddy (the "**Applicant**" or "**Ms. Liddy**") subsequent to the issuance of our report on March 26, 2012.

Comprehensive Audit

2. Subsequent to the issuance of our report, The Applicant has drawn a number of issues to our attention that she had previously raised, culminating in an excerpt taken from the online National Post on March 28, 2012 quoting Ms. Liddy as follows: "*The auditor did not do a comprehensive audit.*"
3. The purpose of this Addendum is to provide the Compliance Audit Committee ("**CAC**") with additional information that will hopefully assist in ensuring a better understanding of our detailed approach. We did not ignore, omit or fail to address information as asserted by the Applicant. Rather, our report focused on what was determined as a result of our compliance audit and opinions were expressed in Section 2 of the report on matters where FFP felt there were apparent contraventions.

Procedures Performed on Corporate Contributions

4. Each procedure set out in Paragraph 1.10 and 1.11 of our report can in turn be broken down into several points. One example is with respect to how we dealt with the verification of corporate contributions. Procedures #5 and #7 indicate that we examined accounting and financial documentation and performed a number of corporate searches. In actual fact we



- a) Identified all corporate contributors that gave \$750 contributions or had common addresses or in particular were numbered companies;
 - b) Performed corporate searches on these companies;
 - c) Requested written confirmation from these corporations with common addresses or directorship to confirm whether they were/were not associated and obtained copies of certain extracts from their corporate T2 returns in which they have provided signed representations to Canada Revenue Agency ("CRA");
 - d) Verified these and all campaign contributions to the campaign banking records and copies of cancelled cheques; and
 - e) Reconciled these and all campaign contributions over \$10 to the details on receipts to contributors and over \$100 to the details in the Financial Statement.
5. We have examined all contributions over \$750 for possible corporate association, including the ones that were alleged by the Applicant.
 6. The Applicant had previously raised an issue with contributions from the Milani's companies – 611428 Ontario Limited and 1714486 Ontario Limited. During the course of our compliance audit, we requested and received excerpts from the respective corporate tax returns for these companies from the contributors, including Schedule 9 that disclosed that these corporations are "related but not associated." As a result, there was no apparent contravention of the Act.
 7. Our Overall Findings as set out in paragraphs 2.6 to 2.9 represent the exceptions noted and the resultant apparent contraventions; paragraphs 3.1 to 3.9 provide further detail in support of these findings; and paragraph 2.5 provides an explanation of an effective control measure introduced this year to the DiBiase campaign.

Issues raised by the Applicant

8. We stand by the statement made in paragraph 1.5, as follows:

"The Applicant also identified a number of 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."

9. In particular, paragraphs 1.12 and 1.13 address a number of serious allegations made by Ms. Liddy that are, in our opinion, beyond the scope of a compliance audit of the Candidate's 2010 campaign finances. A compliance audit is limited to addressing apparent contraventions of the Act, and thus in our opinion does not extend to investigating allegations ancillary to the Candidate's 2010 campaign finances. We



haven't ignored these allegations, rather have brought them to the attention of the CAC for possible future consideration or referral to the City of Vaughan's internal audit department.

10. The DiBiase campaign finances were examined in their entirety. There was no use of random sampling or other judgment selection techniques. As such, to the best of my knowledge, any allegations raised by Ms. Liddy with respect to the 2010 DiBiase campaign finances have received consideration. Those that merited further discussion were commented on in Section 3 of our report and the overall findings have been commented on in Section 2.

Rosh Hashanah and the registration date of the DiBiase campaign

11. DiBiase registered for the election campaign on September 7, 2010 and Rosh Hashanah commenced at sundown on September 8, 2010. The DiBiase campaign provided a pamphlet that was distributed prior to Rosh Hashanah. Due to the timing, our compliance audit identified the production of this pamphlet as a possible incurrence of campaign expenses outside of the campaign period that required further investigation.
12. As set out in paragraph 3.19, Ms. Liddy introduced an unsworn affidavit from a third party alleging receipt by that third party of Rosh Hashanah materials prior to September 7, 2010.
13. As set out in paragraphs 3.20 to 3.24, we obtained additional third party information from the designing and printing companies respectively. This information confirmed the allegations in part although there were some inconsistencies as reported in paragraph 3.23, plus one additional item, as follows:
 - a) The artwork cost also included the design of a "Greetings from the Family" card that was similar to what was also included within the pamphlet. We have included the cost of the art design work in the total design costs described in paragraph 3.20 that has been referred to in our overall finding at paragraph 2.12. We have not seen any evidence from the printing company that the card was printed for or invoiced to the campaign.
14. Subsequent to issuing our report, Ken Froese ("Froese") spoke with the third party that signed the affidavit. Her representations provide further confirmation to our findings in paragraph 2.12 that the Candidate had incurred campaign expenses prior to registering as a candidate. Where we have referred to "a portion (if not all) of the expenses..." the third party claimed that she received all of the printed pamphlets and greeting cards prior to September 7, 2010. Although she claims to have boxes of these materials in her possession, verifying when these materials were actually received by her is not possible.



15. As set out in paragraph 2.12, we concluded that there was an apparent contravention of the Act but were unable to conclude whether it applied to a portion or all of the related expenses of producing the Rosh Hashanah pamphlet.

