

Windsor, Ontario December 17, 2015

A meeting of the **Compliance Audit Committee** is held this day commencing at 9:30 o'clock a.m. in the Council Chambers, 3rd floor, City Hall, there being present the following members:

Brian Cowell, Chair
Mario Quaglia
George Wilkki

Delegations in attendance:

William Molson, Auditor
Gabe Maggio, Candidate
Ian Shalapata
John Skinner

Also present are the following resource personnel:

Mark Nazarewich, Senior Legal Counsel
Karen Kadour, Committee Coordinator

1. **CALL TO ORDER**

The Chair calls the meeting to order at 9:31 o'clock a.m. and the Committee considers the Agenda being Schedule "A" **attached** hereto, matters which are dealt with as follows:

2. **DISCLOSURE OF INTEREST**

None disclosed.

3. **ADOPTION OF THE MINUTES**

Moved by M. Quaglia, seconded by G. Wilkki,
That the minutes of the Compliance Audit Committee of its meeting held July 20,
2015 **BE ADOPTED** as presented.
Carried.

4. **OPENING STATEMENT BY THE CHAIR**

The Chair advises the purpose of this meeting is to hear the findings of the Compliance Auditor, and then to hear statements from the Applicant and the Candidate. Following that, the Committee will determine whether to commence legal proceedings if there was indeed a contravention of the *Municipal Elections Act*.

5. **OVERVIEW OF LEGAL REQUIREMENTS – MARK NAZAREWICH, SENIOR LEGAL COUNSEL**

M. Nazarewicz advises the rules governing the municipal election campaign financing including the receipt of contributions and the making of expenditures are found in Section 66 through 82.1 of the *Municipal Elections Act* 1996, a Statute of the Province of Ontario.

The Act establishes a process for dealing with allegations of contraventions of the municipal election campaign financing rules. The process is called a Compliance Audit and it is the exclusive process for dealing with such allegations. The process provides that any elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Act relating to campaign finances, may make an application for a compliance audit of that candidate's election finances. An application must be made to a Compliance Audit Committee which every municipality is required to establish. In simple terms, a Compliance Audit Committee exists for the purpose of deciding what to do with an application for a compliance audit of a candidate's election finances. As long as the application meets certain baseline requirements regarding timeliness it must be sent in writing setting out the reasons for the elector's belief and submitted to the correct municipal official. The application must be sent to the Compliance Audit Committee for consideration. Those baseline requirements have been met in this case, and the application was sent to the Compliance Audit Committee.

Once sent to the Compliance Audit Committee, there are several stages in the compliance audit process. At the first stage within 30 days of receiving the application, the Committee must decide whether the application should be granted or rejected. It should be kept in mind that granting or rejecting an application refers only to whether or not the Committee will seek a report of the Compliance Auditor. The act of granting or rejecting an application at this stage has nothing whatsoever to do with making a finding that a candidate has or has not contravened any provision of the election campaign finance rules. Further, at this stage, and granting an application for a compliance audit, the Committee need only believe on reasonable grounds that a candidate has contravened a provision of the *Act* related to campaign finances. A belief by the Committee that reasonable grounds exist, that a candidate has contravened a provision of the Act relating to campaign finances does not mean that it has determined that a

contravention of the *Act* has actually occurred. It merely means that there is a credibly based probability that a contravention may have occurred. If that belief is reasonable, the application will then proceed to the next stage in its statutory audit investigation compliance process.

In this case the first stage has concluded. The Committee believed that reasonable grounds existed and the application for a compliance audit has been granted. The Committee's decision to either accept or reject an application at the first stage may be appealed to the Ontario Court of Justice within 15 days of the Committee's decision. If appealed, the Court may uphold the Committee's decision or make any decision that the Committee could have made at the first stage. There was no appeal of this Committee's decision to grant the application thus rendering this step of the compliance audit irrelevant to this application.

