



The Municipal Corporation of the  
Town of Fort Erie

**COMPLIANCE AUDIT COMMITTEE  
MEETING**

**WEDNESDAY, FEBRUARY 29, 2012  
COUNCIL CHAMBERS**

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**MINUTES**

**1) CALL TO ORDER**

The meeting was called to order at 5:30 p.m.

**2) ROLL CALL**

PRESENT: David Barrett, Committee Chair; John K. Bice, Committee Member and Alex Susic, 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: 28

**3) DISCLOSURE OF PECUNIARY INTEREST AND GENERAL NATURE**

NIL

**4) 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.

## 5) **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 as follows: 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 were Contravention) to any candidate;
- Use of services offered by Reg Goulding of RedLion MultiMedia, they 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.

## 6) **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 1<sup>st</sup> 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.

**7) COMPLIANCE AUDIT REPORT (#5-11) - APPLICATION BY  
RICHARD L. BERRY FOR CANDIDATE STEPHEN PASSERO, WARD 1**

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

The Compliance Audit Report for the Town of Fort Erie regarding Stephen Passero 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. He referred to Section 2.3 of the report and advised the candidate should have returned the \$350 cash contribution he received from his Mother and requested a cheque. The amount was properly receipted. In Section 2.5 of the report the candidate incurred an expense without an invoice. When brought to Mr. Passero's attention he took immediate steps to go to the supplier and provided the auditors with the documentation in that amount. In Section 2.6 of the report the contribution of goods and services was difficult to record. It was recorded in two places as a contribution and an expense but one was in the wrong box. Section 2.7 is a rehash of Section 2.4, the candidate's failure to include the invoice for the website in expenditures. Mr. Armstrong pointed out that Mr. Passero did cooperate with the investigation and made himself available by phone, email or in person.

3. Opportunity for Applicant to be Heard

Mr. Berry expressed a number of concerns. He referred to Mr. Armstrong's comments regarding cheques made out to the newspaper and receipt issued and questioned if the auditor went to the newspaper to see if they issued that receipt. He referred to Section 3.14, being the expense of \$850.72 and questioned how could the candidate forget that expense. He also referred to the service offered by RedLion Multimedia Productions and thought it should be considered as an in-kind donation and requested a response.

Mr. Armstrong responded the services offered by RedLion Multimedia were goods and services offered to all of the candidates and the provisions of the *Act* provided for that as a noted exception. He referred to the website invoice which he commented on in his report and confirmed it was recognized after the fact. With respect to the receipt from the newspaper, they were in touch with the newspaper and it was a valid receipt.

4. Opportunity for Candidate to be Heard

Mr. Passero stated the results of the audit showed the more serious charge of having a surplus refunded to himself was proven false. The mistakes that were discovered, although minor and not corrupt, were still mistakes. He took full responsibility for the mistakes which led to the

process costing the taxpayers money. For that, he felt embarrassed and apologetic. He stated he would accept the Committee's decision and take the appropriate measures should he choose to run again to ensure the mistakes were not repeated.

5. Compliance Audit Committee Deliberations and Decision

Resolution No. 1  
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 Stephen Passero, Ward 1, and further

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

**8) APPLICATION FOR COMPLIANCE AUDIT (#4-11/7-11) –  
APPLICATIONS BY RICHARD L. BERRY AND JOHN GILMOUR FOR  
CANDIDATE DOUG MARTIN, MAYOR**

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

The Compliance Audit Report for the Town of Fort Erie regarding Doug Martin 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 2.2 of the report respecting the \$500 contribution from Heavy Construction Association of Niagara, 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 were many opinions out there providing pros and cons. They felt that if reasonable efforts were made to establish it was a valid corporation, there was no contravention.

He referred to Section 2.6 of the report respecting advertising expenses using a personal credit card which would be reimbursed. They expanded the scope of their work because that opened up the personal records of the candidate in which he willingly provided and was cooperative throughout. The items in Section 2.7 of the report were not included in the initial filing and recording with respect to re-usable signs, which he let the Town Clerk know about including two banners. The total of those three items was less than \$2,000.