Other

16. In paragraph 3.30, FFP has identified that for 2006 and 2010 there were "differences not identified" between the total qualified donors listed on the annual T3010 charitable tax return and the individual supporting details. The Qualified Donee Worksheet only contains spaces for ten (10) names. However, the Canada Revenue Agency, Charities division ("CRA") Guide is quite specific in outlining the requirements for listing all qualified donees, as follows:
- a) For 2006, the Guide¹ states in part that: "...you *must* attach a list with the name of each qualified donee..."; and
 - b) For 2010, the Guide² states in part that: "Where a gift has been made to a qualified donee, provide the name of each qualified donee..."
17. Despite the foregoing requirements, at no point was there any implication made or intended by FFP that the Foundation paid monies to unqualified donees. Paragraph 3.32 outlines the powers available to CRA, should they ever discover any irregularities.

Modifications to be considered to our Report

18. The following details our revision and clarification to the compliance audit report dated March 15, 2012:
- a) Paragraph 2.17 of our Report states that:

"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."

This sentence should be deleted and replaced by the following:

"These monies would in turn be held in trust for use by the candidate if the candidate incurs expenses related to a recount, an application for a controverted election, or a compliance audit, in accordance with Subsection 79.1 of the Act. If the surplus is not needed for these expenses, it would become the property of the municipality or local board."

¹ CRA Guide #T4033A (E) Rev. 06 entitled Completing the Registered Charity Information Return, pp 12.

² CRA Guide #T4033-1 (E) entitled Completing the Registered Charity Information Return, pp 13.



- b) Further to paragraph 2.17, the Candidate has no doubt incurred legal and other expenses pursuant to the compliance audit that are considerably in excess of the \$408.57 figure calculated in paragraph 3.29 and summarized in paragraph 2.17. Accordingly, in our opinion, provided the candidate can provide supporting invoices, he should be able to either retain the \$408.57 refund or pay it to the City clerk and request its return.
- c) Paragraph 1.11 of our Report states that:

"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."

It should be clarified that the amounts included in the calculation of the deficit carried forward were agreed to the compliance audit report prepared by LECC Canada Ltd. in relation to the 2006 DiBiase election campaign.

Restrictions and Limitations

19. This Addendum to our Report dated April 2, 2012 was prepared for the City of Vaughan in relation to the compliance audit regarding the 2010 election campaign finances of Michael DiBiase requested by City Council. It should be read in conjunction with our Report dated March 15, 2012. It is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through use of this Addendum to our Report for a purpose other than as described in this paragraph.
20. Although we reserve the right, we will be under no obligation to further review and/or revise the contents of our Report in light of information which becomes known to us after the date of this Addendum.
21. This Addendum to our Report is respectfully submitted by Bruce Armstrong of FFP and Glen R. Davison. We were assisted in the compliance audit by Ken Froese and Grace Lau of FFP.



FROESE FORENSIC
partners ltd.

*Addendum to Compliance Audit Report
For the City of Vaughan
Re: Local and Regional Councillor Michael DiBiase
April 2, 2012.*

Yours truly,

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

To: Winborn, Donna
Subject: RE: Deputation for today

C 2
COMMUNICATION

COMPLIANCE AUDIT COMMITTEE
APRIL 4, 2012

-----Original Message-----

From: Carrie Liddy [mailto:carrie.liddy@sympatico.ca]
Sent: Wednesday, April 04, 2012 9:01 AM
To: Abrams, Jeffrey
Subject: Deputation for today

ITEM - 1

Mr Abrams

Attached is my deputation for today. Its a draft, but best I can do under the circumstances.

I ask that you please give the deputation to the Committee, and accept it late, because of the late arrival of the addendum.

We're prepared to proceed today if the Audit Committee is prepared to proceed.

Thank you

Audit Report

2012-04-04

A. Contraventions

Our initial analysis leads us to believe that there are many and multiple contraventions in the Report.

In our opinion, the contraventions are serious in nature and carry the most severe penalties under the MEA.

- 1) section 71(1)
- 2) section 69(1) (m)
- 3) section 69(1)(e) (three identified)
- 4) section 69(1)(f) (three identified)
- 5) section 69(1)(d)
- 6) section 69(1)(f)(iii)
- 7) section 67(2)
- 8) section 76(2)
- 9) section 79(7) (multiple occurrences for the Feb. 2010 decision and for the 2010 reporting)
- 10) section 69(1)(k) (multiple occurrences)
- 11) section 78(1) (multiple occurrences)
- 12) section 67(2)

B. Audit Contravention of Act

The MEA clearly states that it is a requirement to complete a comprehensive audit once the audit is ordered. An Auditor must report each contravention and not make "judgment calls" as to the validity of the contravention. Further, it is not the role of an Auditor to "negotiate" settlement of the contravention.

It appears that is not the case with several items in this Report.

Auditors must remain objective, neutral, and not negotiate.