Once an application has been granted and no appeal has been taken, the second stage of the process begins. This is the Audit Stage. At this stage the Compliance Auditor is required to promptly conduct an audit to determine whether the candidate has complied with the provisions of the *Act* related to election campaign finances and the Auditor must prepare a report outlining any apparent contravention by the candidate. The Auditor must submit his report to several persons including the candidate, the applicant and the Clerk of the municipality. The Clerk must then send the report to the Compliance Audit Committee within 10 days of its receipt. This stage has also been completed. We are now entering the third stage of the process requiring the Committee to consider the audit report and make a decision as a result of that consideration.

The *Act* requires the Compliance Audit Committee to consider the report within 30 days after receiving it. The *Act* grants the Committee discretion in deciding what to do and the options are as follows:

Option #1 – If the report concludes that the candidate appears to have contravened the provision of the *Act* relating to campaign finances the Committee may, and I emphasize may, not must, commence a legal proceeding against the candidate for the apparent contravention.

Option #2 – If the report concludes that the candidate does not appear to have contravened the provision of the *Act* relating to campaign finances the Committee may, again I emphasize may, not must, make a finding whether there were reasonable grounds for the application.

The report has concluded that the candidate appears to have contravened provisions of the *Act* relating to campaign finances, thus the second option is not available to the Committee. Therefore, the Committee is required to decide whether or not to commence a legal proceeding against the candidate. It is important to once again consider the statutory language in applying the Committees obligations at this stage. That language cloaks a Committee with discretion to decide whether to commence a legal proceeding even if the candidate appears to have contravened a

provision of the *Act* relating to campaign finances. The Committee's decision should be conveyed to the applicant, the candidate and the public in such a way that its reasons to either commence or not commence a legal proceeding are transparent and understandable. If it decides to commence a legal proceeding the Committee's final act is to lay an information pursuant to the provisions of the *Provincial Offences Act*. That, legislation indicates that either a Judge or a Justice Of The Peace will ultimately determine whether the candidate has contravened the *Act* and what penalty to impose. In this jurisdiction it is usually a Justice of the Peace that determines Provincial Offences Act matters.

The next matter to discuss is to make a determination under what circumstances can a Committee decide not to commence legal proceedings when a contravention of the *Act* is apparent. The seminal case in this regard appears to be a case by the name of Jackson and Vaughn City. That was a case in which a candidate who also happened to be the Mayoral candidate who actually was elected to office was alleged to have committed the following contraventions of the legislation relating to campaign finances. The candidate had a campaign spending limit under the *Act* but spent 10 percent more than the limit. The candidate accepted contributions in excess of the contribution levels for companies or associated groups of companies, received cash donations in excess of the limit for cash donations, returned contributions made in contravention of the *Act* months after filing the financial statement. Several contributions were recorded in the name of partnerships and not in the name of individual contributors and expenses were either omitted or understated.

I will not go through all of the comments that the application the Judge made in that case but suffice it to say the following principles emerged from that decision. In determining whether or not to commence legal proceedings, a Committee can take into consideration the scale of the contravention. A Committee need not commence legal proceeding for minor breaches. A Committee may consider the financial cost of legal proceedings to their municipality compared to the importance of the possible outcome of the proceedings. The Committee's decision should be based on maintaining the confidence of the electorate, the integrity of the election process, and the values of public accountability and transparency. Things to consider are also did the candidate act in good faith? Did the candidate commit the offence inadvertently or through an error in judgment? So those are my comments and overview with respect to the legal obligations of the Committee.

