



Hamilton

**A G E N D A**  
**ELECTION COMPLIANCE AUDIT COMMITTEE**  
**HEARING**

**Tuesday, September 6, 2016**  
**Rooms 192 & 193**  
**City Hall, 71 Main Street West**  
**7:00 p.m.**

**Lauri Leduc**  
**Legislative Coordinator**  
**905-546-2424 Ext. 4102**

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**1. CALL TO ORDER**

**2. DECLARATIONS OF INTEREST**

**3. COMMUNICATIONS**

3.1(a) Ombudsman Report: Investigation into a meeting held by the City of Hamilton's Election Compliance Audit Committee on July 15, 2015

Recommendation: Be received.

3.1(b) Council Resolution respecting the Ombudsman's Recommendation Report (CL16007(b)/LS16013(b)) (City Wide)

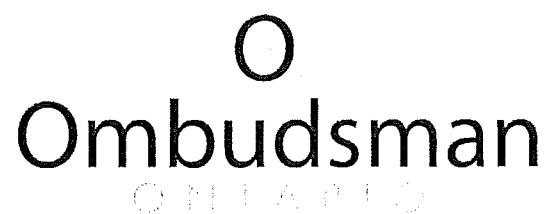
Recommendation: Be received.

**4. CONSIDERATION OF APPLICATIONS**

4.1 Applications for an Election Compliance Audit respecting the Campaign Finances (December 10, 2015 to May 5, 2016) of the Ward 7 By-election Campaign Period of H. Rabb, Candidate, Ward 7, submitted by Vivian Saunders and Christina Crane.

- 4.2 Applications for an Election Compliance Audit respecting the Campaign Finances (January 12, 2016 to May 5, 2016) of the Ward 7 By-election Campaign Period of U. Qureshi, Candidate, Ward 7, submitted by Vivian Saunders and Christina Crane.

**5. ADJOURNMENT**



## **Ombudsman Report**

**Investigation into a meeting  
held by the City of Hamilton's  
Election Compliance Audit Committee  
on July 15, 2015**

**Paul Dubé  
Ombudsman of Ontario  
July 2016**

## Complaint

- 1 On October 22, 2015, our Office received a complaint alleging that the Election Compliance Audit Committee for the City of Hamilton held a “deliberation” on July 15, 2015, which was illegally closed to the public. The complainant alleged that three of the committee’s four members, as well as various members of city staff, entered a staff meeting room at approximately 5:30 p.m. The complainant contended that the Election Compliance Audit Committee is a local board, subject to the open meeting requirements in the *Municipal Act, 2001*, and that this private deliberation was contrary to the Act.
- 2 The Clerk confirmed that the Election Compliance Audit Committee met at 5:30 p.m. on July 15, 2015 to deliberate in private about applications that were before the committee. She acknowledged that the public was not allowed to attend and was not provided notice of the deliberations. In addition, formal meeting procedures were not followed; there was no resolution to proceed in camera and no minutes were taken.
- 3 However, the City Clerk and City Solicitor assert that the Election Compliance Audit Committee is not a “committee” or “local board” under the *Municipal Act, 2001*, and that it therefore is not subject to the Act’s open meeting requirements. They acknowledged that, if the Election Compliance Audit Committee is subject to the Act’s open meeting requirements, the subject matters discussed by the committee on July 15, 2015 would not have fallen within any of the Act’s closed meeting exceptions.

## Ombudsman jurisdiction

- 4 Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality or local board has properly closed a meeting to the public. Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities and local boards that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the City of Hamilton and the Election Compliance Audit Committee.

- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the local board's governing procedures have been observed.

## **Investigative process**

- 8 On January 11, 2016, we advised council for the City of Hamilton of our intent to investigate this complaint.
- 9 Members of the Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the Election Compliance Audit Committee's procedure, the *Municipal Act, 2001*, and the *Municipal Elections Act*. They also reviewed the committee's Terms of Reference, materials related to the applications under consideration by the committee, and submissions provided by the city and the committee.
- 10 In addition, OMLET staff reviewed the meeting procedures of selected compliance audit committees throughout the province, including those in the Cities of Toronto, Ottawa, Brampton, Markham, Greater Sudbury and Kawartha Lakes, as well as the Waterloo and Niagara regions. In response to submissions provided by the City of Hamilton, we also reviewed the procedures of the compliance audit committee in the City of Guelph and the joint compliance audit committee for the Towns of Aurora, East Gwillimbury, et al.
- 11 In the course of our investigation, staff spoke with Hamilton's Clerk, Deputy Clerk, City Solicitor, and Solicitor. At the City of Hamilton's request, OMLET staff and Ombudsman legal counsel also met with the City Solicitor, Solicitor, and Clerk to discuss the city's comments on a preliminary version of this report.
- 12 We received full co-operation in this matter.

## **The *Municipal Elections Act* and compliance audit committees**

### Creation and structure

- 13 Section 88.37(1) of the *Municipal Elections Act* (the *MEA*) requires that a municipal council establish a compliance audit committee before October 1

of an election year. The committee must have between three and seven members, none of whom can be an employee of the municipality, council member, or candidate in the election for which the committee is established.<sup>1</sup>

- 14 Section 88.37(6) states that the clerk of the municipality “shall establish administrative practices and procedures for the committee and shall carry out any other duties required under this Act to implement the committee’s decisions”. Under section 88.37(7), council is responsible for funding the committee’s operations and activities.

### Function of the Committee

- 15 Any elector who: (i) is entitled to vote in an election and (ii) believes on reasonable grounds that a candidate has contravened a provision of the *MEA* may apply to a municipality’s compliance audit committee for an audit of the candidate’s election campaign finances.<sup>2</sup> The committee must consider the elector’s application within 30 days and decide whether it should be granted or rejected.<sup>3</sup> The decision of the committee may be appealed to the Ontario Court of Justice, and the court may make any decision the committee could have made.<sup>4</sup>
- 16 If the application is granted, the committee must appoint an auditor to conduct a compliance audit of the candidate’s election campaign finances.<sup>5</sup> If the auditor’s report concludes that the candidate appears to have contravened a provision of the *MEA*, the committee may commence a legal proceeding against the candidate for the apparent contravention.<sup>6</sup>

### Hamilton’s Election Compliance Audit Committee

- 17 Hamilton’s Election Compliance Audit Committee consists of four members of the public with relevant expertise and experience. The members were selected by the city’s Selection Committee and appointed by city council in June 2014.

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<sup>1</sup> *Municipal Elections Act, 1996*, SO 1996 c 32, s. 88.37(2).

<sup>2</sup> *Ibid* at s. 88.33(1).

<sup>3</sup> *Ibid* at s. 88.33(7).

<sup>4</sup> *Ibid* at s. 88.33(9).

<sup>5</sup> *Ibid* at s. 88.33(10) and (11).

<sup>6</sup> *Ibid* at s. 88.33(17).

18 The committee operates according to its own procedures, which are set out in a documented entitled *Procedure for the Election Compliance Audit Committee*. These procedures were drafted by the Clerk's office and received by the committee. According to these procedures, the committee adheres to the following process when reviewing an application:

- The Clerk receives an application under the *MEA* from an elector;
- The Clerk calls a meeting of the committee and provides notice on the City of Hamilton website committee meeting calendar (s.6.1). The Clerk also provides notice to the applicant and the candidate of the time and place of the meeting (s.6.2);
- The Clerk creates an agenda, which includes a copy of the application, the candidate's financial statements, and any written submissions (s.6.3). This agenda is made available to the public (s.6.4);
- The meeting of the Election Compliance Audit Committee is conducted like a quasi-judicial hearing (s.8). The meeting is open to the public. The Clerk must prepare minutes of each meeting of the committee (s.14.1). The applicant and candidate are each given an opportunity to make submissions and the committee may ask questions. Once the applicant and candidate have addressed the committee, each committee member is given the opportunity to speak;
- In some cases, there is clear consensus and the committee issues a decision right away (s.9.3). In other cases, the committee retires to deliberate before rendering its decision (s.8.6(4)). In either case, the committee must provide written reasons for the decision (s.9.2-9.3); and
- The decision of the committee is made public through the city's website. In addition, the decision is individually sent to the applicant, the candidate, and other individuals who provide their contact information to the Clerk at the hearing (s.9.4).

19 Section 4.5 of the committee's procedure further specifies that:

The Committee shall conduct its meetings in accordance with its Procedure, the Council Procedural By-law and the *Statutory Powers Procedure Act*, with modifications as necessary.

20 When asked what this section was intended to accomplish, the Clerk said this section was included to allow for basic procedural matters that were not covered in the compliance audit committee procedure or the *Statutory Powers Procedure Act* to be relied on if necessary without making the

committee's procedures too lengthy. The Clerk advised our Office that the procedure could be amended to provide specific information about what portions of the council's procedure by-law and/or the *Statutory Powers Procedure Act* are applicable to the committee.

## **July 15, 2015 meeting of the Election Compliance Audit Committee**

- 21 On July 15, 2015 at approximately 5:30 p.m., Hamilton's Election Compliance Audit Committee met to deliberate on various applications before the committee. The committee met in Room 140 of City Hall, a room typically used for staff meetings. Because this was intended to be a private "deliberation" of the committee, notice was not provided to the public, no agenda was created, and no minutes were kept.
- 22 Prior to July 15, the committee met on July 13, 2015, and received submissions from each applicant and candidate regarding the pending applications. This meeting was open to the public, notice was provided on the city's website, and minutes were taken. At the meeting on July 13, the meeting minutes indicate that the committee was reserving its decisions for a later date.

### The Committee's discussion

- 23 The Clerk indicated that during the July 15 deliberation, the committee reviewed eight applications about which it had received submissions on July 13. The Clerk advised that the majority of the committee's time was spent reviewing financial paperwork and the submissions of the parties. As the committee reviewed these documents, the members periodically discussed points raised in a party's submission and came to a decision on that particular issue. City staff members provided administrative support recording these decisions and formatting them into written decisions.
- 24 While legal staff from the city was present during the deliberation, the Clerk advised that no legal advice was provided to the committee by the legal staff. When our Office spoke jointly with Hamilton's Clerk, Deputy Clerk, and legal staff about the committee's meeting, each agreed that the discussion did not fit within any of the Act's closed meeting exceptions.
- 25 The Clerk believes that the *deliberation concluded at approximately 8:30 p.m.*



## Analysis

- 26 Section 239(1) of the *Municipal Act* states that “[e]xcept as provided in this section, all meetings shall be open to the public”. The Act defines a “meeting” as:

[a]ny regular, special or other meeting of a council, of a local board or of a committee of either of them.<sup>7</sup>

- 27 Section 1(1) of the Act broadly defines a “local board” as:

a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority. [emphasis added]

- 28 For the purposes of section 238 and 239, police services boards and public library boards are also excluded from the definition of “local board”. However, no such exclusion exists for compliance audit committees. It is therefore necessary to determine if Hamilton’s Election Compliance Audit Committee fits within the Act’s definition of a “local board”.