In our opinion, without limiting the generality of the foregoing, the Auditor failed to address the following issues:

- 1) over contributions of Milani – cheques provided (Audit Committee July 8 2011) were to addressed in the first report, and addressed in an

addendum report, (filed less a day before the hearing) without documentation to substantiate the omitted issue

- 2) campaign expenses incurred allegedly outside of the campaign period, including and remain unaudited:
 - a. rent, paid outside of campaign period (Audit Committee July 8 2011) and where phones, etc were connected before candidate was registration
 - b. opening bank account outside of campaign and/or paying for expenses outside of bank account
 - c. website outside of campaign period (appendix A)
 - d. use of campaign donations to pay for website of foundation (appendix B)
 - e. use of website paid for using campaign donation to advertise foundation golf tournament (appendix C)
 - f. advertising purchased outside of campaign period
- 3) failure to report donations used to pay for legal expenses
 - a. approximately \$400 in legal expenses paid for from either Maplewood management or City of Vaughan (appendix D)
 - b. undisclosed legal fees paid by an anonymous contribution, and unreported contributions through DiBiase second lawyer (Blaney McMurtry) to Gillespie and undeclared (appendix E)
- 4) failure to report legal expenses (see below)
- 5) failure to verify the date bank account was opened, and that all expenses were paid through the account (reference legal expense payment, ad payment, website payment, etc.)

C. Alleged Failures with the Report under the requirements of the MEA

The Report fails to address all issues noted and was not a comprehensive Report as is the requirement of the MEA.

Contrary to what is claimed by the Auditor in paragraph 1.14 and 1.10, all issues were raised in October through December 2011 but apparently have not been addressed including the issue that the Auditor had to complete a comprehensive audit. That is the responsibility of an Auditor.

It was not a requirement under the Act nor a responsibility for an Applicant to bring all issues forward. The Auditor appears to fail to grasp this and as reflected in his paragraph 1.14, seems to find his inability and or failure to complete a comprehensive audit to be the fault of the Applicant.

Section of the MEA as follows is clear:

The decisions of the court have also indicated strongly that a comprehensive audit " MUST" be completed and " MUST" not be limited to the issues raised by the Applicant.

1. **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.”¹ Further, Lauwers J. notes that “The trigger can be a single contravention.”² The following cases are ones in which the audit exceeded the scope of the original requests:**

***Savage v. Niagara Falls (City)*, [2005] O.J. No. 5694 (B.W. Duncan, OCJ); *Chapman, supra*. In *Mastroguiseppe and Ruffolo v. City of Vaughan* (February 19, 2008), Newmarket, 49119990790000352-01-02 (O.C.J.)³**

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

¹ [2009] O.J. No. 1057 at para. 65 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)

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

³ *Jackson v. Vaughan (City)* [2009] O.J. No. 1057 at para. 66 - affirmed by ONCA in *Jackson v. Vaughan (City)*, 2010 ONCA 118 (CanLII)

We believe that this Report not only fails to properly calculate the surplus, it also fails to follow the directions of the Court. It appears to transcend from an audit role to a prosecution and judicial role. Statements made by the auditor are outside of the scope and duties of an auditor, to dismiss contraventions, due to "acceptable" excuses and by allowing a full restatement of the filings of DiBiase campaign and by using a previous audit, previously dismissed by the courts.

Section 79 of the MEA as follows clearly states:

Surplus and deficit

79. (1) A candidate has a surplus if the total credits exceed the total debits, and a deficit if the reverse is true. 2009, c. 33, Sched. 21, s. 8 (44).

Total credits

(2) For the purposes of subsection (1), the total credits are the sum of,
(a) the candidate's contributions under section 66;
(b) any amounts of \$10 or less that were donated at fund-raising functions;
(c) interest earned on campaign accounts; and
(d) revenue from the sale of election materials. 2009, c. 33, Sched. 21, s. 8 (44)

Total debits

(3) For the purposes of subsection (1), the total debits are the sum of,
(a) the candidate's expenses under section 67; and
(b) any deficit from a previous election campaign of the candidate if that campaign,
(i) related to an office on the same council or local board as the present campaign, and
(ii) was in the previous regular election or a subsequent by-election. 2009, c. 33, Sched. 21, s. 8 (44).

Refund

(6) If a candidate who has a surplus or his or her spouse has made contributions to the election campaign, the candidate may, after the election campaign period ends but before filing the financial statement or supplementary financial statement, as the case may be, refund to himself or herself or to the spouse, as the case may be, an amount that does not exceed the lesser of,
(a) the relevant contributions;
(b) the surplus. 2009, c. 33, Sched. 21, s. 8 (44).

The MEA does not allow the restating of previous expenses. The auditor allowed restatement of the 2006 return, and refused to investigate matters by claiming they "outside the scope" of his audit.

In Mr. DiBiase's situation in 2010, his expenses were changed to allow for expenses appearing to be incurred outside of the campaign period and/or outside of campaign limits, and the auditor removed \$23,100 in donations.

We challenge the Auditor to provide the Section of the Act relied on to reduce the donations.

The MEA definition above is clear. The Auditor in choosing to account for amounts outside of the definition, and as the legal expense appears, (and was reported to the courts and on the 2006 return) and therefore has not properly stated the surplus as is required by the MEA.