Under Section 2.8 of the report recount and legal expenses of the candidate incurred after December 31, 2010 are addressed. They reviewed correspondence between the Mayor and Clerk. He explained that Mr. Martin was right to send out a request before he filed his Financial Statement to extend the campaign in a letter to the Clerk dated March 1, 2011. The Town Clerk sent out a letter dated March 2, 2011 and Mr. Martin thought it was addressed to him but it was a standard letter to all candidates with instructions. Mr. Armstrong could see how there was confusion and Mr. Martin was talking about getting authorization to extend his campaign expenses. He just had to advise the Clerk, then file a supplementary Financial Statement which he could have done up to June 30, 2011. Instead he backed it up to December 31, 2010 but those expenses would have been allowed.

Under Section 2.7 of the report there was a \$2,000 shortage as of December 31, 2010. He had a \$3,000 overage of expenses in January and February 2011 that were backed up to 2010 so technically, his expenses were overstated by \$1,000 and well within his limit.

Mr. Armstrong explained not included in the report and he stands corrected, was receipt of a number of emails when the report was in circulation and whether the rent that Mr. Martin paid for his campaign office was fairly represented, a comment he would make of the next candidate as well. Mr. Armstrong advised this is something they look at closely in any compliance audit and it was brought up in Vaughan in the 2006 election. As a result, they did a study involving landlords on how to determine accurate rental charge for a short term lease and the answer was its reasonable to assume when something is being leased for a short period of time the rental is 50% of long term. They did not do a study in Fort Erie. Then they looked at activities. In Mr. Martin’s situation he moved into the premises of his first choice but that building was up for sale. He had to move to another premise for the balance of the period. At 1½ months rental but was probably closer to 2 months because of inconvenience and moving, he was charged for 1½ months rent and not the other 2 weeks because he had to move offices. Mr. Armstrong concluded the rent imposed for that period was reasonable.

3. Opportunity for Applicants to be Heard

(a) Mr. Gilmour advised, as stated in his request for a compliance audit, his only request was in democracy and ensuring the election went through as it was supposed to. Because of the small difference in votes, it concerned him that the accuracy of this audit was of utmost importance. He referred to Mr. Armstrong's report and was under the impression this was going to be a forensic audit. He stated obviously he was wrong or that word was used originally. He questioned how far and deeply the auditor went to verify what was documented and that it was documented correctly. He questioned the corrections made by Mr. Martin to the Clerk regarding signage that was omitted and questioned if that was notarized by anyone other than Town staff. He questioned if the auditor investigated the discrepancy or omission when it was reported and was it notarized by anyone outside of Town staff. If it was not investigated, he questioned whether the Clerk reported it to Elections Canada. It was a close election and he suggested it could have an impact. Mr. Martin had the use of extra signs that were not documented. He also had the use of money that was returned later after the election. All of this hinged on the fact the election was close, in his view. He needed to know as a democratic citizen this was a fair election. He questioned again whether or not the Clerk or the investigator reported to Elections Canada.

Mr. Armstrong responded to Mr. Gilmour's questions as follows:

1. Did the auditors look at all items and the answer was yes. As he mentioned in his opening remarks that the materiality was zero.
2. Did the auditors review where the omission or failure to include the cost of campaign signs and were they notarized and reported to someone else. They satisfied their requirements as compliance auditors by reporting it as an apparent contravention.
3. With respect to a forensic audit, he did outline earlier they do not do a traditional audit because of the materiality aspects. A forensic audit has several components and the last end could be full blown if they see any evidence of financial irregularities or fraud then they have to dig further. First they have to seek advice because they are working within budget parameters although it would not prevent them from doing their job.

(b) Mr. Berry asked the Committee to send this matter before a judge to ask for a ruling to decide if Mr. Martin purposely skirted the rules as set out by the Province under the *Municipal Elections Act*. He advised he listened last evening to the Councillors explanations on how this was new to them and how they made mistakes and in particular Councillor Lubberts who the Committee said should have known better because he ran in 2003. Mr. Berry stated Mr. Martin had 30 years of experience in all aspects of government i.e. Municipal, Regional and Provincial. The Committee stated that running in a past election weighed on their decision.