6. COMPLIANCE AUDIT REPORT – Application by Paul Synott for Candidate Gabe Maggio, Ward 3

6.1 Auditor's Report (Distributed to the Candidate, Council, Clerk and Applicant (s. 81(10) *Municipal Elections Act*)

6.2 Auditor's Presentation of Issues, Findings and Conclusions

William Molson, Auditor provides the following comments relating to the Auditor's Report:

- The Auditor has undertaken 150-200 full audits of political returns in the past.
- During the course of the audit, conducted interviews with the City Clerk, the Applicant, the Candidate, his Campaign Manager and the independent auditor. Discussions were held with the City of Windsor and communication was held with third parties as required. Obtained legal advice as appropriate to ensure appropriate interpretation of the *Act*, and guidance as to the legal jurisdiction, authority and limits that relate to the role of a compliance auditor appointed under the *MEA*.
- Mr. Molson had full access to the Candidate's independent auditor's working papers.
- Apparent contraventions were so numerous that a reconstruction of the return from ground zero was undertaken. The revenue reporting in the return was not good.
- Reports a slight mathematical error on page 11 (Appendix "A") under Excess (Deficiency) of Income over Expenses – should read zero not 44.
- All five of the allegations made by the Applicant were correct.
- Contributions of Goods and Services that were given to the campaign were omitted from the financial statement file.
- There were three instances where contributions in cash in excess of \$25 were received by the candidate and deposited in the bank. The *Act* states the amount cannot be in excess of \$25.
- Mr. Maggio improperly accepted a \$500 contribution from Emmanuel Shaleta, a non-resident of Ontario who was ineligible to contribute under *subsection 70(3)* of the *MEA*.
- Mr. Maggio had accepted an in-kind contribution from Bluesfest Windsor for space for a hospitality tent from July 11 to July 13, 2014 but had not declared it in his Financial Statement.
- Reported Office expenses of \$159.51 did not reflect the value of office space provided by "Maggio Immigration", a business.
- No expense was reported under Phone and Internet (when presumably there should have been some expenses).
- The return was completed with an absence of sufficient audit evidence and that portion of the return was removed. There is no evidence to suggest that Mr. Maggio was aware of the fact that he was filing a return with missing pages.
- In summary, it is the opinion of the Auditor, that the Candidate Gabe Maggio has committed a number of apparent contraventions of the *Act* because the prescribed "Financial Statement – Auditor's Report, Form 4 ("the Financial Statement") filed was not prepared in accordance with the *Act*, and was not complete.

6.3 Opportunity for the Applicant to be Heard

Paul Synnott, Applicant is not present.

6.4 Opportunity for the Candidate to be Heard

Mr. Gabe Maggio is present and provides the following comments:

- Expresses that Mr. Molson did a very thorough job.
- States perhaps he could have hired a different chartered accountant to undertake the personal audit of his election finances as some things were lacking.
- Tried to do their best during a very long campaign and nothing was intentional.

6.5 Compliance Audit Committee Deliberations and Decision

Moved by G. Wilkki, seconded by M. Quaglia,

That given the conclusion of the auditor's report of an **apparent contravention** of a provision of the *Municipal Elections Act* relating to election campaign finances for Gabe Maggio, Ward 3, for the 2014 Election, the Election Compliance Audit Committee hereby determines **not to commence** a legal proceeding against the candidate for the apparent contravention.

Carried.

G. Wilkki provides the following comments relating to the foregoing decision:

- Thanks Mr. Molson for a very comprehensive report.
- The candidate did not exceed the spending limit and the candidate cooperated fully with the process.
- This process is extremely useful as information and assistance to future candidates to ensure they avail themselves of the rules, comply with the rules, and to seek expert advice.

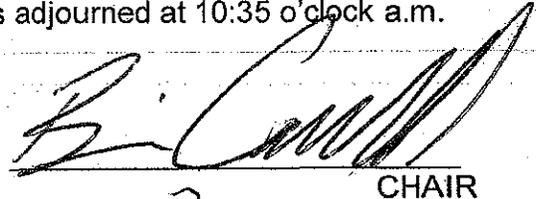
M. Quaglia states in my opinion, while the Candidate did commit apparent contraventions of the Act by filing improper Financial Statements, he did not do so deliberately with corrupt intentions. In addition, the actions of the applicant in filing the application for an audit is reasonable having regard to the findings of the audit.

