



**NIAGARA COMPLIANCE AUDIT
COMMITTEE MEETING
4:30 p.m.
THURSDAY, JULY 14, 2011
CITY OF NIAGARA FALLS, CITY HALL
COUNCIL CHAMBERS**

MINUTES

ATTENDANCE

Allan Andrews (member), Margo Pinder (member), Alex Sutic (member), Ken Beaman (City Solicitor), Dean Iorfida (City Clerk), Jim Diodati (candidate), Nancy Tkachuk (applicant), Stephen Badger (applicant) and Teresa Fabbro (steno).

APPOINTMENT OF CHAIR

MOVED on the motion of Alex Sutic that Allan Andrews be appointed as Chair for the purposes of this meeting.

CARRIED

DISCLOSURES OF PECUNIARY INTEREST

No disclosures of pecuniary interest.

COMPLIANCE AUDIT APPLICATIONS

- (a) Stephen Badger, 6770 Hagar Avenue, Niagara Falls, addressed the committee and requested that a compliance audit be ordered on Jim Diodati, candidate for Mayor in the 2010 municipal election. Mr. Badger felt that in light of the candidate filing an inaccurate financial statement in March, the matter warranted a second look. He felt politicians should be accountable and held to a higher standard. His interest was in increasing voter turnout. A compliance audit, in his opinion, was necessary to ensure credibility.
- (b) Nancy Tkachuk, 7404 North Dorset Place, Niagara Falls, had submitted eight applications requesting that a compliance audit be ordered on Jim Diodati, candidate for Mayor in the 2010 municipal election. Mrs. Tkachuk outlined that she was the campaign manager for the incumbent candidate for Mayor, Ted Salci. She had worked on six previous election campaigns, attended various campaign information sessions and was a media and marketing purchaser. She indicated that her applications were not fishing expeditions and she firmly believed that the candidate realized an unfair advantage due to the alleged violations.

Mrs. Tkachuk reviewed the applications in detail and outlined what she believed were reasonable grounds for a compliance audit. She highlighted the three instances of associated corporations, which were subsequently refunded by the candidate. She questioned the lack of opening inventory and non-reporting of items such as metal sign posts and fascia signage. Mrs. Tkachuk outlined her belief and efforts to ascertain the fair market value of such items as office space rental, print advertising, billboards and website production. She pointed out that the difference between the cost of an item and the item's fair market value is deemed to be a campaign contribution. Mrs. Tkachuk submitted what she alleged were magazine "advertorials" that were not properly costed on the Form 4 financial statement.

Mrs. Tkachuk felt that the candidate's campaign manager's use of his school board email address was inappropriate and contrary to the *Municipal Elections Act*. This was an advantage not afforded her candidate.

CANDIDATE RESPONSE

- (a) Jim Diodati, the candidate, indicated he believed he has adequately addressed each of the nine individual applications through his written submission but welcomed the opportunity to elaborate before the committee.

Mr. Diodati in speaking to the Badger request, questioned whether the applicant was eligible to be an elector. With regard to the filing error from March, it was an error of his auditor and had been adjudicated by the Superior Court of Justice. He argued that Mr. Badger's application should be rejected as he has not raised any specific violations to justify a compliance audit.

With regard to Mrs. Tkachuk's applications, Mr. Diodati indicated that, as per the *Municipal Elections Act*, he repaid the contributions when the associated corporations issue was raised in the compliance audit request, despite a consideration of challenging the alleged associations. He indicated that his campaign team did their due diligence with regard to associated corporations, however, short of a time-consuming corporate search, it would be difficult to determine a company relationship. He indicated that many candidates throughout the Region have had similar issues.

Mr. Diodati outlined how his campaign team started early and, as a result, may have received better pricing than candidates that were in a rush to secure limited supply items such as billboards and signs late in the campaign. He indicated that all relationships with suppliers and vendors were arms' length and his campaign team has the relevant receipts. No expenditures were excluded.

Mr. Diodati indicated that there is no guidance as to specifying certain items on the Form 4. He indicated that the fascia sign was included in office expenses. He did not have any carry over inventory from his last campaign, as he was a councillor and now he was running for Mayor, therefore, he had to buy everything new. He did not use metal frames for his signs. Mr. Diodati indicated that "advertorials" raised by Mrs. Tkachuk were profiles and not paid advertising.

Mr. Diodati was of the opinion that he met his obligations under the *Municipal Elections Act* and, as a result, the applications should be rejected.

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Questions arose regarding the April Superior Court of Justice matter on the candidate's filing error. The Solicitor outlined the case and a recess was provided for the members to read the decision. The Solicitor and Clerk indicated that the April court matter was not related to municipal election finances but was related to the filing error, which showed that the candidate had overspent the campaign limit by \$72.74. Justice Henderson felt the filing error was inadvertent and the candidate acted in good faith. The Justice provided relief from forfeiture of office, as such a penalty would be an "absurd" result.

The Solicitor advised that the Justice did not comment on the validity of the financial form and granting a compliance audit request would not be in violation of the Justice's court order. The Solicitor outlined case law, most notably the case against Angelo Di Ianni, candidate for Mayor of Hamilton in the 2003 municipal election. The Solicitor advised that the committee had to weigh whether there were reasonable grounds to warrant a second look at the candidate's financial statements or where the allegations a fishing expedition.

MOTION/ COMMITTEE REASONS

Allan Andrews stated that although a number of factors were raised the committee had to determine if "there was enough smoke at different locations to believe there may be a fire". He dismissed the filing error issue, which he reasoned may have had an impact on a \$500 campaign but was minor on a \$60,000 campaign.

Mr. Andrews expressed concerns regarding the associated corporations' issue but he indicated that the *Income Tax Act* goes on for five pages on the issue, therefore, one can never be absolutely certain that a company is or is not associated. He felt the candidate took reasonable steps.

He accepted the candidate's explanation on costs. With regard to the cost figures provided by the applicant, the case law shows that cost estimates after the fact, in different circumstances, from different suppliers and at different times are not particularly relevant and in this case the differences were not enormous. As the law is not interested in trifles, he made a motion to reject the compliance audit

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MOVED on the motion of Allan Andrews that having received written materials by the applicants and candidate and having heard the oral submissions of the parties, pursuant to Section 81(5) of the *Municipal Elections Act*, 1996, as amended, the Niagara Compliance Audit Committee hereby rejects the compliance audit applications filed by Stephen Badger/ Nancy Tkachuk for an audit of the election campaign finances of Jim Diodati, candidate in the October 25, 2010, since the Committee is not satisfied that reasonable grounds have been demonstrated that the candidate may have contravened the provisions of the said Act relating to election campaign finances.

Margo Pinder agreed with Mr. Andrews reasoning.

Alex Sutic indicated that he was not comfortable that the committee had the discretion to reject the requests for a compliance audit, especially on the associated corporations issue. He indicated that the cases the committee had heard in Fort Erie outlined the minimal discretion the committee has at this stage of the process. He did not feel it could definitively be stated that contraventions did not occur without a further review.

CARRIED

with Alex Sutic opposed

ADJOURNMENT

MOVED on the motion of Alex Sutic that the meeting be adjourned at 6:25 p.m.

CARRIED