



The Municipal Corporation of the
Town of Fort Erie

**COMPLIANCE AUDIT COMMITTEE
MEETING**

TUESDAY, FEBRUARY 28, 2012

COUNCIL CHAMBERS

MINUTES

1) CALL TO ORDER

The meeting was called to order at 5:34 p.m.

2) ROLL CALL

PRESENT: David Barrett, Committee Chair; John K. Bice, Committee Member and Alex Sutic, Committee Member.

ALSO PRESENT:

C.J. Kett, Town Clerk

S. Ellis, Legal Counsel, Compliance Audit Committee (Fort Erie)

C. Watson, Legislative Assistant

Bruce Armstrong, Froese Forensic Ltd.

Glen Davison, CA-Public Accountant

MEDIA PRESENT: Kris Dube, The Times; James Culic, The Post; and John Robbins, Bullet Media.

MEMBERS OF THE PUBLIC PRESENT: 47

3) SELECTION OF CHAIR

Resolution No. 1

Bice-Sutic

THAT:The Compliance Audit Committee hereby selects David Barrett as the Chair for the Compliance Audit Committee Meetings (Fort Erie) of Tuesday, February 28 and Wednesday, February 29, 2012. (CARRIED)

4) DISCLOSURE OF PECUNIARY INTEREST AND GENERAL NATURE

NIL

5) ADOPTION OF MINUTES

- (a) Compliance Audit Committee Minutes (Fort Erie) – July 12, 2011 and to authorize the adoption of February 28 and 29, 2012 minutes electronically.

Resolution No. 2
Sutic-Bice

THAT:The Niagara Compliance Audit Committee Minutes dated July 12, 2011 be adopted as printed, and further

THAT:The Compliance Audit Committee hereby authorizes the adoption of the February 28 and 29, 2012 minutes electronically. (CARRIED)

6) OPENING STATEMENT BY CLERK

The Clerk provided the Opening Statement on behalf of the Chair. Ms. Kett described the purpose of the meeting was to receive the compliance audit reports from the Auditors.

Ms. Kett described the format of the meeting as follows:

1. Mr. Bruce Armstrong of Froese Forensic Partners Ltd. and Mr. Glen Davison, CA-Public Accountant would provide a 20 minute overview of the general methodology used to conduct the investigation and to prepare the compliance audit reports. The overview would not be specific to any one candidate at this point. The overview would help everyone to understand how the compliance audits were conducted and the reports written. The Committee members would have an opportunity to ask questions of clarification only at the conclusion of the remarks.
2. Mr. Stuart Ellis, of the law firm Lampard, Ellis & Walsh, Solicitor to the Compliance Audit Committee, would conduct a 20 minute legal overview of the *Municipal Elections Act* requirements at this stage of the compliance audit process. He will advise the Compliance Audit Committee of the duties and responsibilities as set out under the *Act* and the discretion the Compliance Audit Committee has when considering its decisions of whether or not to commence legal proceedings if the auditor's report concludes there is an apparent contravention of a provision of the *Municipal Elections Act* relating to election campaign finances. The Committee would have an opportunity to ask questions of Mr. Ellis at the conclusion of his remarks. The Committee could call upon Mr. Ellis at any time in the proceedings to seek legal advice.
3. The Compliance Audit Committee would then move into the agenda to consider the auditor's report for each candidate.

The Auditor would identify the issues, findings and conclusions specific to each candidate and application.

The Committee could ask questions of the Auditors.

4. The Applicant would have an opportunity to address the Compliance Audit Committee if he/she so wished for a maximum of 5 minutes respecting the auditor's report only.

The Committee could ask questions of the Applicant.

5. The Candidate would have an opportunity to address the Compliance Audit Committee if he/she so wished for a maximum of 5 minutes respecting the auditor's report only.

The Committee could ask questions of the Candidate.

6. The Compliance Audit Committee would then deliberate each auditor's report and make a decision by resolution. The Compliance Audit Committee options and resolutions were set out in the agenda and have since been amended and included in an Addendum circulated to all parties and publicly posted.

The Compliance Audit Committee could choose one of the proposed alternative motions as set out in the Addendum or present something else.

The Committee could seek clarification from the Auditor at any time, or advice from the Solicitor or Clerk.