### “Local board” criteria

- 29 In our Office’s 2014 letter to the City of Elliot Lake<sup>8</sup>, we identified four criteria which represent the different elements that have been recognized in case law to determine if an entity is a “local board”:

1. the entity must be carrying on the “affairs of the municipality” (as set out in the definition in section 1);
2. a direct link with the municipality must be found (either by way of legislation or authority from the municipality);
3. there must be a connection to or control by the municipality; and
4. there must be an element of autonomy.<sup>9</sup>

<sup>7</sup> *Municipal Act, 2001*, SO 2001, c 25, s. 238(1).

<sup>8</sup> Letter from Ombudsman of Ontario to City of Elliott Lake (12 June 2014) at 4, online: <<https://www.ombudsman.on.ca/Files/sitemedial/Documents/Elliott-Lake---June-2014.pdf>>.

- 30 Although not specifically identified as a “judicial test”, these criteria represent a summary of the different factors courts have considered when determining whether an entity is a “local board” for the purpose of various acts.

**1. The entity must be carrying on the “affairs of the municipality” (as set out in the definition in section 1)**

- 31 A number of reported cases have considered whether certain bodies carry on the affairs or purposes of a municipality. In *Toronto & Region Conservation Authority v Ontario (Minister of Finance)*<sup>10</sup>, the court was asked to determine whether a conservation authority fell within the definition of a “local board” for the purposes of the *Retail Sales Tax Act*. Although not identical to the *Municipal Act*’s definition of the term, both look to whether an organization is exercising powers respecting the “affairs or purposes” of a municipality.
- 32 In *Toronto & Region Conservation Authority*, the court determined that the conservation authority was not a local board because it was not conducting the affairs or purposes of a municipality. The court noted that the conservation authority was an independent body, created by the provincial government and responsible to the Minister of Natural Resources; it required the approval of the Minister of Natural Resources before proceeding with a project. In addition, the conservation authority was not bound by municipal official plans.<sup>11</sup> These factors led the court to conclude that the conservation authority was carrying out provincial, rather than municipal, purposes.
- 33 In *St. Lawrence Power*, the court determined that a private hydro corporation operating for profit was not a local board carrying out the affairs of the municipality under the *Retail Sales Tax Act*.<sup>12</sup> The court noted that local boards:

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<sup>9</sup> Rick O’Connor, municipal lawyer and author of several texts on municipal law, noted that these four criteria are drawn from the case law, including: *City of Hamilton and Hamilton Harbour Commissioners et al*, [1984] 48 OR (2d) 757 at 11; *Westfall v Eedy*, [1991] OJ No 2125 at para 23; *Mangano v Moscoe*, [1991] OJ No 1257 at 4; *Toronto and Region Conservation Authority v Ontario (Minister of Finance)*, [1999] OJ No 4349.

<sup>10</sup> [1999] OJ No 4349.

<sup>11</sup> *Ibid* at para 16 and 20.

<sup>12</sup> *St. Lawrence Power Co v Ontario (Minister of Revenue)*, 1978 CarswellOnt 583 (Sup Ct Ont).

are those normally existing as municipally established for the governing and regulating of civic affairs with a view to providing certain services for the municipality.<sup>13</sup> [emphasis added]

- 34 The court determined that the private hydro corporation had an “object of carrying on a commercial operation for the financial benefit of its shareholders” and therefore was not a local board. It had a private, rather than public municipal, purpose.
- 35 In this case, the Election Compliance Audit Committee considers applications from eligible electors seeking a compliance audit of a municipal candidate’s campaign finances. It is also responsible for reviewing auditor’s reports and determining what further action, if any, the committee will take with respect to complaints about the financial affairs of candidates in municipal elections. Although mandated by provincial legislation, compliance audit committees are established by municipal councils at the local level. Unlike the conservation authorities considered in *Toronto & Region Conservation Authority*, the committee is not responsible to the provincial government and does not require provincial approval before taking action. Rather, it is subject to the procedures that are drafted at the municipal level by Hamilton’s Clerk. Further, the committee is “governing and regulating...civic affairs with a view to providing certain services for the municipality” (i.e. municipal elections), as required by the court in *St. Lawrence Power*; it is not an entity carried on for private purposes. As a result, Hamilton’s Election Compliance Audit Committee is carrying on the affairs of the municipality.

**2. A direct link with the municipality must be found (either by way of legislation or authority from the municipality)**

- 36 Section 81.1(1) of the *MEA* requires that a municipal council establish a compliance audit committee before October 1 of an election year. Hamilton’s Selection Committee recommended the members for the committee, and council appointed the recommended members. The city’s Clerk, an officer of the municipality under the *Municipal Act*, drafted the committee’s Terms of Reference and provides ongoing administrative support to the committee. These factors indicate that there is a direct link between the Election Compliance Audit Committee and the City of Hamilton.

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<sup>13</sup> *Ibid* at para 10.

### **3. There must be a connection to or control by the municipality**

- 37 In *Toronto & Region Conservation Authority*, the court said that in order to be considered a local board, a body “must be connected to, or be controlled by, a municipality or municipalities”.<sup>14</sup> In that instance, the factors leading the court to conclude that the conservation authority was not subject to municipal control were the mixture of councillors and others on the board, as well as lack of control over the conservation authority’s budget.
- 38 In its communications with our Office, Hamilton argued that amendments to the *Municipal Elections Act* in 2009 mean that the city no longer has a connection to or control over its compliance audit committee. Prior to the amendments, council itself could decide whether to grant or deny applications seeking a compliance audit of a candidate’s election campaign finances. The Act allowed council to delegate these powers to a committee, and council members were allowed to sit on the committee. Following the Act’s amendments in 2009, this structure changed. Municipalities are now required to establish a separate compliance audit committee with between three and seven members, none of whom can be an employee of the municipality, council member, or candidate in the election for which the committee is established.<sup>15</sup>
- 39 While Hamilton’s compliance audit committee has a greater degree of independence from the city than before the 2009 amendments, it nonetheless remains connected to and controlled by the municipality. As previously stated, Hamilton’s Selection Committee recommended the members for the committee, and council appointed the recommended members. The committee posts its agendas, minutes, and decisions on the City of Hamilton’s website and holds its meetings in the municipal offices. The City Clerk established the committee’s administrative practices and procedures and the city pays all costs related to the committee’s operation and activities.<sup>16</sup> While the members of the Election Compliance Audit Committee are not councillors, the city nonetheless has a connection to and a degree of control over the operation of the committee.

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<sup>14</sup> *Toronto and Region Conservation Authority*, *supra* note 10 at para 15.

<sup>15</sup> *Municipal Elections Act, 1996*, SO 1996 c 32, s. 88.37(1) and (2).

<sup>16</sup> *Ibid* at s. 88.37(6 and 7).

#### **4. There must be an element of autonomy**

- 40 In the case law, this factor is relied on to differentiate an advisory committee without decision-making functions from an entity with some level of independent authority.<sup>17</sup> The Election Compliance Audit Committee has independent authority to make decisions regarding the matters before it. These decisions are not subject to review or approval by Hamilton's council. This indicates that the committee is exercising independent authority and decision-making power.
- 41 The Election Compliance Audit Committee satisfies the four criteria of a local board and falls within the *Municipal Act's* open meeting requirements.

#### Practices of other compliance audit committees

- 42 We also conducted research into the meeting practices of compliance audit committees throughout the province. Many compliance audit committees conduct their meetings and deliberations in accordance with the *Municipal Act's* open meeting requirements. For instance, procedures for compliance audit committees in the Cities of Toronto, Ottawa, Brampton, Markham, Greater Sudbury and Kawartha Lakes specify that their meetings are subject to the Act's open meeting requirements. In addition, six municipalities in the Waterloo area and 13 municipalities in the Niagara area make the same provision for their joint compliance audit committees. While these committees recognize that they are subject to the *Municipal Act's* open meeting requirements, that does not mean that all deliberations must occur in public. When a committee's discussion falls within a closed meeting exception – for instance, because the committee is obtaining legal advice – the committee is entitled to proceed in camera in accordance with the Act.
- 43 While there are many compliance audit committees that conduct their deliberations in accordance with the *Municipal Act's* open meeting requirements, the practice is not universal. During the course of the investigation, the City of Hamilton referred our Office to two compliance audit committees with procedures that allow the committee to “reserve” decisions following a hearing if further deliberation is required. Although the procedures do not explicitly state that these deliberations will occur in

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<sup>17</sup> *Mangano v Moscoe*, [1991] OJ 1257 at 4.

private, courts and administrative tribunals commonly equate reserving a decision with private deliberation.<sup>18</sup>

- 44 With 444 municipalities in Ontario that must each establish a compliance audit committee, there are likely other compliance audit committees with procedures that allow private deliberation either explicitly or by implication. However, the fact that some compliance audit committees may not comply with the Act's open meeting requirements does not change those requirements. Further, it is clear that numerous compliance audit committees have developed methods for complying with the Act's requirements, even in the context of deliberation amongst committee members.

### Practices of analogous committees

- 45 Our Office is not aware of any other reports where a closed meeting investigator has considered whether a compliance audit committee is subject to the *Municipal Act's* open meeting requirements. However, several investigators have determined that a similar entity – a committee of adjustment – comes within the Act's open meeting requirements.
- 46 Under section 44(1) of the *Planning Act*, municipalities may pass a by-law appointing a committee of adjustment (sometimes referred to by other names, such as a minor variance committee) for the municipality. The Act empowers the committee to make various decisions and to grant minor variances.<sup>19</sup> The Act prescribes procedural requirements for the committee, including the requirement to hold public hearings, to provide notice of hearings, and to provide written decisions with reasons.<sup>20</sup> Decisions of the committee may be appealed to the Ontario Municipal Board.<sup>21</sup> However, there is one major difference between a committee of adjustment and a compliance audit committee; section 45(6) of the *Planning Act* specifically states that:

[t]he hearing of every application shall be held in public, and the committee shall hear the applicant and every other person who desires to be heard in favour of or against the application, and the committee may adjourn the hearing or reserve its decision.