We believe the surplus should have been calculated as follows:

Deficit claimed:	\$ 74,822.60
Legal expense improperly claimed:	<u>\$107,582.45</u>
UNREPORTED Surplus:	<u>\$ 32,759.85</u>

The unreported surplus represents a most egregious violation of the Act. A surplus **MUST** be remitted to the City of Vaughan. The surplus had to be submitted to the City of Vaughan immediately following the decision of the court that declared (based on Mr. DiBiase's testimony and evidence) the legal fees testified as not qualifying as an expense.

DiBiase failed to remit the tens of thousands of dollars in surplus contributions and further attempted to benefit from his own failure to return the surplus and further, then attempted to benefit again by refunding himself the monies out of his 2010 donations.

Based on evidence and testimony in the previous court trials, these actions cannot be seen as anything but purposeful. The actions should carry the strictest of penalties, and be treated as a corrupt practice, as they are quite clearly an attempt to undermine and ignore the legal requirements of the MEA, first through a court and second through a subsequent financial filing (to the Audit Committee).

The MEA penalty for corrupt practice:

Corrupt practice and ineligibility for office

91. (1) If a person is convicted of a corrupt practice under this Act, or of an offence under the *Criminal Code* (Canada) in connection with an act or omission that relates to an election to which this Act applies, then, in addition to any other penalty provided for in this Act,
(a) any office to which the person was elected is forfeited and becomes vacant; and

(b) the person is ineligible to be nominated for, or elected or appointed to, any office until the next two regular elections have taken place after the election to which the offence relates. 2009, c. 33, Sched. 21, s. 8 (61).

Offences by candidate

(5) A candidate is guilty of an offence and, on conviction, in addition to any other penalty that may be imposed under this Act, is subject to the penalties described in subsection 80 (2), if he or she,

(a) files a document under section 78 or 79.1 that is incorrect or otherwise does not comply with that section; or

(b) incurs expenses that exceed what is permitted under section 76. 1996, c. 32, Sched., s. 92 (5); 2002, c. 17, Sched. D, s. 35 (1); 2009, c. 33, Sched. 21, s. 8 (65, 66).

General penalty, individual

94.1 (1) An individual who is convicted of an offence under this Act is liable to the following penalties in addition to any other penalty provided for in this Act:

- 1. For any offence, a fine of not more than \$25,000.**
- 2. For any offence other than a corrupt practice, the penalties described in subsection 80 (2).**
- 3. For an offence under section 90, imprisonment for a term of not more than six months.**
- 4. For any offence that the presiding judge finds that the individual committed knowingly, imprisonment for a term of not more than six months. 2009, c. 33, Sched. 21, s. 8 (68).**

The UNREPORTED surplus from 2006, of tens of thousands of dollars (actual amount can be determined through the courts) and improperly reported "deficit" that was in fact a surplus on the 2010 return, are obvious contraventions and with the first, already tested and upheld by the court.

The attempt to conceal legal expenses KNOWN to be campaign expenses (due to the nature of the first compliance audit) and unreported contributions and paid within the defined terms of the campaign period, by both the auditor and by DiBiase and by Gillespie (DiBiase's lawyer) are alleged contraventions and likely to be offences under the Act. The Auditor did not note the contraventions, instead, outside of his authority stated they were "out of scope" of the audit.

The Auditor allowed the restatement of expenses on the 2010 filing, thus authorizing a change of expenses from expenses contributing towards the cap to not contributing towards the cap. This is not an action contemplated by the MEA. The necessary forms were not used, and the Auditor acted outside of his authority in doing so.

The Auditor is charged with completing a comprehensive audit and not restating the financial statement itself to the benefit of the candidate.

More Issues with the Report

Large election signs were not reported according to their value, and despite the Auditor noting this, he did not account for the market value of the signs. This issue was not addressed in the report. Amounts for previously claimed campaign materials were “reallocated” to the sign category.

The event described in 3.15 is an event that is subject to the limits for calculating expenses. The event did not charge a fee and was held during the campaign period prior to the vote. It is advertising, or marketing, and must be included in the spending limits. The audit Report is extremely unclear as to the disposition of the monies, and the auditor gives DiBiase the “option” of changing the reporting on the filings. Again, this is outside of the auditor’s scope or duty and not contemplated by the MEA.

In paragraph 1.11, the Auditor states he “**relied on the previous audit report**”.

The auditor’s actions in NOT auditing the actual facts of this audit and relying on a previous audit Report is not supported by the MEA or good audit practices, nor by the decision of the court to dismiss the previous audit.

The audit must be comprehensive and nowhere does the Act allow for a previous Report to be used, i.e., substitution for a comprehensive audit.

The previous Report with its contraventions and charges, other than those that relate to the recount legal expenses and donations were not the subject of the rulings of the court, were not examined by the courts, except for the legal expenses, (brought as a voter not as a candidate) which a specific ruling was made.

The previous audit CANNOT be used as a means to deny the rights of the Applicant to a full and comprehensive audit.