7. A further Compliance Audit Committee meeting has been scheduled for tomorrow evening, February 29, 2012 at 5:30 p.m. in the Council Chambers to consider the balance of the compliance audit reports.

7) OVERVIEW OF METHODOLOGY USED FOR CONDUCT OF AUDITS

Re: Presentation by Bruce Armstrong, Froese Forensic Partners Ltd. and Glen Davison, CA-Public Accountant

Mr. Armstrong provided general comments and explained there were three parts to the compliance audit process: Methodology of Compliance Audit, Role of licensed public accountant and Other comments common to all/most reports.

Mr. Armstrong explained the Methodology as follows:

- Objective to report on any "apparent" contraventions of the *Municipal Elections Act (MEA)*;
- To that end they carried out a number of audit procedures to determine whether:
 - FMV (fair market value) of goods and services reflected in the F/S (Financial Statement) as contributions or expenses;
 - Campaign expenses supported by invoices or other documentation;
 - Contributions supported by receipts;
 - Applicant (and any other) concerns were adequately considered; and
 - The F/S was prepared in accordance with the *MEA* and the 2010 Guide.
- No materiality considerations. He differentiated between a compliance audit and a traditional audit that a licensed public accountant may carry out on a person's business.

- A compliance audit could find its way into a court of law. It is highly unlikely that one of the outcomes of a traditional set of financial statements is that they would go to court although it does happen. With the report they issued they have to be prepared for the expectation that something might come of it. To that end, materiality considerations go out the window. With the assistance of Ms. Kelly Malcolm, they have touched on all transactions regarding all candidates in some manner.
- A traditional audit would consider materiality and would stratify, consider transactions, use judgment random samplings, etc. It would only be in cases where they observed extreme financial irregularities or fraud where a compliance audit could evolve into a full blown forensic audit. Nothing of the sort was observed.

Mr. Glen Davison commented on the role of the licensed public accountant and provided an overview as follows:

- Reviewed applicants issues, Candidates' Form 4 – Financial Statement and Audit Report, correspondence and their findings. He did not review all of the work done by Mr. Bruce Armstrong and Ms. Kelly Malcolm as that would be a duplication;
- Discussed any evident possible contentious issues;
- Ensured their findings were consistent with the work done;
- Ensured the wording in their reports was clear and consistent; and
- Ensured the correct sections of the *MEA* were referenced in the reports.

Mr. Armstrong provided the following additional comments:

- The F/S (Financial Statement) was filled out incorrectly in most cases and they believed there were inadequate instructions provided in the *MEA* or the 2010 Guide;
- Therefore they disregarded attributing any AFRC (Apparent Financial Recording Contravention) to any candidate;
- Use of services offered by Reg Goulding of RedLion MultiMedia, they have treated these services as being offered to all candidates in accordance with Subsection 66(2)(2)(iv) despite some inconsistencies observed. They tried to reach Mr. Goulding several times, without success.
- To the extent possible, they noted apparent contraventions and provided mitigating circumstances, where possible. With perhaps one exception, they don't think any were "dismissed" by them.
- Correction in Introduction section of each of the reports. The applicant requests were submitted to the Town Clerk rather than Town Council as stated in the reports. Corrected reports are on the website.

Chair Barrett referred to Sections 89-91 of the *Municipal Elections Act* dealing with corrupt practices and asked Mr. Armstrong if he found any evidence whatsoever of corrupt practices with respect to the applications. Mr. Armstrong responded in the negative.

8) **OVERVIEW OF LEGAL REQUIREMENTS**

Re: Presentation by Stuart Ellis, Lampard, Ellis & Walsh, Solicitor to Compliance Audit Committee

Mr. Ellis provided the following facts and advice:

1. In recent years, the principles of accountability and transparency have been emphasized by the provincial government in the drafting of municipal legislation.
2. Sections 66 to 82.1 inclusive of the *Municipal Elections Act (MEA)* are devoted to campaign finance rules and throughout these rules, the principles of accountability and transparency in the financing of municipal election campaigns are evident.
3. Section 81.1(1) of the *MEA* compels municipal councils in the Province of Ontario to establish a Compliance Audit Committee on or before October 1st in any election year for the purposes of providing a mechanism for compliance audits of financing of any municipal candidate.
4. Under the provisions of subsection 81.1(3) of the *MEA*, the term of office for the Compliance Audit Committee is the same as that of the municipal council.
5. Under the provisions of subsection 81.1(5) of that *Act*, any and all costs in relation to the operations and activities of the Compliance Audit Committee shall be paid by the municipal council concerned.
6. The *MEA* creates two classes of contraventions:
 - (i) Corrupt practices; and
 - (ii) Less serious offences relating to campaign finance rules.
7. Municipal election campaign rules operate on a system of self-reporting.
8. Section 78 of the *MEA* requires a candidate to file a financial statement which should be accompanied by an auditor's report if the amounts exceed \$10,000.00.
9. The procedure to be followed in reviewing these financial statements involves five stages:
 - (i) A citizen can apply for a compliance audit and the Compliance Audit Committee must consider the application.
 - (ii) If the Committee refuses the application for a compliance audit, there is an appeal to the Ontario Court of Justice.
 - (iii) The independent audit must be conducted by an independent auditor licensed under the *Public Accounting Act*.
 - (iv) The Compliance Audit Committee must consider the compliance audit within 30 days after receiving it and must determine whether to commence legal proceedings against the candidate.
 - (v) The legal proceeding (prosecution) itself is the last stage and in it, the candidate has the benefit of full natural justice protection and can employ the Charter of Rights.

10. We have been in receipt of compliance audit reports for six candidates in the Town of Fort Erie and it is now time to hear further from the various applicants for each compliance audit, the candidates concerned, the auditors and then the Committee shall make a determination as to whether there should be a prosecution or not considering the nature of the alleged offences and the cost of any such prosecution and in any event, as to whether there were reasonable grounds or not for each of the applicants to apply for an audit.
11. In making these decisions, the Committee can consider the directions rendered by the Ontario Superior Court and the Court of Appeal in past cases as follows:
 - (a) Any decision should endeavour to maintain the confidence of the electorate in the election process.
 - (b) Any decision shall endeavour to maintain the integrity of the election process.
 - (c) Any decision shall be made to enhance the values of public accountability and transparency.
 - (d) Any decision must consider the scale of the apparent contraventions.
 - (e) Any decision must be reasonable and fair.
 - (f) One must not endeavour to advance political agendas.
 - (g) One must not engage in personal animosity or bias.
 - (h) One should not prosecute modest apparent contraventions.
12. A reading of the contents of these auditor reports will require a consideration of the following:
 - (a) Will anybody go to jail if prosecuted?
 - (b) Will anybody lose their seat on Council if prosecuted?
 - (c) Will anybody pay a high fine if convicted?
 - (d) Did anyone exceed campaign spending limits?
 - (e) Did anyone exceed contribution limits and pocket the surplus, if any?
 - (f) Were the apparent contraventions the result of evident corruption or breach of the Criminal Code or were the apparent contraventions likely the result of carelessness, inattentiveness, or lack of attention to important details?
 - (g) Did the candidate co-operate at all times with the auditor?
 - (h) If the errors or omissions found by the auditor in the various reports were totaled up with the figures already contained in the candidate's reports, would the totals exceed statutory campaign spending limits, campaign contribution limits, or any other financial limits imposed by the statute?
 - (i) Did the candidate do anything that would trigger forfeiture of office under subsection 80(2) of the *MEA*?
13. The Committee should consider the question as to the likelihood of a conviction in any prosecution and further consider if indeed there be a conviction, will there be a large fine or only a moderate penalty that will not suffice to perhaps even cover the costs of the prosecution which can be large.
14. In the consideration of the costs of moving forward if prosecution is suggested, the Committee should consider the requirements of the provision of evidence before the Court and the type and nature of such evidence and the likelihood of professional fees or costs in adducing such evidence.

15. The Committee would be aware that the cost of any prosecution is at the expense of the municipal taxpayers, not the provincial government, or the Crown.
16. The Committee may consider that if there be in fact a prosecution, the only loser might be the municipal taxpayer.
17. The Committee will consider whether or not in fact the greatest penalty here is the knowledge of the public in a reading of the audit reports to where the financial resources of each of the candidates emanates from and in the future, where their political support might be grounded
18. In any event, the Committee should also consider the fact that the statute now permits private prosecutions, if such be deemed necessary, by specific members of the public.
19. In summary, the *MEA* is provincial legislation drawn up to establish the rules regarding election financing in an effort to provide:
 - (a) Accountability;
 - (b) Transparency;
 - (c) Campaign spending limits;
 - (d) Campaign contribution limits;all in an effort to enhance a fair electoral process and create a level playing field.