<sup>18</sup> For instance, *Decision no. 90/081*, 2008 ONWSIAT 2195, online: <<http://canlii.ca/t/21wrr>>.

<sup>19</sup> *Planning Act*, RSO 1990, c P.13, s. 45(2-3).

<sup>20</sup> *Ibid* at s. 45(5-6) and (8).

<sup>21</sup> *Ibid* at s. 45(12).

47 In a 2009 report regarding Vaughan’s Committee of Adjustment, Local Authority Services (LAS) determined that the committee was a local board for the purposes of section 238 and 239 of the *Municipal Act*.<sup>22</sup> Our Office reached the same conclusion in a letter regarding the Minor Variance Committee for the Township of Russell.<sup>23</sup> In addition, the closed meeting investigator for the City of Cornwall determined that a committee of adjustment is subject to the Act’s open meeting requirements. After reaching this conclusion, he noted that:

such a committee has the authority – if it chooses to do so – to reserve and deliberate on a decision in a meeting closed to the public under the provisions of the *Planning Act*.<sup>24</sup>

48 This conclusion flowed from the closed meeting exception in section 239(2)(g) of the *Municipal Act*, which allows a meeting to be closed to the public if the subject matter being considered is “a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act”. According to the report, the interaction of the *Planning Act* and the *Municipal Act* allows committees of adjustment to reserve and deliberate on a decision in a meeting closed to the public. In contrast, LAS’s 2009 report regarding Vaughan’s Committee of Adjustment reached a different conclusion, noting that section 45(6) of the *Planning Act* did not grant the committee “specific, express authority to hold closed meetings to deliberate its decisions”.<sup>25</sup> As a result, LAS determined that the committee had improperly deliberated in private.

49 It is outside the scope of this report to determine whether committees of adjustment may deliberate in private under the *Municipal Act*. However, in the case of compliance audit committees, there are no provisions in the *Municipal Elections Act* that permit the committees to reserve a decision or to deliberate in private. If parliament wished to grant this power to compliance audit committees, it could have done so expressly.

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<sup>22</sup> Local Authority Services, *Report to the Committee of Adjustment and the Council of the City of Vaughan* (17 March 2009).

<sup>23</sup> Letter from Ombudsman of Ontario to Township of Russell (2 September 2011).

<sup>24</sup> Stephen Fournier, *Report: Closed Meeting Investigation* (10 December 2013) at pg 11.

<sup>25</sup> Local Authority Services, *Report to the Committee of Adjustment and the Council of the City of Vaughan* (17 March 2009) at 4.

## Arguments raised by the City of Hamilton and the Election Compliance Audit Committee

- 50 In the course of our investigation, the Clerk for the City of Hamilton provided our Office with submissions explaining why, in the city's opinion, compliance audit committees are not local boards and not subject to the *Municipal Act's* open meeting requirements. The Clerk advised our Office that the Clerk's office worked with legal staff to prepare the document.
- 51 After reviewing a preliminary version of this report, the Clerk provided additional submissions to our Office. At the City of Hamilton's request, OMLET and legal staff met with Hamilton's City Solicitor, Solicitor, and Clerk to discuss the city's comments on the preliminary report. The Election Compliance Audit Committee was also given the opportunity to review a preliminary version of this report and provided separate submissions to our Office.
- 52 Through its submissions and discussion, the City of Hamilton argued that based on the four criteria applied in our report, compliance audit committees are not local boards. It also believes that the four criteria we applied are not instructive and instead proposed its own "series of inquiries", including:
- Does the entity carry on the "affairs of the municipality"? ;
  - How does the entity function? Is it an administrative tribunal?;
  - Does it have autonomous authority to make procedure, independent from Council and the *Municipal Act*?; and
  - Does it make a decision that is appealable only to court or another entity but not to Council or any local board?
- 53 In addition, the city asserted that the procedures for the committee allow it to deliberate in private, and that the procedures for other compliance audit committees allow the committees to reserve decisions when further deliberation is required. Further, the city contended that the committee's deliberations may not meet the definition of "meeting" under the *Municipal Act* and therefore may not need to be open to the public.
- 54 The Election Compliance Audit Committee also asserted that it is not a local board of the municipality and that it is not carrying on the "affairs of the municipality." Rather, the committee said it addresses "public affairs" at the request of a citizen. It also argued that while there are links for practical administrative purposes, there is no substantive control by or connection to the City of Hamilton. The committee said it has complete autonomy from the city and that the city has no input on the committee's decisions. It feels that



its ability to establish its own procedures support this assertion. The committee also indicated that its members receive no compensation, and therefore the members have no obligation to the city. In addition, the committee said that, by statute, its decisions can be appealed to court; it indicated that statutory appeal rights do not exist for decisions of local boards.

55 I have considered the submissions of the city and the committee and while I understand the committee's expressed need to be able to deliberate in private, I cannot find that the open meetings provisions of the *Municipal Act* do not apply in this case. When the criteria considered by the courts in the context of analogous cases are applied, it is clear that compliance audit committees are local boards. The lack of committee member compensation and the existence of statutory appeal rights are not factors that courts have considered when determining whether a body is a local board. In addition, section 238(2) of the *Municipal Act* requires all local boards to adopt their own procedure by-law; accordingly, the committee's ability to establish its own procedures does not mean it cannot be a local board. Although there are some similarities between the series of enquiries proposed by the city and the criteria considered by courts, the enquiries proposed by the city are not supported by existing jurisprudence.

56 Further, the committee's private deliberations clearly fall within the Act's definition of "meeting". Section 238(1) of the *Municipal Act* defines a "meeting" as "any regular, special or other meeting of a council, of a local board or of a committee of either of them". This definition is circular and not particularly helpful in determining whether a meeting has actually occurred. In a 2008 report regarding closed meetings in the City of Greater Sudbury, our Office developed the following definition of "meeting" to assist in the interpretation of the definition contained in the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or the purpose of doing the groundwork necessary to exercise that power or authority.<sup>26</sup>

57 At the deliberation session on July 15, 2015, the committee discussed applications that were before the committee and decided whether to grant

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<sup>26</sup> Ombudsman of Ontario, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 2008) at para 92, online: <[http://www.ombudsman.on.ca/Files/sitemedial/Documents/Resources/Reports/Municipal/SudburyReportEng2\\_2.pdf](http://www.ombudsman.on.ca/Files/sitemedial/Documents/Resources/Reports/Municipal/SudburyReportEng2_2.pdf)>.

or deny those applications. The members were exercising the power or authority of the committee. This is clearly the type of decision-making intended to fall within the Act's definition of meeting.

- 58 The city also submits that the ability for tribunals to deliberate in private is protected at common law. It asserts that the court in *Lancaster v Compliance Audit Committee et al.*<sup>27</sup> established that compliance audit committees are administrative tribunals, and that numerous other cases have determined that tribunals are entitled to retire to deliberate pursuant to the common law principle of deliberative secrecy. The City notes that this principle is crucial to ensuring that judicial and quasi-judicial processes are conducted fairly and referred our Office to various cases that consider this principle. During its meeting with our Office, the city suggested that given the importance of deliberative secrecy to the proper functioning of tribunals, our Office should depart from the established interpretation of the open meeting requirements and, in effect, read in a new exception to the *Municipal Act*. The city envisioned that this exception would allow any administrative tribunal that otherwise falls within the Act's open meeting requirements to deliberate in camera.
- 59 The committee also contended that the ability to privately deliberate is important in carrying out its functions. It indicated that it needs to engage in confidential discussions with other committee members to reach an informed decision. In addition, the committee emphasized that its hearings are open to the public and that its decisions are recorded in writing.
- 60 In the context of provincial administrative bodies, our Office has recognized and respected the purpose of deliberative secrecy. However, clear statutory language overrides common law principles.<sup>28</sup> As compliance audit committees fall within the Act's definition of a "local board", the statute displaces the common law principle of deliberative secrecy and requires that compliance audit committees comply with the Act's open meeting provisions. The city's and committee's concerns about the practical difficulties of deliberating, reaching consensus, and producing a written decision in open session are understandable. However, compliance audit committees in other municipalities have overcome these difficulties and restrict closed session discussions to those permitted under the *Municipal*

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<sup>27</sup> 2013 ONSC 7631 at para 36, online: <<http://canlii.ca/t/g2b30>>.

<sup>28</sup> For example, *Knight v Indian Head School Division No. 19*, [1990] 1 SCR 653 at para 41 and *Horsefield v Ontario (Registrar of Motor Vehicles)*, [1999] OJ No 967 (ONCA) at para 59 and 65.

*Act*. Similarly, municipal councils sitting as administrative decision-makers on various issues routinely deliberate in open session.<sup>29</sup>

- 61 When acting as closed meeting investigator, our role is to apply the *Municipal Act* as it is written. The Act does not contain a closed meeting exception for the deliberation of administrative tribunals and we cannot read this exception into the Act's enumerated exceptions. The Legislature, not the Ombudsman, is the appropriate mechanism for achieving this statutory change.
- 62 The Ministry of Municipal Affairs and Housing is currently conducting a legislation review that includes consideration of the *Municipal Act*. The city made submissions about this legislation, recommending that the Ministry amend the Act's open meeting requirements as follows:

Section 238

- Clarify the definitions to ensure that meetings of administrative tribunals appointed by Council (e.g. committee of adjustment, election compliance audit committee) are not included.<sup>30</sup>  
[emphasis added]

- 63 In addition, the Legislature recently passed Bill 181, which amends the *Municipal Elections Act* in various ways and comes into effect on April 1, 2018. While the bill was before the Legislature's Standing Committee on Finance and Economic Affairs, the city made the following submission regarding the provisions of *Municipal Elections Act* that govern compliance audit committees:

Recognizing the function of the compliance audit committee, the [Act] should set out that: the hearing of every application shall be held in public; the committee shall hear the applicant and the candidate; and the **committee may adjourn the hearing or reserve its decision**. This is currently set out in the Planning Act with respect to the committee of adjustment.<sup>31</sup> [emphasis added]

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<sup>29</sup> For example, *Pattison Outdoor Advertising LP v City of Toronto*, 2016 ONSC 2419.

<sup>30</sup> City of Hamilton, City Council Minutes 15-023, online:

<<http://www2.hamilton.ca/CityDepartments/CorporateServices/Clerks/AgendaMinutes/MinutesReports/Council/2015/Oct28CouncilMinutes15023.pdf>>; City of Hamilton, Appendix "A" to Report LS15030, online: <<http://hamilton.siretechnologies.com/sirepub/cache/2/5zw0h52z3waoephc3dke4w44/9729201142016114551754.PDF>>.