Mr. Berry referred to Ms. Butler's delegation last evening where she said "we are responsible for our own actions. The *Act* was amended to give the powers a level playing field. Six contraventions, you cannot ignore that fact." He stated Mr. Bice advised they are looking at three things. Was there any corruption. Mr. Berry indicated there is not one person in this room who could answer that question and that is why it should go before a judge who has the legal training to answer it. Did it affect the outcome of the election? Mr. Berry answered yes it did since there was only a five vote difference. Mr. Berry stated he is only asking the question that the Committee put to the candidate last evening. Five votes could be one single family who voted. The signage issue was beneficial to Mr. Martin and should go before a judge for review. Mr. Berry stated these are some of the reasons he was asking the Committee to decide this evening to recommend it go before a judge. He wanted to reiterate that Mr. Martin had been repeatedly running in elections since 1982 and requested the Committee to take that into consideration.

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

4. Opportunity for Candidate to be Heard

Mr. Martin stated he had no argument with the report prepared by Mr. Armstrong and his associates. If there were reporting errors, omissions and oversights, the majority were corrected before the appeal came in. He assured everyone that it was a complete and thorough Investigation by Mr. Armstrong and his associates. He confirmed they went through everything included in his filing from advertising to timbits. They looked at everything expended, to every dollar that came in. It has been said that he was an experienced Councillor and that was true. Mr. Martin stated he has experience with a number of elections and with each election, as with other candidates, there may have been inconsistencies or errors in reporting because as Mr. Armstrong said, it was about the makeup of the reporting form itself. It was because of this, in past elections, they looked at the amount of expenses available to the candidate and left a significant buffer in case there were any challenges. The most significant was usually the cost of rental facilities and if it was appealed, that was why he had a considerable buffer from actual expenses to allowable expenses.

Mr. Martin explained that running for an election is an arduous task for anyone. He reflected one thinks one is doing it for the good of the municipality, for the good of the people, but what it really meant was that one was obligated to start a new business, open a bank account, conduct fundraising, etc. In the end, one is asked to close the business and balance the account. This was all done by volunteers who are not familiar with the *Act* or the requirements of a candidate. As volunteers, they are there to help the candidate and they do not have any background or history on how to run this business so there are going to be errors made by volunteers and by others in the reporting of the expenses and income.

Mr. Martin advised at every opportunity when he found a challenge he brought it forward to the Clerk. There was a misunderstanding with respect to the filing for an extension of the campaign period. It was determined after he made an application that it was not necessary as he was going to fund those expenses himself and therefore, he did not extend the campaign period which caused a discrepancy in the reporting of the dates.

Mr. Martin agreed with Mr. Armstrong in the fact that the reporting form and the information provided to every candidate needs work, needs clarification and needs to be simplified so that an average person who chooses to run understands the implications of the requirements of the candidate so they can do a better job of reporting i.e. whether it's a corporation or not and whether it's a business. He stated he had a retail business for forty years and gave contributions for many years however, he now knows it should have been a personal contribution.

He suggested those are the things, if a report goes forward to the Province, should be considered as well. Also, he recommended that Ms. Kett be part of any Committee.

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

## 5. Compliance Audit Committee Deliberations and Decision

Resolution No. 2  
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 Doug Martin, Mayor, and further

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

**9) APPLICATION FOR COMPLIANCE AUDIT (#8-11) –  
APPLICATIONS BY MICHAEL CLOUTIER AND SHAWN CHESNEY FOR  
CANDIDATE ANN-MARIE NOYES. MAYOR**

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

The Compliance Audit Report for the Town of Fort Erie regarding Ann-Marie Noyes 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 2.3 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 take 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. Section 2.4 of the report brought into issue Ms. Noyes private company STAR and the fact that a private company was making a valid contribution exposed Ms. Noyes' personal business that would not be exposed under normal circumstances. She provided any information willingly.

Mr. Armstrong questioned if Ms. Noyes paid reasonable rent and he referred to his comments made about the previous candidate. The 2006 study in Vaughan determined short term rental costs could not be equated with a traditional lease and the general rule of thumb was the rent was not more than 50% of a normal lease or less. Ms. Noyes was presented with an opportunity to rent premises with a caveat if a buyer came along she would have to leave. When he reviewed the lease agreement, it was for a larger amount than what was expensed as a campaign expense. Ms. Noyes provided a satisfactory explanation that she was conducting her business from the office as well. She and her accountant worked out a split between costs of her business STAR and part as a campaign expense. The overall expenses totalled \$4,918 which the auditors thought was a fair amount.