9) COMPLIANCE AUDIT REPORT (#1-11) – APPLICATION BY MARINA BUTLER FOR CANDIDATE JOHN HILL, WARD 4

1. Auditor's Report (Previously circulated and available on e-agenda)

The Compliance Audit Report for the Town of Fort Erie regarding John Hill dated January 31, 2012 was received at Town Hall on February 8, 2012. Copies were circulated to the applicant, candidate, Mayor and Members of Council, Compliance Audit Committee and Stuart Ellis, Legal Counsel and publicly posted on the Town's website.

2. Auditor's Presentation of Issues, Findings and Conclusions

Mr. Armstrong explained the "Overall Findings" were set out in Section 2 and "Details" in Section 3 of the report. A correction was made to Section 3.3. since Councillor Hill had never run for office. With respect to Section 2.2, they did not know if the \$40.00 unknown contributions were a series of amounts greater than \$10.00. If so, then the provisions of Subsection 66(2)(2) of the *MEA* could apply.

In Section 2.4 of the report respecting the FEWPA contribution, they gave a lot of consideration to whether an Ontario corporation is carrying on business in the Province. As auditors, they took the "expectation of profit" approach but there are many opinions out there providing pros and cons. They felt that if reasonable efforts were made to establish that it was a valid corporation, there was no contravention. In Section 2.6 of the report

Mr. Armstrong acknowledged he should have included mitigating circumstances under Section 3.13. He referred to legal comments outlined in a recent memo #8 from the Compliance Audit Committee's legal counsel which would have a direct bearing on Sections 2.3, 2.4 and 2.1 of the report.

3. Opportunity for Applicant to be Heard

Ms. Butler stated everyone is responsible for their own actions and have to follow the laws. Politicians are not excluded. She suggested the *Act* was amended to ensure there was a fair playing field for those to run in elections, to keep candidates honest, to ensure those elected would serve in the best interest of those they represent and not for their own self-interest. The auditors found not one but six apparent contraventions of the *Act* regardless of the reasons or remedies Councillor Hill made after the fact and for the most part, after the request for investigation.

Ms. Butler explained accepting donations from non-resident parties is against the *Act*. Accepting contributions from a lobbying group such as FEWPA may have slanted votes to Mr. Hill's advantage. Unfortunately, the audit did not have the power to go to the next step to evaluate what that contribution meant.

Ms. Butler addressed two of the six contraventions: In Section 2.3 the contribution from Mr. Smith, a person not normally a resident in Ontario, it is the opinion of the auditors that Mr. Hill took all reasonable steps to ensure the resident requirement was met. She recalled Mr. Hill's delegation at the first Compliance Audit Meeting where he recounted his conversation with Mr. Smith regarding the Bay Beach project. She found it curious that Mr. Smith, being a member of the Bay Beach Club, was proof to persuade Mr. Hill that Mr. Smith was a Canadian resident. She believed Mr. Hill was also a member of the Bay Beach Club where the majority of membership is American. She stated their website also encourages donations to FEWPA.

Ms. Butler referred to Mr. Hill's donation from FEWPA and his explanation of researching the eligibility of the group. She indicated his advice came from a local restaurateur and not such a person of knowledge as the Municipal Clerk. It states clearly contributions can only come from three sources, one of which is a corporation carrying on business in Ontario. She added FEWPA is not a business but an association with an expressed purpose to fight a development project and fund a lawsuit.

Ms. Butler referred to Mr. Hill's interview with the auditors wherein he stated his advice on FEWPA's eligibility came from Mr. Phil Smith, a Canadian and its President, yet Mr. Hill listed on his filing that Garrett Reid is the President and is a summer resident from the U.S. Mr. Hill's platform for election was to do everything he could to stop the Bay Beach development. She questioned whether the influence of FEWPA and non-Canadian residents was a factor in the election and whether Mr. Hill was a willing participant in that orchestration.