<sup>31</sup> Letter from the City of Hamilton (Tony Fallis, Manager of Elections/Print & Mail) to the Standing Committee on Finance and Economic Affairs (3 May 2016).

- 64 On May 19, 2016, the Standing Committee completed its clause-by-clause review of the Act. The committee did not address this submission, and the amended *Municipal Elections Act* does not provide compliance audit committees with the powers requested by the city.

## Opinion

- 65 The Election Compliance Audit Committee for the City of Hamilton falls within the *Municipal Act's* definition of a "local board" and is subject to the Act's open meeting requirements. The committee contravened the Act on July 15, 2015, when it met in private to deliberate on various applications that were before the committee. Notice of the meeting was not provided, no procedure was followed to close the meeting to the public, and even if this procedure had been followed, the committee's discussion did not fall within any of the Act's closed meeting exceptions.

## Recommendations

- 66 I make the following recommendations to assist the city in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

### Recommendation 1

The City of Hamilton should formally recognize that the Election Compliance Audit Committee is a local board subject to the open meeting requirements of the *Municipal Act, 2001*.

### Recommendation 2

All members of the Election Compliance Audit Committee for the City of Hamilton should be vigilant in adhering to their individual and collective obligation to ensure that the committee complies with the open meeting requirements of the *Municipal Act, 2001* and its own procedures.

### Recommendation 3

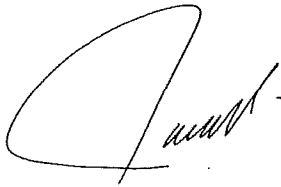
The Election Compliance Audit Committee should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements. The committee's procedure should be amended to provide that the committee will only proceed in camera for matters that fall within the statutory closed meeting exceptions.

#### **Recommendation 4**

The Election Compliance Audit Committee should amend its procedure to clearly specify which portions of the council's procedure by-law and/r the *Statutory Powers Procedures Act* are applicable to the committee.

### **Report**

- 67 As previously noted, council for the City of Hamilton and the Election Compliance Audit Committee were given the opportunity to review a preliminary version of this report and provide comments. All comments received were considered in the preparation of this final report.
- 68 My report should be shared with the Election Compliance Audit Committee and Council for the City of Hamilton. The report should be made available to the public as soon as possible, and no later than the next council and committee meeting.



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**Paul Dubé**  
Ontario Ombudsman

## 3.1 (b)

### August 12, 2016 City of Hamilton Council meeting

#### 10.1 Ombudsman's Recommendation Report (CL16007(b)/LS16013(b)) (City Wide)

##### (Farr/Whitehead)

WHEREAS, the Courts have clearly recognized the right of administrative tribunals to deliberate privately;

WHEREAS, it is important for administrative tribunals, such as the Elections Compliance Audit Committee, to deliberate privately in order to render a fair, well-reasoned and thoughtful decision; and,

WHEREAS, the City of Hamilton believes the Elections Compliance Audit Committee did nothing wrong when it deliberated privately, following the public hearing;

THEREFORE BE IT RESOLVED:

That staff be directed to seek a judicial review of the matter, and engage with the Province of Ontario to pursue legislative amendments, if necessary, to protect the right of the Election Compliance Audit Committee to deliberate privately, and support all of the tribunals of the City of Hamilton, specifically the Election Compliance Audit Committee, Committee of Adjustment, Hamilton Licencing Tribunal and Property Standards Committee, with the continued practice of private deliberations pending the judicial review.

**CARRIED**



Hamilton

## CITY OF HAMILTON

### APPLICATION FOR ELECTION COMPLIANCE AUDIT<sup>1</sup>

**Applicant Information:**

First Name: Vivian Last Name: Saunders

Mailing Address: 3 Frances Avenue, Stoney Creek, Ontario L8E 2Y6

E-mail Address: [REDACTED] Phone Number: [REDACTED]

Identify the address and type of property that qualifies you as an elector in Hamilton:  
as per mailing address - owner

**Requesting Compliance Audit of Election Campaign Finances of:**

Name of Candidate: Howard Rabb

Candidate for office of: Mayor  Councillor

Date of election for the office: March 21, 2016

I, the undersigned applicant:

- 1) am an elector as defined under Section 17(2) of the *Municipal Elections Act, 1996*, namely a person who:
  - (a) resides in Hamilton or is the owner or tenant of land there, or the spouse of such owner or tenant;
  - (b) is a Canadian citizen;
  - (c) is at least 18 years old; and
  - (d) is not prohibited from voting under Section 17(3)<sup>2</sup> or otherwise by law.
- 2) have reasonable grounds for believing that the candidate has contravened the *Municipal Elections Act, 1996* relating to the candidate's election campaign finances.

Which sections of the *Municipal Elections Act, 1996* relating to election campaign finances do you believe have been contravened?

As per attached Appendix

What are the reasonable grounds for your belief? (Attach supporting documentation, if any)

As per attached Appendix

I, Vivian Saunders, being an eligible elector in the City of Hamilton,

- (a) believe the facts and information submitted above to be true, and I request a compliance audit of the candidate's election campaign finances.
- (b) understand Council is entitled to recover the auditor's costs from me, as provided under section 81(15) of the *Municipal Elections Act, 1996*, to recover the auditor's costs from me, if the auditor indicates there was no apparent contravention and the Election Compliance Audit Committee finds that there were no reasonable grounds for the application.

July 27, 2016  
Date

  
Signature of Applicant

This form contains information collected and maintained specifically for the purpose of creating a record available to the general public and may be inspected by any person at the Clerk's office at a time when the office is open. (Section 88(5) of the *Municipal Elections Act, 1996*).

<sup>1</sup>Section 81(3) of the *Municipal Elections Act, 1996*:

The application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) the candidate's supplementary filing date, if any, under section 78;
- (c) the filing date for the final financial statement under section 79.1; or
- (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires.

<sup>2</sup>Section 17(3) of the *Municipal Elections Act, 1996*:

The following are prohibited from voting:

- 1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
- 2. A corporation.
- 3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
- 4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

OFFICE OF THE CITY CLERK  
JUL 27 2016  
REF'D TO \_\_\_\_\_  
REF'D TO \_\_\_\_\_  
REF'D TO \_\_\_\_\_



## OVERVIEW

Mr. Rabb submitted his Form 4 by the filing deadline but on the surface, the statements do not appear to be in keeping with the filing requirements of the MEA.

To begin with, the Income & Expense statement appears to be more in keeping with a Balance Sheet. It is next to impossible to run a campaign whereby contributions and expenses net out equally. On the surface, it appears that estimates were used and/or contributions adjusted in order to net zero excess/deficiency of income over expenses prior to any eligible refunds to the candidate for personal contributions.

As confirmed by the auditing firm:

- (a) their opinion does not include whether or not all donations of goods and services, and receipts and disbursements were included in the accounting records that they reviewed, and
- (b) Their audit does not include a determination of whether or not contributions reported include only those which may be properly retained in accordance with the MEA.

It is my belief that further explanations, additional documents (such as complete bank records) and an audit is warranted for the alleged violations. The vast majority of these violations involve deemed municipal contributions. This particular candidate seems to have received an over-abundance of direct and indirect assistance from the City via City Councillors, and City Employees.

For committee's benefit, a brief history of the candidate's employment might be helpful. Prior to announcing his candidacy, Mr. Rabb was employed by the City of Hamilton as a special assistant in one of the Ward Councillor's office. Following the municipal by-election, it appears the candidate is being retained as a political consultant for the same Councillor again. It is unclear whether this is an employment agreement or not, and whether said agreement was established after Voting Day.

The specific alleged infractions (numbered and detailed separately) fall under the following sections of the MEA:

### **Contributions**

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

### **Additional rules**

(2) Without restricting the generality of subsection (1), the following rules apply in determining whether an amount is a contribution:

1. The following amounts are contributions:

iii. if goods and services used in a person's election campaign are purchased for less than their market value, the difference between the amount paid and market value

### **Expenses**

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

### **Additional rules**

(2) Without restricting the generality of subsection (1), the following amounts are expenses:

2. The value of contributions of goods and services

### **Election campaign period**

68. (1) For the purposes of this Act, a candidate's election campaign period for an office shall be determined in accordance with the following rules:

1. The election campaign period begins on the day he or she files a nomination for the office under section 33.

2. The election campaign period ends on December 31 in the case of a regular election and 45 days after voting day in the case of a by-election.

### **Duties of candidate**

69. (1) A candidate shall ensure that,

(d) contributions of goods or services are valued;

(e) receipts are issued for every contribution and obtained for every expense;

(f) records are kept of,

(i) the receipts issued for every contribution,

(ii) the value of every contribution,

(iii) whether a contribution is in the form of money, goods or services, and

(iv) the contributor's name and address;

(g) records are kept of every expense including the receipts obtained for each expense;

(k) financial filings are made in accordance with sections 78 and 79.1;

(m) a contribution of money made or received in contravention of this Act is returned to the contributor as soon as possible after the candidate becomes aware of the contravention;

(n) a contribution not returned to the contributor under clause (m) is paid to the clerk with whom the candidate's nomination was filed;

### **Who may contribute**

70. (1) A contribution shall not be made to or accepted by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 70 (1).

#### **Only during election campaign period**

(2) A contribution shall not be made to or accepted by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 70 (2).

(3) Only the following may make contributions:

1. An individual who is normally resident in Ontario.

2. A corporation that carries on business in Ontario.

3. A trade union that holds bargaining rights for employees in Ontario.

4. Subject to subsection (5), the candidate and his or her spouse. 1996, c. 32, Sched., s. 70 (3); 1999, c. 6, s. 43 (4); 2005, c. 5, s. 46 (4).

### **Same**

(4) For greater certainty, and without limiting the generality of subsection (3), the following shall not make a contribution:

1. A federal political party registered under the Canada Elections Act (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party.

2. A provincial political party, constituency association, registered candidate or leadership contestant registered under the Election Finances Act.

3. The Crown in right of Canada or Ontario, a municipality or local board. 1996, c. 32, Sched., s. 70 (4); 2002, c. 17, Sched. D, s. 27.

### **Contributors**

(7) A contribution may be accepted only from a person or entity that is entitled to make a contribution. 1996, c. 32, Sched., s. 70 (7).

### **Expenses**

76. (1) An expense shall not be incurred by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 76 (1).

#### **Only during election campaign period**

(2) An expense shall not be incurred by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 76 (2).