3. Opportunity for Applicants to be Heard

(a) Mr. Cloutier asked the Committee to clarify the definition of the word "apparent". His dictionary, the New Oxford American, provided two definitions:

1. Clearly visible or understood; obvious.
2. Seeming real or true but not necessarily so.

He questioned which definition was applied in the auditor's report.

Mr. Cloutier stated Ms. Noyes' acceptance of the cheque from Mr. Smith was an obvious violation which was spelled out clearly in the guide. Her attempt to refund the donation was her admission that she erred and an attempt to mitigate the error. Mr. Smith had not cashed the refunded cheque as of January 31, 2012. Refunds from the other candidates were presumably cashed since the auditor made no mention to the contrary. He referred to her financial statement dated March 22, 2012 that indicated the contribution was returned. The auditor's report stated Ms. Noyes issued the refund on March 31, 2012. This was an inconsistency that was not addressed.

Mr. Cloutier indicated the FEWPA donation was essentially anonymous donations from contributors of the non-profit corporation. It was clearly advertised that FEWPA's business was to solicit donations for lawyers. He suggested that money should also be returned and if they refuse to cash the cheque, then \$650 should be paid to the Clerk.

Mr. Cloutier advised when Ms. Noyes purchased the domain name "Noyesformayor.com" in October 2009, it was a clear violation. He advised she had been a candidate in municipal elections in 1997, 2000, 2003, 2006 and 2010. The Municipal Election Guide states "no expense shall be incurred outside the campaign period." Ms. Noyes made the purchase to secure an advantage in the 2010 election to prevent another party from using the name. The auditor's report stated she realized only in early 2011 that all expenses were to be paid from the campaign account and she reimbursed herself.

Mr. Cloutier concluded by stating he filed the complaint to ensure legitimacy of the process that gives government its authority. That the people who make the laws abide by the laws. Ms. Noyes did not win the election and two recounts were conducted to ensure every vote was counted and that no voter was disenfranchised. He expected the same standards to be applied now.

- (b) Mr. Chesney stated Ms. Noyes contravened the *Municipal Elections Act* and there was no denial of this fact. The issue was now what the Committee would do as it had the power to recommend further actions be taken. He asked the Committee to recommend further legal proceedings. If they should find that no further actions be taken, he asked for the blocking of participation in the 2014 election.

Mr. Chesney surmised one might say the illegal contributions did not represent any financial gain to the candidates. He indicated this was false when considering the annual salary, additional monies from sitting on other boards, health care benefits over a four year term.

Mr. Chesney referred to Ms. Noyes delegation at the July 12, 2011 Compliance Audit Committee Meeting and how she attempted to educate the Committee on how FEWPA is a business. Posted on FEWPA's website is that donations can be made via a U.S. or Canadian address. He suggested a veteran politician would see that as a red flag.

Mr. Chesney stated Mr. Smith's refusal to cash a cheque is hard to believe when it was learned of the trouble it would cause. He questioned if the auditor's verified the cheque was written compared with previous and subsequent cheques, dates, etc.

Mr. Chesney explained he has over 20 years of networking experience and has dealt with large companies so he knows about websites and benefits. Registration of the website provided an unfair advantage as soon as it became active. The sooner a site is registered, the more time it has to be found and this was a tangible benefit over other candidates. He has been able to ascertain there were no other people named Noyes running for Mayor anywhere in the world during the 2010 election.

Mr. Chesney clarified one statement made by the forensic team i.e. Section 1.13, paragraph 4 with respect to email communications with himself and Michael Cloutier (the Applicants) in order to reconfirm their understanding of their specific concerns and to determine whether they had additional concerns that they had not previously brought to the auditor. Mr. Chesney recounted the sequence of events with the auditors. In the end, he did not receive a scheduled telephone call with them.

Mr. Chesney stated he found it doubtful the address on the cheque was not noticed by Ms. Noyes.