Ms. Butler stated she would be satisfied if Mr. Hill resigned today to avoid the inevitable next step. Since she didn't believe he would, she urged the Committee to send the message that the residents are holding its politicians accountable. Should Mr. Hill not resign, she requested the Committee to send the matter to a judge to determine a penalty that is commensurate with his violations.

4. Opportunity for Candidate to be Heard

Mr. Hill referred to the June 6, 2012 Compliance Audit Committee Meeting wherein the Committee heard both sides of the argument with respect to the application and decided reasonable grounds had been demonstrated that a contravention of the *MEA* had occurred when he accepted a campaign contribution from an illegible contributor. Therefore they ordered a full audit of his campaign finances.

Mr. Hill referred to the Auditor's report and the decision that an apparent contravention of Subsection 70(3)(1) had occurred and the contributor Mr. Smith was not a resident who normally resides in Ontario. He indicated citizenship was not relevant. Section 2.3 of the Auditor's report states "prior to accepting the contribution, Mr. Hill took reasonable steps to ensure the "resident" requirement as referenced in the *Act* was met. He commented that Ms. Butler acknowledged he returned the funds to Mr. Smith which he also stated in his remarks to the Committee at the time. Mr. Hill recited Section 69(1)(m) of the *MEA* states: "A candidate shall ensure that 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."

Mr. Hill referenced a recent appeal to the Ontario Court of Justice for a similar contravention wherein Justice Harris ruled "the obligation of the candidate is simply to return a contribution of money made in contravention of the *Act* as soon as possible after the candidate becomes aware of the contravention. If he does that, the candidate is not contravening the *Act*." No reference to timing was mentioned. Section 2.1 of the Auditor's report states whereby a cash contribution was received which they deemed an apparent contravention of the *Act* under Subsection 70(8), however the candidate took the appropriate steps to remedy the situation as soon as he realized his mistake, in accordance with the duties outlined in Section 69(1)(m). Mr. Hill advised, in his view, this conveys his accountability and represents transparency of his reporting.

Mr. Hill referred to the applicant's concern of a contribution he accepted from FEWPA and the findings under Section 2.4 of the Auditor's report that states the candidate appears to have taken appropriate steps to establish that FEWPA was incorporated and should not have been expected to make the added determination as to whether the corporation was carrying on business in Ontario. It was their opinion the receipt of this contribution was not an apparent contravention by the candidate. He concurred with this statement.

Mr. Hill stated the Auditor's report illustrated minor financial reporting contraventions which he conceded to. At the June 6, 2012 meeting he stated he did not knowingly or intentionally before, during or after the campaign, feel that he contravened the *Act* or swayed the electorate within his ward. He won the election through hard work and commitment.

Mr. Hill stated he does not believe the intent of the *MEA* is to be used as a tool to achieve a certain objective or expose the Town to over \$100,000 in unaccounted for expenses.

Mr. Hill stated as a first time candidate there are lessons he will take away from this experience and not repeat. The decision is the Committee's to determine if there is merit to expose the Town to further expense through legal actions. He stated he fully complied with the audit process.

5. Compliance Audit Committee Deliberations and Decision

Resolution No. 3
Bice-Sutic

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to whether the candidate fulfilled the duties of a candidate under the *Municipal Elections Act*, and

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to the need for general deterrence with respect to campaign finance issues and the need for this candidate to be deterred from possible future contraventions of the *Municipal Elections Act*, with consideration given to whether this candidate deliberately violated the *Act*, or whether any contraventions were through inadvertence only, and

WHEREAS the Compliance Audit Committee has considered the overall public interest by giving due consideration to whether the contraventions reported by the Compliance Auditor are substantive or technical in nature, and

WHEREAS the Compliance Audit Committee has considered all of the above matters and assessed whether the overall public interest has been served in relationship to achieving final compliance with the *Act* and whether the overall public interest aspect of the compliance audit process has been met, and

WHEREAS the Compliance Audit Committee has determined that both the public interest and compliance aspects required by the legislation have been achieved;

NOW THEREFORE the Compliance Audit Committee hereby determines to take no further action in the matter related to the campaign finances for John Hill, Ward 4, and further

THAT the Compliance Audit Committee hereby finds there were reasonable grounds for the application. (CARRIED)

**10) COMPLIANCE AUDIT REPORT (#2-11) – APPLICATION BY
MARTHA LOCKWOOD FOR CANDIDATE DONALD LUBBERTS, WARD 5**

1. Auditor's Report (Previously circulated and available on e-agenda)

The Compliance Audit Report for the Town of Fort Erie regarding Donald Lubberts dated January 31, 2012 was received at Town Hall on February 8, 2012. Copies were circulated to the applicant, candidate, Mayor and Members of Council, Compliance Audit Committee and Stuart Ellis, Legal Counsel and publicly posted on the Town's website.