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

### **Total credits**

(2) For the purposes of subsection (1), the total credits are the sum of,

(a) the candidate's contributions under section 66;

(b) any amounts of \$10 or less that were donated at fund-raising functions;

(c) interest earned on campaign accounts; and

(d) revenue from the sale of election materials. 2009, c. 33, Sched. 21, s. 8 (44).

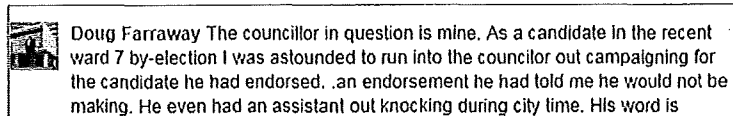
**ALLEGED VIOLATIONS:**

- 1. the candidate has not declared a contribution for services received from Councillor Terry Whitehead's personal assistant during regular business hours. Councillor Whitehead's assistant is a City of Hamilton employee. Under the circumstances, this contribution is likely deemed a municipal contribution. By the city employee contravening section 70(4), the candidate has contravened section 70(7).**

According to another candidate's recent post on Facebook, Councillor Whitehead's assistant canvassed on behalf of Mr. Rabb during regular work hours. Unless this assistant obtained a leave of absence without pay from the City of Hamilton, the time attributed to canvassing would be deemed to be municipally paid services.

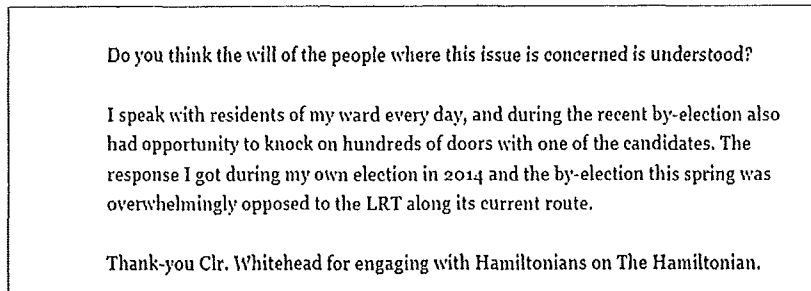
The candidate should be required to submit proof of docked pay as evidence that the municipality has not made a contribution to the candidate's campaign.

Post on Facebook by a different candidate stating violation:



- 2. the candidate has accepted municipal contributions to the campaign. Councillor Terry Whitehead canvassed door to door on behalf of the candidate. A municipal elected official contravening section 70(4), results in the candidate contravening section 70(7).**


In addition to a different candidate stating above that Councillor Whitehead was out campaigning for the candidate, Councillor Whitehead was also quoted in an article in the Hamiltonian confirming he knocked on hundreds of doors with one of the candidates



3. the candidate has accepted municipal contributions to the campaign. Councillor Terry Whitehead campaigned on behalf of the candidate during a meeting of Council in City Hall. A municipal elected official contravening section 70(4), results in the candidate contravening section 70(7).

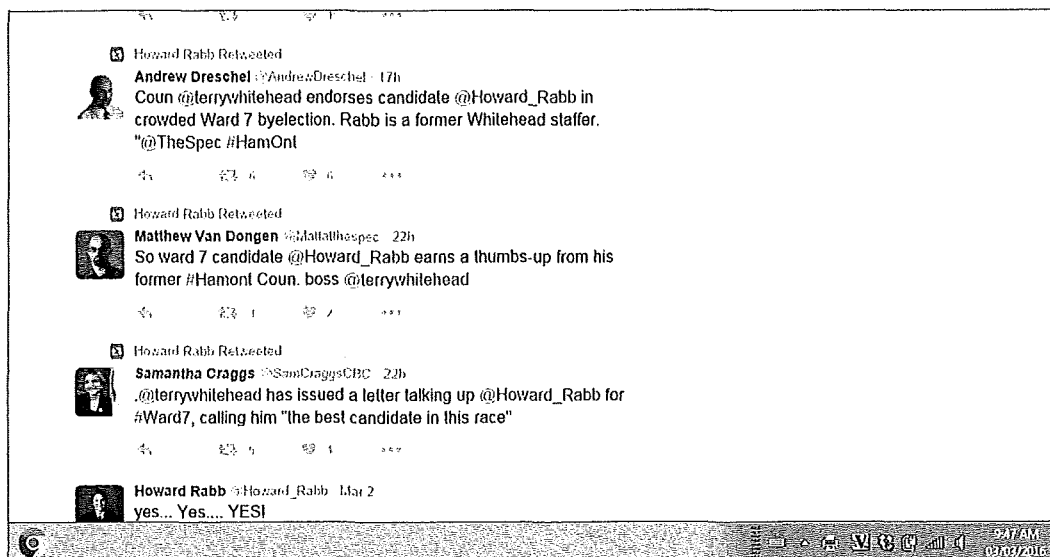
On Wednesday, March 2<sup>nd</sup>, 2016 a letter was issued by Councillor Whitehead endorsing the candidate. Lots of individuals and federal/provincial politicians have made endorsements, so on the surface, this particular endorsement might seem okay. However, in this case, the letter was handed out to the media by the Councillor at a meeting of Council *at city hall*. The letter was signed from the Ward 8 Councillor:

Sincerely,



Ward 8 Councillor  
Terry Whitehead

Various media personnel in attendance subsequently tweeted this announcement out:



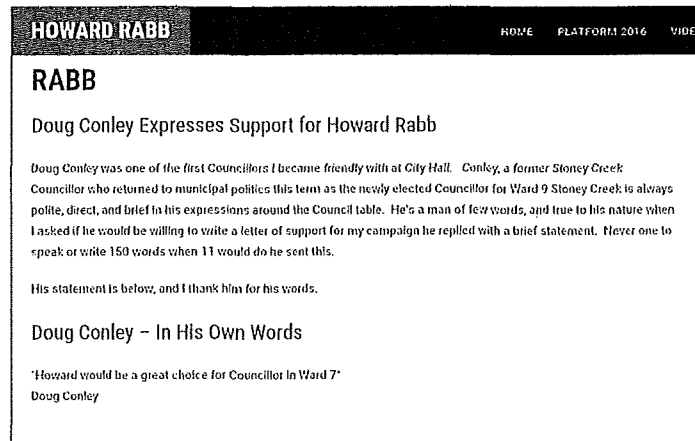
Our Municipal Elections Act clearly states municipalities are not allowed to make contributions and candidates are not allowed to accept municipal contributions. These are 2 separate regulations as to what is and what is not allowed. For clarity, our city also has published Guidelines for City Resources during an Election which state *"Based upon Section 70 (4) of the Municipal Elections Act, any use of city facilities, services, and property, and the use of city staff on paid municipal time, for election purposes would be interpreted as a contribution from the municipality and therefore a violation of the Municipal Elections Act.* The Guide also goes on to reference our Procedural ByLaw Section 7 which deals with Election Campaign Work and states: *No member of Council shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of the public.*

In this case, it seems reasonable to conclude that it is worth ordering a compliance audit to investigate whether the actions qualify as violations.

4. the candidate has accepted municipal contributions to the campaign. With respect to the endorsement letter issued by Councillor Terry Whitehead, the candidate posted the endorsement on his campaign website later that same day. Clearly, the candidate accepted the contribution from an ineligible contributor. The candidate has contravened section 70(7).

In addition to accepting municipal contributions from Councillor Whitehead, the candidate, by his own admission, actively sought municipal contributions during the campaign from at least one other councillor.

Posting on website:



Various City Councillors and a Hamilton Public School Board trustee also "liked" or made comments of support on the candidate's campaign Facebook during the by-election. Had these comments been made from personal social media accounts, they could be overlooked. It is my opinion though, when comments of support are made from municipal social media accounts, these endorsements should be scrutinized by an auditor who specializes in municipal elections issues to determine if they are municipal contributions. This type of audit, as confirmed by the Opinions of the auditing firm, is beyond the scope of the audit submitted with the candidate's financial filings.

5. the candidate has accepted municipal contributions to the campaign. On Voting Day, the candidate placed at least 5 election campaign signs on municipal property at the top of the Sherman Cut. This by-law infraction, to the best of my knowledge, was not dealt with by city employees. By the City allowing an infraction, the city has contravened section 70(4) resulting in another contravention of section 70(7) by the candidate.



6. the candidate does not appear to have included the initial nomination filing fee personally paid, prior to opening the campaign bank account, as a contribution from the candidate. This contravenes sections 66(1), 69(1)(d), (e), (f) and (k).

According to the Form 4, candidate's 4 deposits amount to \$11,000 and were made from December 17, 2015 to February 20, 2016. The additional \$100 fee paid on December 10, 2015 was not declared as a contribution.

7. the candidate does not appear to have included the 'revenue from the sale of election materials' as Income to the campaign. Some expenses declared as part of the campaign, are now being used by Howard Rabb Consulting however it does not appear that a deemed fair market value was established and shown as a contribution to the campaign by the candidate. This is an alleged contravention of section 79(2)(d).

Following the by-election, the candidate's campaign website: electhoward.ca was changed to howdrabb.com. Howard Rabb Consulting is an independent business and political consulting entity. The website, facebook account, linked in account etc contains campaign materials such as the professional photography. Unlike assets used for personal use following a campaign, The Act accommodates the accounting method that is to be used when campaign assets are subsequently used for non-personal purposes. In this case, campaign assets are being used by a business and were used without any lapse in time between the campaign and the business.

**Howard Rabb**  
 Owner at Howard Rabb Consulting  
 Hamilton, Ontario, Canada | Government Administration

**304**  
connections

Client	Howard Rabb Consulting
Previous	Juch-Tech Inc, City Of Hamilton, Cool Sounds
Education	Adler International Learning
Recommended by	2 people have recommended Howard
Websites	Company Website Personal Website

8. the candidate didn't declare all the Website Hosting Fees during the full campaign period. The filing reflects in-kind contributions for December, January, February and March. There are no in-kind contributions upto and including the end of the campaign period which was May 5, 2016. This contravenes sections 66(1), 69(1)(d), (e), (f) and (k).

9. the candidate appears to have bought publicly traded securities (Credit Union shares) with campaign funds and subsequently declared the trading fee as an expense; neither of which are eligible campaign expenses under the Act. The Act specifically states costs incurred for goods or services are eligible expenses. Candidate has violated section 67(1).