Mr. Chesney referred to the financial burden to the taxpayers of Fort Erie for any actions or proceedings and asked the Committee to consider the indirect costs to the Town by not taking the next step to action. He felt a message needs to be sent to those seeking public office that they will be held accountable for improper actions.

Mr. Chesney concluded his remarks by stating Ms. Noyes contravened the *Act* with a consequence of which would have been financial gain by means of salary and benefits. She showed contempt for the *Act* by defending her contraventions as being acceptable. She was a veteran of local politics and her knowledge of the *MEA* should have excluded her from such mistakes. The Committee had the power and obligation to take action with respect to the stated contraventions and provide justice to the taxpayers.

Mr. Armstrong apologized for the oversight of not following-up with Mr. Chesney.

4. Opportunity for Candidate to be Heard

Ms. Noyes stated at the July 12, 2012 meeting she explained and took responsibility for expending funds before registering for her candidacy. She previously explained her reasons that it was a knee jerk reaction to a phone call she received in October advising if she was even thinking about running she should reserve her web name before someone else got it or heard that she was going to run and did some nasty things on the

site. Without thinking, without going through election laws, she thought perhaps she should do that. She did not even know how to reserve a web domain and called her son to assist. She stated it was activated in July or August of the election year. She paid herself back as soon as she was familiar with the *Elections Act*. It was she who brought it forward to the Clerk and the auditor who was doing her books and she asked if he needed to write a letter. She asked the Clerk what to do as she could not unring the bell and did she have any suggestions. She said not to worry about it, it's not a big deal.

Ms. Noyes stated the auditor did bring to her attention the expenses of two \$40 cash donations and a receipt for \$50 cash. She advised she was not aware of this since it was not herself who accepted or deposited these amounts however, the buck stops with herself and she apologized for this oversight.

Ms. Noyes referred to the FEWPA contribution and she felt it was unfortunate the eligibility was still not clear and that the auditors did not get a legal opinion. She received one opinion and they are of the mind that it was a legal donation. She suggested at some point the *MEA* needs to be more clear.

Ms. Noyes explained why she accepted the \$200 cheque from Mr. Smith. The guide book handed out to all candidates was misleading. Under "who can contribute" it simply stated "lives in Ontario". Under different headings "who can run," "who can vote" it very clearly stated "permanent resident in Ontario." She questioned if the Ministry made that distinction in some places, why didn't they under contributions. She suggested it would probably have avoided the auditors and is an improvement for the guide book.

Ms. Noyes stated she just received a letter this date from Mr. Smith advising he cashed the cheque for \$200, a copy of the cancelled cheque was also included which she would provide to the Clerk. She went to the bank to make sure the cheque had cleared because it was stale dated. It cleared and she got a statement from the bank to close her election account. However, there was \$3.74 left in the campaign account. She requested direction as to what to do with the balance. She currently transferred it to her personal account.

Ms. Noyes wished to clarify that citizenship is not an issue when accepting donations. The issue is residency. When a cheque is written on a Canadian bank account or an American bank account, it doesn't matter since that is not the issue, residency is. She had American cheques that were cashed from people who lived in Ontario, worked in the U.S. and operated bank accounts in the U.S. That was not the problem. The auditors did not find it a problem nor did her own auditor. She referred to the guide book however, if she had researched the *MEA* she may have found she couldn't accept the contribution. She stated it was wrong of her to accept the donation and she returned it as soon as she became aware of the error.



Ms. Noyes referred to comments made about her running for prior office which she confirmed. She explained in the first election she spent \$125, in the second election she was acclaimed, in the third election she spent approximately \$1,000 and in the fourth election she spent \$1,500. In those elections there was no fundraising, no web domain, no contributions accepted with the exception of her sister who insisted on giving her a couple of hundred dollars each time. Everything was funded by herself. She apologized for all of the mistakes she made and accepted responsibility but there was never any attempt to mislead anyone and no intent for corruption. She stated the next time she runs, she will be that much more informed.

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 Ann-Marie Noyes, Mayor, and further

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

**10) ADJOURNMENT**

Resolution No. 4  
Bice-Sutic

**THAT:**The Compliance Audit Committee Meeting hereby adjourns at 7:22 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

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Alex Sutic