2. Auditor's Presentation of Issues, Findings and Conclusions

Mr. Armstrong explained the "Overall Findings" were set out in Section 2 and "Details" in Section 3 of the report. A correction was made to Section 3.3 since Mr. Lubberts had run for office previously. With respect to Section 2.2., they do not know if the \$24.00 unknown cash was made up of individual contributions of greater than \$10.00. If so, then the provisions of Subsection 66(2)(2) of the *MEA* could apply. The total effect of all of the above as outlined in Section 2.3 was \$4.71 as shown in Section 3.13. At all times, the candidate was well within his authorized expense limitation. Section 2.5 is explained further in Section 3.17 with respect to failing to issue receipts to ticket purchasers for his fundraiser. He referred to legal comments outlined in a recent memo #8 from the Compliance Audit Committee's legal counsel which would have a direct bearing on Sections 2.3, 2.4 and 2.1 of the report.

3. Opportunity for Applicant to be Heard

Ms. Lockwood explained when Mr. Lubberts was before the Committee on June 6, 2012 he introduced Ms. Shirley Grace identifying her as the person who handled his finances. Ms. Grace then spoke to clarify an accounting matter. Ms. Lockwood questioned who really ran Mr. Lubberts campaign.

Ms. Lockwood referred to Section 3.3. of the report that states Mr. Lubberts had not run in previous elections which was incorrect. She was curious if that was Mr. Lubberts mistake or that of the auditors. In Section 3.6 of the report it stated Mr. Lubberts had done extensive research to determine eligibility. She questioned if there was proof offered of this extensive research by Mr. Lubberts. She stated questionable donations, discrepancies in donations, lack of receipts and incorrect addresses speak for themselves. There seemed to be a lack of care and due diligence in understanding who was eligible to contribute and how to receipt it. She indicated if in doubt, a candidate should err on the side of caution and not accept a donation from a questionable source.

Ms. Lockwood advised her other concern was a lack of respect of the *Municipal Elections Act* concerning campaign contributions. Whether the campaign spends \$500 or \$50,000 the same rules apply. She suggested ignorance is not a defense. Ms. Lockwood advised Mr. Lubberts ran for

office in 2003 so he was not new to this. His lack of accuracy in reporting and questionable foreign involvement in his campaign pointed to a lack of understanding of the rules or an offence to circumvent the rules. When a candidate breaks the rules there should be consequences. If not, then a precedent is set to allow candidates to do whatever they want with very little consequences. If this happens what is the point in having campaign finance rules.

Ms. Lockwood stated she trusts the Committee will send a clear message that the kind of cavalier attitude Mr. Lubberts has demonstrated will not be tolerated. She asked that legal proceedings be commenced and Mr. Lubberts will have to deal with the consequence of his many contraventions of the *Municipal Elections Act*.

Following Ms. Lockwood's presentation, a question and answer period followed with the Committee.

4. Opportunity for Candidate to be Heard

Mr. Lubberts advised he did not have a prepared statement. He wanted to comment on the auditor's report and some mistakes that were made. He referred to the auditor's explanation about the form and he suggested if one were not an accountant, mistakes could be made. The bottom line of the auditor's report is that there was a difference of \$4.71 on his Financial Statement.

Mr. Lubberts referred to Ms. Lockwood questioning what research he did regarding an Ontario resident. He advised the Committee received this information on June 6, 2012 when he brought an email from Karen Wallace of Municipal Affairs when he questioned her about an Ontario resident. They had a discussion and she said he could make a determination himself or seek legal advice and if challenged, he would have to defend himself. Further, after he received notice of a compliance audit, he sought legal advice. Mr. Ennis called Municipal Affairs and spoke to a woman who told him to advise Mr. Lubberts to return the money, which he did. He did his due diligence in trying to determine if Mr. Smith was an Ontario resident or not.