10. the candidate's Advertising expenses appear to be high. The candidate did not do any print advertising in the Hamilton Mountain News as per a review of all of their printed editions during the campaign period. To the best of my recollection, the candidate did not do any print advertising in the Hamilton Spectator nor were any radio advertisements run on the local CHML station. The candidate's advertising I believe was limited to a billboard and approximately 10 City of Hamilton Bus Shelters throughout Ward 7.

The candidate declared \$7,959.60 in Advertising over and above @ \$6,700 for brochures/flyers and signs. While I appreciate that no 2 campaigns are alike, other candidates in this by-election who did place multiple ads in the Hamilton Mountain News and/or advertised on bulletin boards, declared Advertising expenses in the range of \$1,700 to \$8,600.

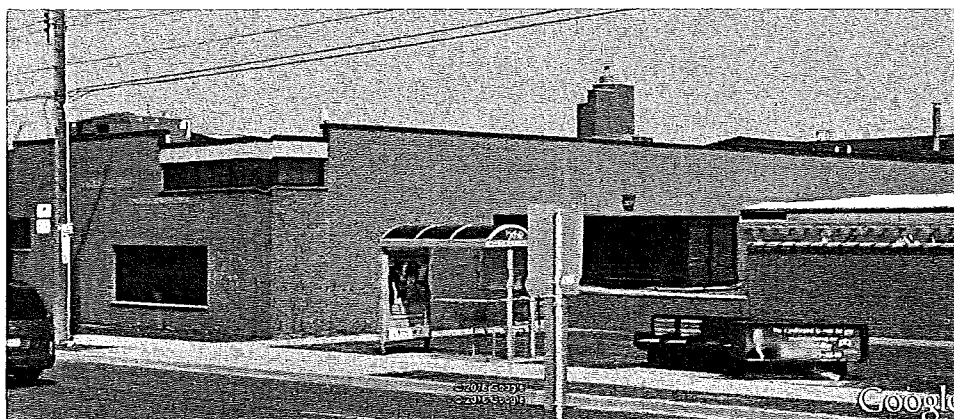
In comparison, Mr. Rabb's expenses seem high and require further explanation along with proof of receipts.

More importantly however, it is my belief a forensic auditor should make a determination as to whether advertisements placed on city property (the bus shelters) via a third party (CBC Outdoors I believe) agreement with the city of Hamilton, on property that is owned by the city, is considered a municipal contribution.

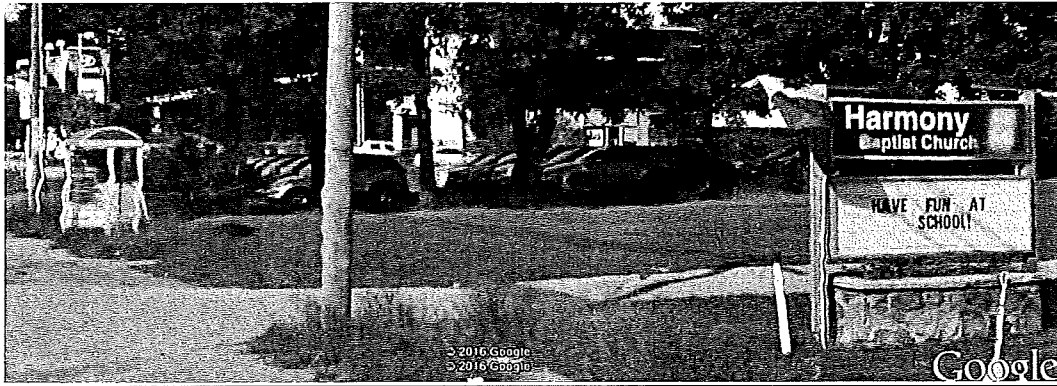
I'm also of the opinion a list of the actual sites where the bus shelters were located should be requested from the candidate. Some voting poll locations have bus shelters located on municipal property immediately outside the doors or at the parking lot entrances. Campaign materials are not allowed "at" polling stations.

It is my understanding that one such advertisement was questioned by an Election Official during polling and that Polling Manager was advised it was okay because the candidate paid to "rent" the space. In my humble opinion, whether paid or free, campaign materials are clearly not allowed on municipal property and clearly not allowed at Polling Stations, inclusive of the municipal land that surrounds the building. What's next? Allowing candidates to "rent" electronic billboards during elections from City Hall, our schools, rec centres and the churches that are used as polling locations

Pic of Entrance into Sackville Hill Senior's Rec Centre where candidate placed ad (Advance Poll Voting Location and Election Day Voting Location)



Pic of Parking Lot Entrance into Harmony Baptist Church (Election Day Voting Location) as another example of where a bus shelter is located:

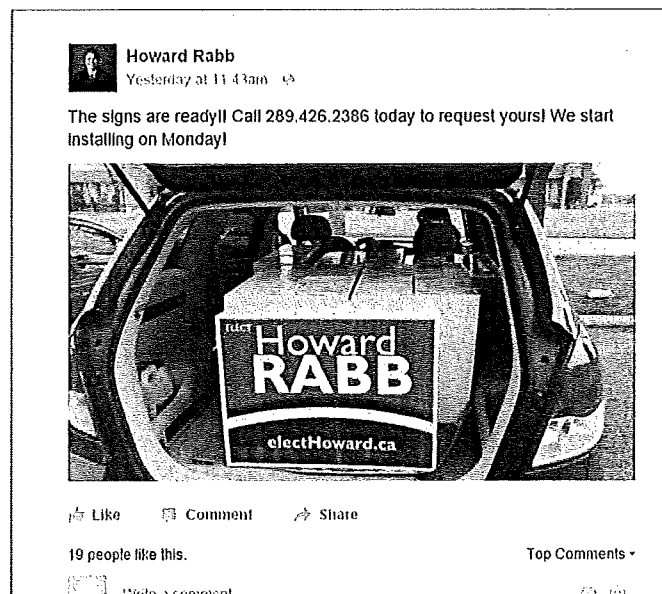


11. the candidate's Sign expenses appear to be less than fair market value and it seems likely an in-kind donation from the sign company was provided but not declared. This contravenes sections 66(1), 66(2)(1)(iii), 69(1)(d), (e), (f), (g) and (k).

Sign costs vary a great deal. The rates usually drop the more that you order and can vary depending on the time of the year. During the regular 2014 municipal elections, signs were @ \$3 each , however due to the exchange rate fluctuation signs were higher during this by-election and had increased to @ \$4.50 each for the small two colour signs. The candidates signs were three colour and fair market values appears to be @ \$3.50 to \$3.75 per sign.

The candidate appears to have purchased 10 bundles in pic at 100 signs / bundle = 1,000 signs

Declared \$3,050.80 after tax = \$2,700 before tax = \$2.70 per sign including stakes. This amount appears to be substantially below the fair market value at the time of the by-election





12. the candidate operated his campaign from his home office with personal equipment and inventory such as cell phone, furniture, computer, supplies, etc. The candidate appears to have declared the value of Money but appears to have not reported the value attributed to any of these goods as a contribution from candidate and/or the value attributed as expenses used during the campaign (excluding those listed for in-kind donations of the website hosting fees).

This contravenes sections 66(1), 67(2)(2), 69(1)(d), (e), (f) (g) and (k).

Declared Contribution from Candidate: \$11,000 (which shows as Money deposited to the campaign account since In-Kind donations for Website Hosting are listed separately):

Schedule 1 - Contributions	
Part I - Summary of Contributions	
Contribution from candidate (include the value of Inventory listed in Table 5)	+ \$ 11,000.00
Contribution from spouse	+ \$

The candidate has declared Office Expenses, Phone, and/or Internet expenses in the sum of only \$45.20 (all of which is Website Hosting). The candidate continually used a cell phone during campaign to tweet, post and record campaign videos. No expenses have been declared for the use of this equipment.

13. the candidate received a donation from the Carpenters Hamilton-Niagara Political Action Committee. As per previous documentation provided from Local 18 and submitted to Committee by candidate Maria Pearson, "the Local 18 Political Action Committee is just a sub-committee of Local 18 funded by the membership of local 18". As such, although this sub-committee receives funds from a trade union who holds bargaining rights in Ontario (which is the United Brotherhood of Carpenters & Joiners of America Local 18 Hamilton to the best of my knowledge), the sub-committee itself is not a trade union entity. It is therefore an ineligible contributor. The contravention of section 70(3) by the contributor has resulted in the candidate contravening sections 66(1),69(1)(k), (m) and (n) and 70(7)


From Proceedings on another Candidate:

ECAC July 8  
Exhibit 3

---

**Pearson, Maria**

**From:** Dan Timofejew <dan@local18.ca>  
**Sent:** June-30-15 2:39 PM  
**To:** Pearson, Maria  
**Subject:** Local 18 Political Action Committee



Good afternoon Councilor Pearson,

I would like to shed light on the Carpenter's Union structure. Basically, Local 18 is one of twelve self-supported affiliated locals of our Provincial Council (The Carpenter's District Council of Ontario) that covers the Hamilton-Halton-Niagara area. The Local 18 Political Action Committee is just a sub-committee of Local 18 funded by the membership of local 18. The campaign contributions for the past election in question only came from this local union, not any other entity related to the Council.

If you require any further information, please don't hesitate to contact me.

Regards,

*Based on this evidence, it is reasonable to conclude that the committee operates with a separate and distinct bank account from that of the trade union.*

From Candidate's Form 4:

2/24/2016	Carpenters Hamilton-Niagara Political Action Committee	1342 Stone Church Rd E Hamilton, ON L8W 2C8 44 Humberston St South	Gary Baverstock	Gary Baverstock	Cheque	Union
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*Point of Clarity: The contravention occurs if the candidate does not return an ineligible contribution "as soon as possible" after being made aware of the contravention. At this stage, (unless the candidate has subsequently returned the contribution), it appears only a forensic auditor has the experience to make a determination whether a violation has occurred. Hence, a compliance audit is warranted.*

14. Candidate's campaign period was December 10, 2015 to May 5, 2016. All campaign activity must not start before December 10, 2015 and must have ceased by May 5, 2016. On at least 8 occasions, the candidate has campaigned and is campaigning outside of the legally defined campaign period. This contravenes sections 70(2), 76(1) and 76(2)

(a) Pre-Nomination: Candidate Tweeted out message which contained a link to campaign website electhoward.ca as well as an immediate media release prior to actually filing nomination papers and receiving approval to be a candidate:

**Howard Rabb** · Howard Rabb · 10 Dec 2015

Today I will file paperwork seeking the seat for ward 7 on the #Hamont Mountain in the upcoming By-Election #YHMgov



Howard Rabb Launches Bid For Hamilton Mountain... FOR IMMEDIATE RELEASE December 10th, 2015 VP of Juch Tech and Hamilton Teleport has sights set on seat at City Hall Hamilton- Howard Rabb has spent nearly ... #electhoward.ca

(b) The candidate appears to have incurred the campaign expense of the photographer prior to filing Nomination Papers since the official campaign photograph is part of the above tweet and website.