The Chair advises Mr. Molson provided a very detailed report and guidance on some of the standard practices relating to municipal election reporting. He adds Mr. Maggio should have been able to rely on his independent auditor to find some of the

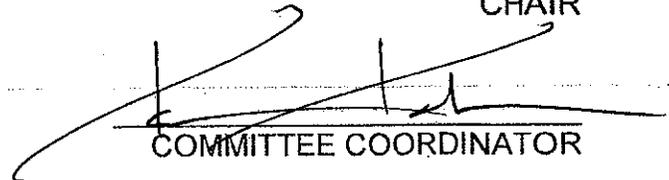
contraventions in the *Act*. There's no serious contravention in his opinion and no intention to contravene the *Act* in a malicious way.

7. **ADJOURNMENT**

There being no further business, the meeting is adjourned at 10:35 o'clock a.m.



CHAIR



COMMITTEE COORDINATOR

**COMPLIANCE AUDIT COMMITTEE
MEETING**

Thursday, December 17, 2015

Council Chambers, 3rd floor, City Hall
9:30 A.M.

AGENDA

1. **CALL TO ORDER**

2. **DISCLOSURE OF INTEREST**

3. **ADOPTION OF MINUTES**

Adoption of the minutes of the Compliance Audit Committee of its meeting held July 20, 2015 (*attached*).

4. **OPENING STATEMENT BY CHAIR**

5. **OVERVIEW OF LEGAL REQUIREMENTS**

Re: Presentation by Legal Counsel, City of Windsor to Compliance Audit Committee.

6. **COMPLIANCE AUDIT REPORT – APPLICATION BY PAUL SYNOTT FOR CANDIDATE
GABE MAGGIO, WARD 3**

6.1. **Auditor's Report (Distributed to the Candidate, Council, Clerk and Applicant [s. 81(10)
Municipal Elections Act]**

6.2. **Auditor's Presentation of Issues, Findings and Conclusions**

6.3. **Opportunity for Applicant to be Heard**

6.4. **Opportunity for Candidate to be Heard**

6.5. **Compliance Audit Committee Deliberations and Decision**

Choose (a) OR (b), OR (c) AND (d)

- (a) THAT given the conclusion of the auditor's report of an apparent contravention of a provision of the *Municipal Elections Act* relating to election campaign finances for Gabe Maggio, Ward 3, namely: _____
the Audit Compliance Committee hereby determines not to commence a legal proceeding against the candidate for the apparent contravention.

OR

- (b) THAT given the conclusion of the auditor's report of an apparent contravention of the *Municipal Elections Act* relating to election campaign finances for Gabe Maggio, Ward 3, namely: _____
the Compliance Audit Committee hereby determines to commence a legal proceeding against the candidate for the apparent contravention and directs Legal Counsel to proceed accordingly.

OR

- (c) THAT the Compliance Audit Committee hereby receives and files the auditor's report for Candidate Gabe Maggio, Ward 3 given the conclusion of the auditor's report that Candidate Gabe Maggio does not appear to have contravened a provision of the *Municipal Elections Act* relating to election campaign finances.

AND

- (d) THAT given the conclusion of the auditor's report that Candidate Gabe Maggio, Ward 3 does not appear to have contravened a provision of the *Municipal Elections Act* relating to election campaign finances, the Compliance Audit Committee hereby finds there were reasonable/no reasonable grounds for the application.
(Choose "reasonable" or "no reasonable")

(If no contravention and no reasonable grounds for application, Council is entitled to recover the auditor's costs from the applicant). [s. 81(15) *Municipal Elections Act*]

7. ADJOURNMENT

KK/
Windsor, Ontario July 20, 2015

A meeting of the **Compliance Audit Committee** is held this day commencing at 9:30 o'clock a.m. in Room 407, 400 City Hall Square East, there being present the following members:

Brian Cowell, Chair
Mario Quaglia
George Wilkki

Delegations in attendance:

Paul Synott, Applicant
Gabriel Maggio, Candidate

Also present are the following resource personnel:

Valerie Critchley, City Clerk
Shelby Askin-Hager, City Solicitor
Mark Nazarewich, Senior Legal Counsel
Helga Reidel, CAO
Chuck Scarpelli, Manager, Records & Elections & Freedom of Information & Privacy Coordinator
Gazmon Tahiri, Master's Student, University of Windsor
Karen Kadour, Committee Coordinator

1. CALL TO ORDER

The Committee Coordinator calls the meeting to order at 9:30 o'clock a.m. and the Committee considers the Agenda being Schedule "A" attached hereto, matters which are dealt with as follows:

2. DISCLOSURE OF INTEREST

None disclosed.

3. ELECTION OF CHAIR

The Committee Coordinator calls for nominations from the floor for the position of Chair. G. Wilkki nominates B. Cowell and is seconded by M. Quaglia. The Committee Coordinator asks if there are further nominations from the floor for the position of Chair. Seeing none, the Committee Coordinator asks if B. Cowell accepts. B Cowell accepts.

Moved by G. Wilkki, seconded by M. Quaglia,
That Brian Cowell **BE ELECTED** Chair of the Compliance Audit Committee.
Carried.

B. Cowell assumes the Chair.

4. **ADDITIONS TO THE AGENDA**

Moved by G. Wilkki, seconded by M. Quaglia,
That Rule 3.3 (c) of the *Procedure By-law 98-2011* be waived to add the following
addition to the Agenda:

Letter from Gabriel Maggio dated July 16, 2015 requesting deferral of this matter to a
future date and the response from the City Clerk dated July 16, 2015.

Carried.

5. **OPENING STATEMENT BY CHAIR AND INTRODUCTIONS**

The document entitled "Introductory Comments by the Chair" is provided as an overview
for the members and delegations and is **attached** as Appendix "A".

6. **APPLICATION FOR A COMPLIANCE AUDIT**
APPLICATION BY PAUL SYNOTT FOR A COMPLIANCE AUDIT OF GABE
MAGGIO, CANDIDATE WARD 3

i. **Attachments:**

- Submitted Application
- Candidate's Financial Statement

ii. **Introduction and Recording of Applicant and Candidate**

Both the applicant and candidate confirmed their names and mailing addresses:

APPLICANT:

Paul Synott
292 Bruce Avenue
Windsor, Ontario N9A 4W3

CANDIDATE:

Gabriel Maggio
1008 Victoria
Windsor, Ontario N9A 4N6

iii. Presentation by Applicant (or agent)

The applicant declines to make any statements.

iv. Presentation by Candidate (or agent)

The letter from Gabriel Maggio dated July 16, 2015 requesting deferral of this matter to a future date and the response from the City Clerk is distributed and attached as Appendix "B". Mr. Maggio agrees to withdraw his request for deferral.

Candidate Gabriel Maggio addresses the Committee and provides the following comments relating to the 3 allegations provided by the Applicant:

1. **Campaign donation of \$500 from a Michigan resident**

Mr. Maggio indicates the credit card contribution from the U.S resident was disclosed, however, he did not realize a contribution from a non-resident was not permitted until an article appeared in the Windsor Star. He notes he immediately contacted the contributor and stated he would seek direction from Compliance Audit Committee relating to this matter. An e-mail was sent to the City Clerk and the Manager of Records and Elections for direction. He notes his auditor did not disclose this misstep as it relates to a donation by a non-resident.

2. **Bluesfest Hospitality Tent**

Mr. Maggio states there is no differentiation between placing a tent at the Bluesfest event or in a park or on private property. The tent was manned for only two hours and notes he provided his own tent for use at the event.