Mr. Lubberts made one other comment about foreign involvement in his campaign. During his campaign they contacted different people including the Town Clerk and asked if an American resident was allowed to participate in the campaign. They were told they were allowed to participate. Some were scrutineers on Election Day. He would leave the decision up to the Committee.

5. Compliance Audit Committee Deliberations and Decision

Resolution No. 4
Sutic-Bice

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to whether the candidate fulfilled the duties of a candidate under the *Municipal Elections Act*, and

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to the need for general deterrence with respect to campaign finance issues and the need for this candidate to be deterred from possible future contraventions of the *Municipal Elections Act*, with consideration given to whether this candidate deliberately violated the *Act*, or whether any contraventions were through inadvertence only, and

WHEREAS the Compliance Audit Committee has considered the overall public interest by giving due consideration to whether the contraventions reported by the Compliance Auditor are substantive or technical in nature, and

WHEREAS the Compliance Audit Committee has considered all of the above matters and assessed whether the overall public interest has been served in relationship to achieving final compliance with the *Act* and whether the overall public interest aspect of the compliance audit process has been met, and

WHEREAS the Compliance Audit Committee has determined that both the public interest and compliance aspects required by the legislation have been achieved;

NOW THEREFORE the Compliance Audit Committee hereby determines to take no further action in the matter related to the campaign finances for Don Lubberts, Ward 5, and further

THAT the Compliance Audit Committee hereby finds there were reasonable grounds for the application. (CARRIED)

11) COMPLIANCE AUDIT REPORT (#3-11) – APPLICATION BY LARRY GRABER FOR CANDIDATE PAUL L. COLLARD, WARD 6

1. Auditor's Report (Previously circulated and available on e-agenda)

The Compliance Audit Report for the Town of Fort Erie regarding Paul Collard dated January 31, 2012 was received at Town Hall on February 8, 2012. Copies were circulated to the applicant, candidate, Mayor and Members of Council, Compliance Audit Committee and Stuart Ellis, Legal Counsel and publicly posted on the Town's website.

2. Auditor's Presentation of Issues, Findings and Conclusions

Mr. Armstrong explained the "Overall Findings" were set out in Section 2 and "Details" in Section 3 of the report. In Section 2.1 of the report respecting the FEWPA contribution, they gave a lot of consideration to whether an Ontario corporation is carrying on business in the Province. As auditors, they took the "expectation of profit" approach but there are many opinions out there providing pros and cons. They felt if reasonable efforts were made to establish it was a valid corporation, there was no contravention. Mr. Armstrong acknowledged a correction to Section 2.3 of the report which should have included the word "apparent" before the word "financial" in line 3 of the summary. Section 2.4 followed from the fact the candidate did not open a campaign bank account, that the other apparent contraventions took place. Also in Section 2.4 he should have mentioned "contributions" rather than "a personal contribution". He referred to legal comments outlined in a recent memo #8 from the Compliance Audit Committee's legal counsel which would have a direct bearing on Sections 2.3, 2.4 and 2.1 of the report.

3. Opportunity for Applicant to be Heard

Mr. Graber stated there were several issues regarding the compliance audit of Mr. Collard's campaign expenses. The FEWPA donation in the amount of \$450 had been accepted with no receipt issued, in contravention of Subsection 69(1)(e) of the *MEA*. It was also incorrectly reported per Subsection 69(1)(k) and 78(1) of the *Act* which requires the candidate's financial statements to be filed in the prescribed form. While it is the auditor's opinion the FEWPA contribution was not an apparent contravention, it has since been found to be an ineligible contribution under Subsection 70(3)(2) of the *Act* because the corporation was not carrying on business in Ontario. He questioned if Mr. Collard could provide an update as to the status of this donation and if it had been returned based on these facts.

Mr. Graber indicated the most serious infraction under the *MEA* is Mr. Collard's disregard by failing to open a campaign bank account. The failure to deposit a personal contribution to a campaign bank account and the payment of expenses from a source other than a campaign bank account were contraventions of Subsections 69(1)(a), (b) and (c) respectively.