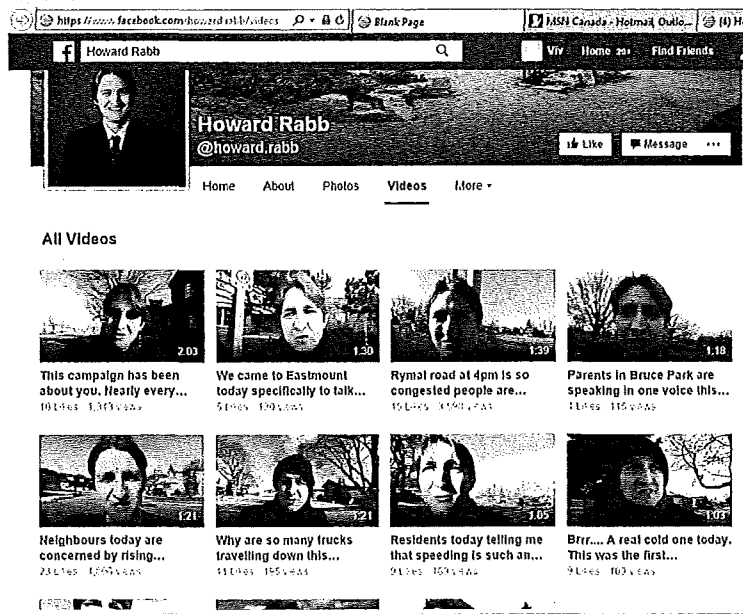
(c) Campaign Facebook and Campaign website (electhoward.ca) was still active as of May 10, 2016:



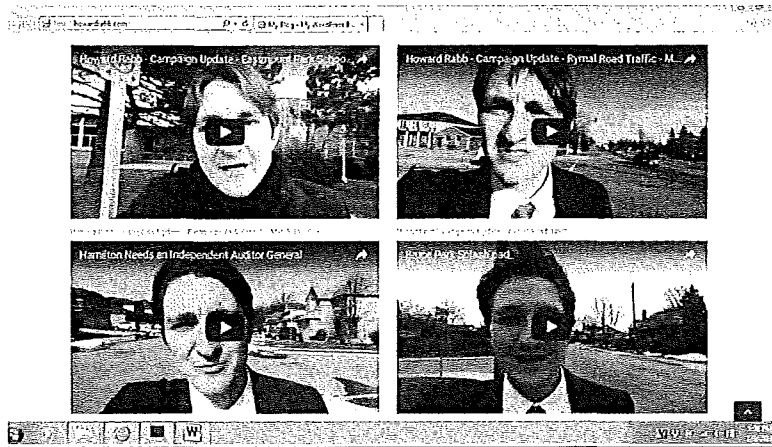
(d) Twitter Account: The candidate's twitter account was set up in September 2008. Not only are personal and campaign tweets for this by-election co-mingled; but in addition, tweets while a City of Hamilton employee during 2015, were accessible to voters and used to advertise the candidate. No separate social media account was set up. The spirit of the Act is a level playing field and a fair election. With the advent of social media accounts, candidates need to take additional measures in order to abide by the Act. Especially candidates whose social media accounts contain municipal issues, (such as Canada Post community mailboxes) positions on issues and City of Hamilton logos, while an employee of the City. A separate and distinct social media account should have been set up by the candidate during this by-election. Failing to do so, has again also led to an additional perceived contribution from the municipality. Eg:



(e) 11 Campaign videos are available on Campaign/Personal Facebook (as of July 9, 2016):



(f) 4 Campaign Update videos are available on Howard Rabb Consulting website (as of July 9, 2016):



(g) 13 Howard Rabb Campaign Videos on Youtube (still running as of July 9, 2016):



(h) Third Party Endorsements are being advertised on candidate's business website howardrabb.com as of today's date, July 22, 2016. These advertisements are campaign related and specifically speak as an endorsement to City Council although campaign period has ended. In my humble opinion, candidate is also pre-campaigning for the 2018 municipal election. In addition, since 2 of these endorsements are from current City Councillors, the municipality is also making an illegible contribution outside of an official campaign period.

Excerpt from City Guidelines:

"Guidelines for use of City Resources during the 2014 Municipal Election":

In addition to the City's code of conduct, Section 70(4) of the Municipal Elections Act specifically prohibits municipalities from contributing to election campaigns.

Based upon Section 70 (4) of the Municipal Elections Act, any use of city facilities, services, and property, and the use of city staff on paid municipal time, for election purposes would be interpreted as a contribution from the municipality and therefore a violation of the Municipal Elections Act.

**Please also use caution when using social media, twitter, Facebook, etc. that comes from a City paid site as this would also be a contravention of the Municipal Elections Act, 1996.**

If any of the above mentioned social media accounts were paid for by the City while an employee (or are being paid for/reimbursed currently while a consultant), an additional contravention has occurred.

**IN CONCLUSION:**

In total, there have been approximately 60 contraventions of the Act that stem from the 14 items presented.

I have not made these allegations lightly. They are not frivolous, vexatious or unsubstantiated.

They are deserving of your careful consideration.

We are on a slippery slope — Those in power are blatantly disregarding one of the main principles of conducting fair elections: A level playing field must be maintained.

Campaigning on city property during municipal functions should not be tolerated. – in addition to what has been outlined by this particular candidate during this by-election a candidate wore his campaign button during the Mayor's New Year's levee at city hall, handed out campaign material at the front door of City Hall, and continually used the City of Hamilton logo in his campaign cover photos. A different candidate also wore her campaign button at an event at City Hall on March 5<sup>th</sup>. These campaigning actions would not have been tolerated by other municipalities outside our city limits.

More than ever we need to establish clear boundaries on what is or isn't a municipal contribution to a candidate's campaign

Committee only needs to concur that at least 1 of the 60 contraventions are reasonable grounds to warrant an audit.

In the best interests of the public and for establishing a precedent for future municipal elections, I respectfully request you vote to grant the Request for a Compliance Audit application.

**HOWARD RABB**

*REPORT AND FINANCIAL STATEMENT - FORM 4  
MAY 05, 2016*

## INDEPENDENT AUDITOR'S REPORT

*To The City Clerk, Hamilton,*

We have audited the accompanying statement of campaign income and expenses and calculation of surplus or deficit of Howard Rabb, candidate, for the campaign period from December 10, 2015 to May 5, 2016 relating to the election held on March 21, 2016. The financial information has been prepared by the candidate in accordance with the accounting treatment prescribed by the Municipal Elections Act, 1996.

### *Candidate's Responsibility for the Financial Information*

The candidate is responsible for the preparation and fair presentation of the financial information in accordance with the accounting treatment prescribed by the Municipal Elections Act, 1996, and for such internal control as the candidate determines is necessary to enable the preparation of the financial information that is free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on this financial information based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial information is free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial information. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial information, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the candidate's preparation and fair presentation of the financial information in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the candidate's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the candidate, as well as evaluating the overall presentation of the financial information.



We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

*Basis for Qualified Opinion*

Due to the nature of the types of transactions inherent in an election campaign, it is impracticable through auditing procedures to determine that the accounting records include all donations of goods and services, and receipts and disbursements. Accordingly, our verification of these transactions was limited to ensuring that the financial information reflects the amounts recorded in the accounting records of the candidate and we were not able to determine whether any adjustments might be necessary to campaign income and expenses and surplus or deficit.

*Qualified Opinion*

In our opinion, except for the possible effects of the matter described in the Basis for Qualified Opinion paragraph, the statement of campaign income and expenses for the campaign period from December 10, 2015 to May 5, 2016 and the calculation of surplus or deficit present fairly, in all material respects, the financial performance of Howard Rabb, candidate, in accordance with the accounting treatment prescribed by the Municipal Elections Act, 1996.

*Basis of Accounting and Restriction on Distribution*

Without modifying our opinion, we draw attention to the basis of accounting, the Municipal Elections Act, 1996 does not require us to report, nor was it practical for us to determine, that contributions reported include only those which may be properly retained in accordance with the provisions of the Municipal Elections Act, 1996. This financial information, which has not been, and was not intended to be, prepared in accordance with Canadian generally accepted accounting principals is solely for the information and use of the City Clerk, Hamilton, for complying with the Municipal Elections Act, 1996. This financial information is not intended to be, and should not be, used by anyone other than the specified user or for any other purpose.

*Gilmore + Company LLP.*

Mississauga, Ontario  
May 19, 2016

Chartered Professional Accountants  
Licensed Public Accountants



Financial Statement - Auditor's Report Form 4

Municipal Elections Act, 1996 (Section 78)

Instructions:

All candidates must complete Boxes A and B. Candidates who receive contributions or incur expenses beyond the nomination fee must complete Boxes C, D, Schedule 1, and Schedule 2 as appropriate. Candidates who receive contributions or incur expenses in excess of \$10,000 must also attach an Auditor's Report.

All surplus funds (after any refund to the candidate or his or her spouse) shall be paid immediately over to the clerk who was responsible for the conduct of the election.

For the campaign period from (day candidate filed nomination) 20151210 to 20160505

- Primary filing reflecting finances to December 31 (or 45th day after voting day in a by-election)
Supplementary filing including finances after December 31 (or 45th day after voting day in a by-election)

Box A: Name of Candidate and Office

Form fields for candidate name (Rabb, Howard), office (Councillor), ward (Ward 7), municipality (Hamilton), and spending limit (\$40,005.55).

I did not accept any contributions or incur any expenses other than the nomination fee. (Complete Box A and B only)

Box B: Declaration

I, Howard Rabb, a candidate in the municipality of Hamilton, hereby declare that to the best of my knowledge and belief that these financial statements and attached supporting schedules are true and correct.

Declared before (clerk or commissioner) in the City of Hamilton on 2016/05/20. Signature of Clerk or Commissioner: A. Fells, Date Filed in the Clerk's Office: 2016/05/20

Signature of Candidate: Howard Rabb

Anthony Parker Fells, a Commissioner, etc., City of Hamilton, for the City of Hamilton. Expires September 14, 2017.