In addition, and with regards to changing and reallocating expenses on a final filing, there are specific forms that must be used, as outlined in the General Regulation of the MEA, as follows:

7. (1) The following forms are prescribed as the required forms for the purposes indicated:

- 1. Form 1: a nomination under section 33 of the Act.**
 - 2. Form 2 or 2.1: a ballot under section 41 of the Act.**
 - 3. Form 3: an appointment of a voting proxy, declaration of voting proxy, clerk's certificate and oath of voting proxy under section 44 of the Act.**
 - 4. Form 4: a consolidated financial statement and auditor's report under section 78 of the Act.**
 - 5. Form 5: a financial statement under section 79.1 of the Act for subsequent expenses after the return of a surplus.**
 - 6. Form 6: a notice of extension of campaign period under subsection 68 (1) of the Act.**
 - 7. Form 7: a notice of registration under section 39.1 of the Act.**
 - 8. Form 8: a financial statement and auditor's report under section 78 of the Act, as made applicable by section 82.1 of the Act. O. Reg. 499/09, s. 2.**
- (2) The forms prescribed by subsection (1) are the forms dated January 2010 that are available on the website of the Government of Ontario Central Forms Repository at www.forms.ssb.gov.on.ca under the listing for the Ministry of Municipal Affairs and Housing. O. Reg. 499/09, s. 2.**

The applicable form to be used was Form 5, that had to be filed immediately following the February 28 2010 decision of Justice Wright and following the submission of the unreported surplus to the City of Vaughan. The form could have been used to increase the expenses on the 2006 Form 4, and/or claim the additional donations (form 6) used to pay for the compliance audit legal expenses, given the campaign could have been extended. These forms were not filed. The campaign was not extended and the expenses were not changed.

These are all actions undertaken by the auditor, not contemplated by the MEA and not supported by good audit practice.

When an audit is ordered by the Audit Committee, or court, each audit **MUST** be comprehensive and **MUST** review all issues based on the MEA stated limits and rules for donations and expenses.

The MEA went through significant change in January 1 2010, in the Good Government Bill, and yet the Auditor chose to rely on a previous audit that was dismissed by the court and was not supported in any manner by the MEA, or even by the previous court decisions.

MEA does not allow donations other than over-contributions to be restated or repaid. The Auditor restated the surplus to be \$23,100 lower than reported. This is not substantiated by the Act.

In addition, it is a contravention of the Act to collect donations outside of the campaign period and to not report expenses. The most blatant of these are the contributions used to pay the legal expenses (that HAVE to be reported) that were ignored by the Auditor, and not claimed in the Report.

Again the MEA is clear:

First: unreported Contributions used to pay legal fees:

Contributions

66.(1) For the purposes of this Act, money, goods and services given to and accepted by or on behalf of a person for his or her election campaign are contributions. 1996, c. 32, Sched., s. 66 (1).

The money used to pay DiBiase's lawyer, Mr Gillespie for the compliance audit is a contribution, according to the above definition. DiBiase failed to report the contribution. The contribution is allegedly accepted outside of the campaign period, as DiBiase did NOT file an election to extend the campaign for the purposes of accepting donations during the compliance audit period, and the money is not accounted for on the 2010 filing.

Further, the contribution allegedly did not go through the campaign bank account as is a requirement.

DiBiase extended his campaign until December 31, 2007, however the compliance audit legal expense contributions were paid in March 2010. The contributions are UNREPORTED on the 2010 return.

The alleged contributions received by either City of Vaughan or Maplewood management are also UNREPORTED. These are also alleged contributions accepted by Gillespie for compliance audit legal expenses, as they appear in the invoice statements. No attempt has been made to properly account for the money, instead attempts have been made to conceal the information.

Note: these documents were claimed to be solicitor client privilege, however the same documents were filed in open court in file number CV-09-383329-0000 on March 8, 2011. The City of Vaughan did not object to the documents, actually, quite the opposite, given the City lawyer filed a motion for production of ALL documents, and which motion was complied with. The documents are available to any member of the public who wishes to make a trip to the court house and print copies.

Second : legal expenses for a compliance audit

Expenses

67.(1) For the purposes of this Act, costs incurred for goods or services by or on behalf of a person wholly or partly for use in his or her election campaign are expenses. 1996, c. 32, Sched., s. 67 (1).

Additional rules

(2) Without restricting the generality of subsection (1), 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.

And:

Same

(3) The expenses described in paragraphs 7, 8 and 8.1 of subsection (2) include expenses relating to recounts and proceedings under section 81 (compliance audit) and section 83 (controverted elections) from a previous election for an office on the same council or local board, if the expenses were incurred after the person's election campaign period for that office in the previous election ended under subparagraph ii of paragraph 4 or subparagraph ii of paragraph 5 of subsection 68 (1). 1996, c. 32, Sched., s. 67 (3); 2009, c. 33, Sched. 21, s. 8 (30).

The MEA is also clear in that all expenses must be declared, including the legal expenses from the 2006 compliance audit.

There are two examples of this, that remain unaudited as follows:

In May 2007, (you can see on the invoices issued by Gillespie filed in the third affidavit with the Audit Committee) where a fee of at least \$315.00 been charged (GST added later) was stated on the Mar 28 08 through Apr 2 08 invoice contained in Appendix A of the third affidavit filed previously with this committee. That money was either paid from a \$50,000 cheque paid by the City of Vaughan to Gillespie allegedly for the Jackson compliance audit, or paid through

Maplewood Management. These amounts are compiled on the balance account statements. This is an issue that the Auditor refused to address, and yet the Auditor changed several expense categories in order to ensure the limits of the maximum expenses was complied with and further removed contributions (donations) of the 2006 final filing, in order to reduce the UNREPORTED surplus.