Mr. Graber explained the Clerk made it plain to him on at least three occasions when he was submitting his candidacy papers, that the first order of business was to open a separate campaign bank account. He was certain this was stressed to all of the other candidates. He advised there was nothing in the *Act* that precluded a candidate from opening a separate campaign bank account regardless if the amount expended was minimal in relation to the campaign expense limitation. Mr. Collard stated his rationale was that he wasn't going to incur any expenses. He questioned why Mr. Collard did not open a bank account when he ordered election signs and advertised in local papers.

Mr. Graber explained Mr. Collard was not exempt and needed to comply with the subsection of the *Act* regarding the campaign bank account. He informed Mr. Collard's action, or lack thereof, must be enforced. The ruling of the Committee will set the precedent to which all similar infractions during future municipal elections will be referenced. He suggested now is the time to set the example that any contravention of this subsection of the *Act* is not acceptable.

Following Mr. Graber's presentation, a question and answer period followed with the Committee.

4. Opportunity for Candidate to be Heard

Mr. Collard explained as he stated previously he had nothing to hide and would cooperate fully in the audit. He advised Mr. Armstrong confirmed same in Section 3.1 of the Auditor's report. Some of the allegations brought forward by Mr. Graber he did not deny.

Mr. Collard explained he accepted a donation from FEWPA which he believed to be an eligible contribution. He quoted Canada Revenue Agency's definition of carrying on business in Canada as "a business includes a profession, calling, trade, manufacturer or undertaking of any kind, whether or not the activity or undertaking is performed for profit."

Mr. Collard advised it is clear he did not open a campaign expense account which he did not dispute. He submitted his personal bank account to a forensic investigation for the campaign period. Section 3.14 of the Auditor's report stated they found nothing. Mr. Collard spent \$1,579.50 and he reported and supplied supporting documentation to that effect resulting in being \$6,573.15 under his campaign expense limitation.

Mr. Collard stated he took the compliance issues seriously and assured the Committee that he did nothing to mislead, cover-up, conceal or misappropriate funds and/or information related to his campaign nor did they affect the result of the election.

Mr. Collard advised he was fully aware of the possible consequences of his actions and that the penalty for non-compliance could be severe. He quoted the penalty provision Section 80(2) of the *MEA*. He suggested to the Committee he is guilty of an error in judgment and learned a valuable lesson. He guarantees after the 2014 election, he would not be before another Compliance Audit Committee.

Following Mr. Collard's presentation, a question and answer period followed with the Committee.

5. Compliance Audit Committee Deliberations and Decision

Resolution No. 5
Bice-Sutic

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to whether the candidate fulfilled the duties of a candidate under the *Municipal Elections Act*, and

WHEREAS the Compliance Audit Committee has been mindful of the overall public interest by giving due consideration to the need for general deterrence with respect to campaign finance issues and the need for this candidate to be deterred from possible future contraventions of the *Municipal Elections Act*, with consideration given to whether this candidate deliberately violated the *Act*, or whether any contraventions were through inadvertence only, and

WHEREAS the Compliance Audit Committee has considered the overall public interest by giving due consideration to whether the contraventions reported by the Compliance Auditor are substantive or technical in nature, and

WHEREAS the Compliance Audit Committee has considered all of the above matters and assessed whether the overall public interest has been served in relationship to achieving final compliance with the *Act* and whether the overall public interest aspect of the compliance audit process has been met, and

WHEREAS the Compliance Audit Committee has determined that both the public interest and compliance aspects required by the legislation have been achieved;

NOW THEREFORE the Compliance Audit Committee hereby determines to take no further action in the matter related to the campaign finances for Paul Collard, Ward 6, and further

THAT the Compliance Audit Committee hereby finds there were reasonable grounds for the application. (CARRIED)

12) ADJOURNMENT & RECONVENE FEBRUARY 29, 2012 5:30 p.m.

Resolution No. 6
Bice-Sutic

THAT:The Compliance Audit Committee Meeting hereby adjourns at 7:05 p.m. and reconvenes on Wednesday, February 29, 2012 at 5:30 p.m. (CARRIED)

Prepared by:

Carolyn J. Kett
Town Clerk
Town of Fort Erie

Reviewed by Compliance Audit Committee Members:

David Barrett, Chair

John K. Bice

Alex Sutic