3. **Campaign Office – 939 Goyeau**

Mr. Maggio states the use of his office located at 939 Goyeau for his campaign is no different than "running his campaign" out of his home. He reports the campaign office was located in one of the storage rooms which are not available for rent.

In response to a question asked by Mr. Maggio regarding the Municipal Elections Act and if the Committee has "jurisdiction only to determine an apparent conflict and at that point in time to refer to an auditor for a further study", M. Nazarewich provides the following comments:

- A case quite similar in nature involved a contribution derived from someone who is not allowed to make a contribution. The candidate basically refunded the money. The legislation involves a person who is not entitled to make a contribution, so the dissimilarity in this case is Mr. Maggio technically still has the funds from the non-resident (which were not refunded). In the other case, the Committee found that by refunding the money immediately it was not contrary to the legislation.

Moved by G. Wilkki, seconded by M. Quaglia,

That the application of Paul Synnott for a compliance audit of the campaign finances of Gabriel Maggio, Ward 3 candidate in the October 27, 2014 municipal election **BE GRANTED**, and

That Purchasing and Risk Management **BE DIRECTED** to engage the services of an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the election campaign finances of Gabriel Maggio, related to the 2014 municipal election for the purpose of preparing a report for the Committee, in accordance with section 81 of the *Municipal Elections Act*, and

That Purchasing and Risk Management **BE DIRECTED** to obtain formal quotations, in accordance with the City's *Purchasing By-law*, for the selection of the auditor giving consideration to the auditor's experience in municipal election finances and/or compliance audits, ability to complete the audit in a timely fashion, and provide the City with a Letter of Independence to confirm that there is no conflict with the undertaking, and

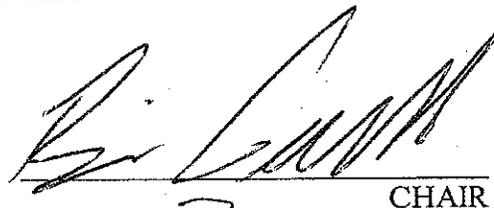
That the successful proponent (Auditor) **BE DIRECTED** to sign the Clerk's Form EL 58, Declaration for a Compliance Audit Committee "Appointed Auditor" (attached) and take the declaration on the form, and

That the auditor, upon completion of the assignment, **REPORT** back to the Election Compliance Audit Committee at a meeting to be held for this purpose, and

That all costs associated with engaging the services of the auditor **BE CHARGED** to the Municipal Election Account #111510.
Carried.

6. **ADJOURNMENT**

There being no further business, the meeting is adjourned at 9:50 o'clock a.m.



CHAIR



COMMITTEE COORDINATOR

**COMPLIANCE AUDIT COMMITTEE
MEETING**

MONDAY, JULY 20, 2015

ROOM 407, 400 CITY HALL SQUARE EAST
9:30 A.M.

A G E N D A

1. **CALL TO ORDER**
2. **DISCLOSURE OF INTEREST**
3. **ELECTION OF CHAIR**
4. **OPENING STATEMENT BY CHAIR AND INTRODUCTIONS**
5. **APPLICATION FOR COMPLIANCE AUDIT
APPLICATION BY PAUL SYNOTT FOR A COMPLIANCE AUDIT OF GABE MAGGIO,
CANDIDATE WARD 3**
 - i. **Attachments:**
 - Submitted Application
 - Candidate's Financial Statement
 - ii. **Introduction and Recording of Applicant and Candidate**
Candidate and Applicant (or agents) to provide names and mailing addresses to the Clerk.
 - iii. **Presentation by Applicant (or agent)**
 - iv. **Presentation by Candidate (or agent)**
 - v. **Committee Consideration of Application and Decision**
Committee to determine to grant or reject Application – Resolution to be presented.
 - vi. **Appointment of Auditor**
If Application is granted – Appointment of Auditor
6. **ADJOURNMENT**