This affidavit was misstated by the Auditor to be a means of bringing forward a conflict of interest (para 1.12) when in fact the affidavit and subsequent emails sent by the applicant clearly state the conflict of interest issue is beyond the scope of the audit. The issue was brought up in order to seek answers to whether or not the legal expenses are compliance audit expenses, and whether the money used to pay the expenses, constitute contributions.

Additionally, in para 1.13, the Auditor continues with the mischaracterization of the third affidavit in order to attempt to justify their actions in failing to complete a comprehensive audit, and as stated several times in emails and discussions with both Auditors.

The purpose of the affidavit, discussion and emails was to identify possible legal expenses that were NOT reported but are both alleged anonymous and alleged undeclared contributions (donations) paid to Gillespie through DiBiase's second lawyer (Blaney McMurtry) and through Maplewood Management and/or through the City of Vaughan's \$50,000 cheque paid without a court order.

Specifically, the legal fees paid to Gillespie are for the compliance audit of Mr.DiBiase. These expenses (according to the definitions of contributions and expenses for compliance audit) have to be reported (according to the MEA definitions) and weren't. The donations were anonymous and were also not reported. The time limitations do not apply to compliance audit expenses, given the compliance audit expenses are not limited to the time limits of the final reporting and the expenses and the donations impact the unreported surplus.

Please note, the alleged expenses were paid outside of the campaign period, but are within the definition of expenses due the fact they were legal expenses resulting from a compliance, audit and within the scope of the audit. The alleged contributions are monies received outside of the campaign period and are anonymous and have to be reported and returned to the Clerk of the City of Vaughan, and/or reported as to who made the contributions.

The MEA is also clear on the intent of reporting contributions (donations), and paying expenses from one bank account:

Duties of candidate

69. (1) A candidate shall ensure that,

- (a) one or more campaign accounts are opened at a financial institution, exclusively for the purposes of the election campaign and in the name of the candidate's election campaign;
- (b) all contributions of money are deposited into the campaign accounts;
- (c) all payments for expenses, except for a nomination filing fee, are made from the campaign accounts;
- (d) contributions of goods or services are valued;
- (e) receipts are issued for every contribution and obtained for every expense;
- (f) records are kept of,
- (i) the receipts issued for every contribution,
- (ii) the value of every contribution,
- (iii) whether a contribution is in the form of money, goods or services, and
- (iv) the contributor's name and address;
- (g) records are kept of every expense including the receipts obtained for each expense;
- (h) records are kept of any claim for payment of an expense that the candidate disputes or refuses to pay;
- (i) records are kept of the gross income from a fund-raising function and the gross amount of money received at a fund-raising function by donations of \$10 or less;
- (j) records are kept of any loan and its terms under section 75;
- (j.1) the records described in clauses (f), (g), (h), (i) and (j) are retained by the candidate for the term of office of the members of the council or local board and until their successors are elected and the newly elected council or local board is organized;
- (k) financial filings are made in accordance with sections 78 and 79.1;
- (l) proper direction is given to the persons who are authorized to incur expenses and accept or solicit contributions on behalf of the candidate;
- (m) a contribution of money made or received in contravention of this Act is returned to the contributor as soon as possible after the candidate becomes aware of the contravention;
- (n) a contribution not returned to the contributor under clause (m) is paid to the clerk with whom the candidate's nomination was filed; and
- (o) an anonymous contribution is paid to the clerk with whom the candidate's nomination was filed. 1996, c. 32, Sched., s. 69 (1); 2002, c. 17, Sched. D, s. 26; 2009, c. 33, Sched. 21, s. 8 (34).

The failure to report contributions received outside of the campaign period and failure to report compliance audit legal expenses that are within the campaign period BOTH constitute serious alleged contraventions of the MEA.

Further, failure to remit the anonymous contributions paid to DiBiase's second lawyer, in order to pay his compliance audit lawyer (Gillespie) also represent a blatant attempt to hide the unreported alleged contributions and alleged unreported expenses.

By ignoring and mischaracterizing the legal expenses and contributions as being "out of scope" given the issues were brought forward in the affidavits for which the audit was ordered under, and by allowing expenses and deleting donations that were previously reported and claimed on the final 2006 report, it seems that the Auditor has understated the surplus , understated the contraventions, and failed to conduct a comprehensive audit contraventions.

The Report represents a significant departure from the requirements of the MEA and from the decisions of the courts.

For this reason, and because of the multiple serious contraventions that were noted by the Auditor, the Compliance Audit Committee must act responsibly, hire a prosecutor, order both charges be laid , have further investigation be undertaken by the prosecutor and more charges laid according to the contraventions misstated or ignored by the Auditor.

The alternative available, should the Compliance Audit Committee not pursue these contraventions, is to proceed directly to court under the Savings Provisions of the MEA. There is approximately two and half years left to pursue the matter in court.

Foundation

The report outlines a number of problems with unreported "donations" given at unknown times from the DiBiase Foundation.

The report with regards to the foundation is NOT complete, and again the audit fails to complete a comprehensive audit.

The DiBiase Foundation used the SAME website as the DiBiase election campaign. The campaign used pictures of donors receiving cheques from the Foundation as a means of advertising DiBiase contributions to the community.

The issues of the Foundation using the SAME website used for the entire campaign period, were again NOT audited by the auditor. Who paid for the

website? Did the Foundation pay for the website, in which case its both a contravention of accepting contributions from a charity (not allowable contribution) or is it a case of the DiBiase election campaign paying for the website of the Foundation, which is also not an allowable expense, or is it a case of UNREPORTED expenses, where neither reports the expense?

With regards to the hundreds of thousands in donations, the definition of what constitutes an illegal benefit (eg, contribution and/or expenses) perhaps is in the criminal code. The auditor notes the monies

125. Every one who

- (a) receives, agrees to receive, gives or procures to be given, directly or indirectly, a reward, advantage or benefit of any kind as consideration for cooperation, assistance or exercise of influence to secure the appointment of any person to an office,
- (b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from an office, in expectation of a direct or indirect reward, advantage or benefit, or
- (c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to
 - (i) the filling of vacancies in offices,
 - (ii) the sale or purchase of offices, or
 - (iii) appointments to or resignations from offices,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

The auditor failed to complete (3.32, 3.33) a comprehensive audit as to whether or not the DiBiase Foundation donations, and use of the election website , unreported or improperly reported donations (3.30(7)) and other issues constitute a contravention under the Act.

This matter MUST be referred to a prosecutor for full investigation and charges laid (if appropriate) upon completion of a proper and full investigation.

D. Repeat violations

Legal expenses and donations raised to pay for legal expenses that were claimed by Michael DiBiase in 2006 and where charges were previously laid, (failure to report) was argued to Justice Wright by Eric Gillespie as being incurred as a voter and not as a candidate.

Michael DiBiase had this group of charges dismissed under Mr. Justice Wright who agreed, Mr. DiBiase had this option. That was in February 2010. Following this decision, DiBiase had an obligation to restate the surplus from the 2006 campaign, pay the surplus to the City of Vaughan , report the legal expenses

from the compliance audit, and report the donations used to pay the legal expenses.

Given the legal expenses exceeded \$108,000 this is a substantial amount of money improperly reported.

In our opinion, Mr.DiBiase failed on all counts. He failed to pay the \$32,000 surplus, failed to disclose and claim the legal expenses, failed to claim and properly disclose the donations received from anonymous donors in the case of DiBiase's second lawyer, and from Maplewood Management and/or the City of Vaughan.

These constitute serious contraventions of the MEA, and the Audit committee, knowing the contraventions have occurred, must refer the compliance audit for prosecution and full investigation of the issues ignored by the auditor.

E. Third Party Charges and Actions

Firstly, as outlined above, the Auditor failed to complete a comprehensive audit. The Auditor then furthermore attempted to blame the failure to complete a comprehensive audit on the Applicant. It is NOT the duty or responsibility of the Applicant to identify issues. It is clearly the duty of the Auditor.

Secondly, the Auditor negotiated the restatement of expenses with DiBiase, which also falls outside of the authority of the Auditor.

Thirdly, the Auditor accepted "excuses" for the failure of the third parties to fulfill their obligations as opposed to simply stating the facts, and outlining the contraventions. (2.10)

It is requested that the professional association of the auditor (CGA Association) be contacted through a written correspondence from the Compliance Audit Committee and a full investigation be requested for the failure to conduct a proper audit on the part of the Auditor . Once the investigation is complete, the appropriate actions can be taken by the professional association, under their code of conduct and/or the item may be included under the Savings Provision of the MEA. Again, as with the above, this is an option available to any resident of Vaughan, should the Compliance Audit Committee not proceed with a request for a full investigation into the actions of the Auditor in using taxpayer money and failing to fulfill a statutory requirement.

The City of Vaughan is prohibited from donating money to a campaign, or from paying legal expenses outside of a court ordered settlement.

It was brought to the attention of the Auditor that either the City of Vaughan and/or Maplewood Management allegedly paid a portion of the DiBiase compliance audit legal expenses and an affidavit was filed to outline the expenses and the money used to pay the expenses. The Auditor refused to audit these legal expenses, refused to audit the donations, and the undisclosed, unreported alleged legal expenses paid in addition by way of Blaney McMurtry.

Lastly, the Vaughan Citizen gave DiBiase free ads and didn't apply the same terms and conditions to DiBiase as other candidates. The terms and conditions applied to all other candidates were that ALL campaign ads had to be prepaid. The Auditor failed to address the ad in particular where this issue had an impact. The ad was placed before DiBiase registered as a candidate. The Vaughan Citizen must also be brought to the prosecutor for full investigation and charges laid, if appropriate. It is not the role of the Auditor to "negotiate" penalties, or to decide that contraventions are not contraventions, through unsubstantiated excuses. That is the role of the justice system. The Auditor should simply have stated the facts. The Vaughan Citizen gave free ad (\$401.15 value) to DiBiase and didn't make DiBiase prepay for multiple ads. Since at least one ad was purchased before registering, this issue should have been addressed, along with auditing the art work, the cost, who paid the expenses and from where did the expenses get paid?

The Supreme Court of Canada has long recognized that freedom of speech, freedom of expression, and limits on advertising are essential elements to support the constitutional right to vote. The Audit Committee must also address this most egregious alleged contravention of the MEA.

These matters must be pursued by way of an investigation by an prosecutor and charges laid, according to the findings of the prosecutor.

F. The Public Interest

The remaining charges brought by the prosecutor (addressed in 2010), were dismissed in March 2010 on a technicality. The City of Vaughan and/or the prosecutor didn't file charges on time and these charges were dismissed in addition to the charges dismissed because of the previously mentioned claims by DiBiase of the recount being brought forward by him as a voter.

Charges and the legal actions that followed, cost taxpayers approximately \$2 million dollars and yet no one was held accountable . Voting is a constitutional right and money does make a difference. Public interest needs to be protected.

It is the opinion of the applicant that there has been a blatant disregard for voting limits, blatant attempt for personal gains from election contributions (reported and unreported), refusal to properly disclose donations and legal expenses, and

purposeful and repeated contraventions of the most serious limits of the MEA and limits on expenses, reporting, and donations all reported by the auditor as being contraventions.

F. Penalties

The Compliance Audit Committee has received the Report. The MEA gives the power to the Committee to commence a legal proceeding against the candidate.

Power of committee

(14) The committee shall consider the report within 30 days after receiving it and may,
(a) if the report concludes that the candidate appears to have contravened a provision of this Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention;

Despite the lack of completion of the report, there are multiple contraventions, including:

- 1) section 71(1)
- 2) section 69(1) (m)
- 3) section 69(1)(e) (three identified)
- 4) section 69(1)(f) (three identified)
- 5) section 69(1)(d)
- 6) section 69(1)(f)(iii)
- 7) section 67(2)
- 8) section 76(2)
- 9) section 79(7) (multiple occurrences for the Feb. 2010 decision and for the 2010 reporting)
- 10) section 69(1)(k) (multiple occurrences)
- 11) section 78(1) (multiple occurrences)
- 12) section 67(2)

Combined with the multiple occurrences of the same contraventions, and again despite the failure of the auditor to address all issues, there are at least 20 contraventions of the MEA. These are serious and repeated contraventions. It is in the public interest to ensure that elections are proper and all candidates adhere to the rules of the MEA.

The contravention of failing to report the alleged \$32,000 surplus, is a serious contravention. The contravention is made even more serious, given the legal fees were sworn to a judge as being incurred as a voter and in the 2010 filings, reported as being incurred as a candidate and further used to derive benefit from contributions from a campaign fund. The courts cannot be used to manipulate a benefit.

The penalties for failure to report a surplus are removal from office and a ban from running in the next election. These penalties are serious and only surpassed with the charge of corruption. Under the Act, the contraventions have to be taken and treated seriously by this Committee.

Corrupt practice must be reviewed by the Compliance Audit Committee, given the contraventions are repeat contraventions and DiBiase KNEW he gave sworn testimony in court that the legal expenses for the recount had been incurred as a voter, and then KNEW he claimed the expenses as a candidate for the 2006 surplus carry forward. The surplus carry forward calculation, whether it is \$44,209.85 or \$21,109.85 or \$32,000 (pg. 14 in report) or higher or lower, it falls within the definition of a corrupt practice. It is NOT a minor violation.

The court record cannot be denied, and the Audit Committee has an obligation to uphold and reinforce the court decision.

In summary: the Regional Councillor first made one claim to the courts and second, then changed the nature of the claim to his own benefit, and in doing so, benefited from his own manipulation of the reported filings.

These contraventions cannot be "negotiated" due to the seriousness and the nature of the contraventions.

I am asking the Compliance Audit Committee to hire a prosecutor, instruct the prosecutor to lay charges under the Act, have the prosecutor investigate the remaining issues not audited and not reported on by the auditor, and lay charges based on his further investigation.

I am also asking the Compliance Audit Committee to instruct the prosecutor to lay charges against the Vaughan Citizen for free ads, and for not applying the same terms and conditions to DiBiase as all other candidates, and for the legal process and justice system to determine the penalty for their actions. Let the courts decide the out come of the charges, not the auditor.

I am also asking that the Compliance Audit Committee to proceed with my request that the Auditor be investigated by his professional association and/or the prosecutor also be asked to address the issue of the Auditor's failure to conduct a comprehensive audit.

Lastly, I am asking the Audit Committee to instruct the prosecutor to investigate the unreported legal expenses, and unreported contributions, and to lay charges according to what his investigation determines. As this may be a conflict of interest, given the potential involvement of the City of Vaughan, I am asking the Audit Committee to have the prosecutor address this issue independent of the City of Vaughan and/or refer the issue to the Attorney General of the Province of Ontario for independent investigation. Fairness to ALL PARTIES in an investigation of this matter must prevail.

Savings Provision

Alternatively, the Savings Provision can be used to bring charges and hold Mr.DiBiase and other third parties accountable, directly to the courts.

Saving provision

(17) 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 contravention of a provision of this Act relating to election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).