**Box C Statement of Campaign Income and Expenses****LOAN**

Name of bank or recognized lending institution \_\_\_\_\_

Amount borrowed \$ \_\_\_\_\_

**INCOME**

Total amount of all contributions (From line 1A in Schedule 1)	+ \$	<u>17,385.16</u>
Refund of nomination filing fee	+ \$	<u>100.00</u>
Sign deposit refund	+ \$	<u>          </u>
Revenue from fund-raising events not deemed a contribution (From Part III of Schedule 2)	+ \$	<u>          </u>
Interest earned by campaign bank account	+ \$	<u>          </u>
Other (provide full details)		
1. Internet Hosting - Donation in Kind from H Rabb	+ \$	<u>45.20</u>
2. Credit Union Shares Sold (Bank Fee)	+ \$	<u>25.00</u>
3. In Kind Donation - Photography	+ \$	<u>141.25</u>
<b>Total Campaign Income (Do not include loan)</b>	<b>= \$</b>	<b><u>17,696.61</u> C1</b>

**EXPENSES (Note: include the value of contributions of goods and services)****Expenses subject to spending limit**

Nomination filing fee	+ \$	<u>100.00</u>
Inventory from previous campaign used in this campaign (list details in Table 5 of Schedule 1)	+ \$	<u>          </u>
Advertising	+ \$	<u>7,959.60</u>
Brochures/flyers	+ \$	<u>3,670.54</u>
Signs (including sign deposit)	+ \$	<u>3,050.80</u>
Meetings hosted	+ \$	<u>51.71</u>
Office expenses incurred until voting day	+ \$	<u>          </u>
Phone and/or Internet expenses incurred until voting day	+ \$	<u>45.20</u>
Salaries, benefits, honoraria, professional fees incurred until voting day	+ \$	<u>          </u>
Bank charges incurred until voting day	+ \$	<u>67.61</u>
Interest charged on loan until voting day	+ \$	<u>          </u>
Other (provide full details)		
1. GOTV Live Calls	+ \$	<u>791.00</u>
2. Credit Union Shares Bought (Bank Fee)	+ \$	<u>25.00</u>
3. Photography - In Kind Donation	+ \$	<u>141.25</u>
<b>Total Expenses subject to spending limit</b>	<b>= \$</b>	<b><u>15,902.71</u> C2</b>

**Expenses not subject to spending limit**

Accounting and audit	+ \$	<u>512.00</u>
Cost of fund-raising events/activities (list details in Part IV of Schedule 2)	+ \$	<u>366.93</u>
Voting day party/appreciation notices	+ \$	<u>914.97</u>
Office expenses incurred after voting day	+ \$	<u>          </u>
Phone and/or Internet expenses incurred after voting day	+ \$	<u>          </u>
Salaries, benefits, honoraria, professional fees incurred after voting day	+ \$	<u>          </u>
Bank charges incurred after voting day	+ \$	<u>          </u>
Interest charged on loan after voting day	+ \$	<u>          </u>
Expenses related to recount	+ \$	<u>          </u>
Expenses related to controverted election	+ \$	<u>          </u>
Expenses related to compliance audit	+ \$	<u>          </u>
Expenses related to candidate's disability (provide full details)		
1. _____	+ \$	<u>          </u>
2. _____	+ \$	<u>          </u>
3. _____	+ \$	<u>          </u>
Other (provide full details)		
1. _____	+ \$	<u>          </u>
2. _____	+ \$	<u>          </u>
3. _____	+ \$	<u>          </u>
<b>Total Expenses not subject to spending limit</b>	<b>= \$</b>	<b><u>1,793.90</u> C3</b>

**Total Campaign Expenses (C2 + C3)****= \$ 17,696.61 C4**

**Box D: Calculation of Surplus or Deficit**

Excess (deficiency) of income over expenses (Income – Total Expenses) (C1 – C4)	+ \$	<u>0.00</u>	D1
Eligible deficit carried forward by the candidate from the last election	- \$	<u>          </u>	D2
<b>Total (D1 – D2)</b>	= \$	<u>          </u>	
If there is a surplus, deduct any refund of candidate's or spouse's contributions to the campaign	- \$	<u>          </u>	
Surplus (or deficit) for the campaign	= \$	<u>          </u>	D3

If line D3 shows a surplus, the amount must be paid in trust, at the time the financial statements are filed, to the municipal clerk who was responsible for the conduct of the election.

Amount of \$ \_\_\_\_\_ paid to municipal clerk in the municipality of \_\_\_\_\_.





Name (Legal and Carrying on Business As)	Full Address	President or Business Manager	Authorized Representative	Amount \$
<input checked="" type="checkbox"/> Additional information is listed on separate supplementary attachment			<b>Total</b>	<b>3,500.00</b>

**Table 3: Contributions in goods or services from individuals other than candidate or spouse**  
 (Note: must also be recorded as expenses in Box C)

Name	Full Address	Description of Goods or Services	Value \$
Joanna St Jacques	211 Glendale Ave, N Hamilton, ON L8L 7K2	Photography	141.25
<input type="checkbox"/> Additional information is listed on separate supplementary attachment			<b>Total</b>
			<b>141.25</b>







**Schedule 2 – Fundraising Events and Activities**

**Fundraising Event/Activity**

Complete a separate schedule for each event or activity held

Additional schedule(s) attached

Description of fundraising event/activity Fundraising Activity

Date of event/activity (yyyy/mm/dd) \_\_\_\_\_

**Part I – Ticket Revenue**

Admission charge (per person)

(If there are a range of ticket prices, attach complete breakdown of all ticket sales)

Number of tickets sold

+ \$ \_\_\_\_\_ 2A  
X \_\_\_\_\_ 2B

**Total Ticket Revenue (2A X 2B) (Include in Schedule 1)**

= \$ \_\_\_\_\_

**Part II – Other revenue deemed a contribution**

(provide details (e.g. revenue from goods sold in excess of fair market value))

1. \_\_\_\_\_ + \$ \_\_\_\_\_  
2. \_\_\_\_\_ + \$ \_\_\_\_\_  
3. \_\_\_\_\_ + \$ \_\_\_\_\_  
4. \_\_\_\_\_ + \$ \_\_\_\_\_  
5. \_\_\_\_\_ + \$ \_\_\_\_\_

**Total Part II Revenue (Include in Schedule 1)**

= \$ \_\_\_\_\_

**Part III – Other revenue not deemed a contribution**

(provide details (e.g. contributions of \$10 or less; market value of goods or services sold))

1. \_\_\_\_\_ + \$ \_\_\_\_\_  
2. \_\_\_\_\_ + \$ \_\_\_\_\_  
3. \_\_\_\_\_ + \$ \_\_\_\_\_  
4. \_\_\_\_\_ + \$ \_\_\_\_\_  
5. \_\_\_\_\_ + \$ \_\_\_\_\_

**Total Part III Revenue (Include in Box C)**

= \$ \_\_\_\_\_

**Part IV – Expenses related to fundraising event or activity (provide details)**

1. Ticket Printing (Event Canceled) + \$ 197.75  
2. Stamps, Paper and Envelopes for fundraising letters + \$ 169.18  
3. \_\_\_\_\_ + \$ \_\_\_\_\_  
4. \_\_\_\_\_ + \$ \_\_\_\_\_  
5. \_\_\_\_\_ + \$ \_\_\_\_\_  
6. \_\_\_\_\_ + \$ \_\_\_\_\_  
7. \_\_\_\_\_ + \$ \_\_\_\_\_  
8. \_\_\_\_\_ + \$ \_\_\_\_\_

**Total Part IV Expenses (Include in Box C)**

= \$ 366.93

**Auditor's Report***Municipal Elections Act, 1996 (Section 78)*

A candidate who has received contributions or incurred expenses in excess of \$10,000 must attach an auditor's report.

Professional Designation of Auditor

Chartered Professional Accountant, Chartered Accountant

Municipality  
MississaugaDate (yyyy/mm/dd)  
2016/05/19**Contact Information**Last Name  
MillsFirst Name  
ChrisLicence Number  
1-17979

## Address

Suite/Unit No.  
201Street No.  
2600Street Name  
Skymark AvenueCity/Town  
MississaugaProvince  
OnPostal Code  
L4W 5B2Telephone No. (including area code)  
905 602-8009 ext.2035Fax No.  
905 602-8011Email Address  
cmills@gilmoreandco.com

The report must be done in accordance with generally accepted auditing standards and must:

- set out the scope of the examination
- provide an opinion as to the completeness and accuracy of the financial statement and whether it is free of material misstatement

 Report is attached

Personal information, if any, collected on this form is obtained under the authority of sections 78 and 95 of the *Municipal Elections Act, 1996*. Under section 88 of the *Municipal Elections Act, 1996* (and despite anything in the *Municipal Freedom of Information and Protection of Privacy Act*) documents and materials filed with or prepared by the clerk or any other election official under the *Municipal Elections Act, 1996* are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open. Campaign financial statements shall also be made available by the clerk in an electronic format free of charge upon request.

Date	Vendor	Subtotal	HST	Total	Details	Paid By	ID	Notes
December	Cartika	10	1.3	11.3	Website Hosting	H Rabb	EX-25	In Kind Donation from H Rabb
January	Cartika	10	1.3	11.3	Website Hosting	H Rabb	EX-26	In Kind Donation from H Rabb
February	Cartika	10	1.3	11.3	Website Hosting	H Rabb	EX-27	In Kind Donation from H Rabb
March	Cartika	10	1.3	11.3	Website Hosting	H Rabb	EX-28	In Kind Donation from H Rabb
				<u>45.20</u>				

Table 1

Date	Amount	Donor	Address	Method	Type
2/25/2016	5	Dorothy Rosart	149 Main St West Unit 507 Hamilton, ON L8P 1H9	Paypal	Personal
1/24/2016	20.16	Matthew Cianfarani	7385 Magistrate Terrace Unit 21 Mississauga, ON L5W1W8	Paypal	Personal
2/2/2016	25	Colin Pye	38-1159 North Shore Blvd E Burlington, ON L7S 1K3	Paypal	Personal
3/3/2016	35	Kelly White	112 Frederick St Whitby, ON L1N 3T4	Cheque	Personal
2/16/2016	40	Barb Miller	704 Old Dundas Rd Dundas, ON L9H 5E3	Cheque	Personal
1/29/2016	50	Margaret Stewart	50 Governors Rd Unit 605 Dundas, ON L9H 5M3	Cheque	Personal
3/22/2016	50	Margaret Harris	50 Governors Rd Unit 1203 Dundas, ON L9H 5M3	Cheque	Personal
2/12/2016	60	Barb Miller	704 Old Dundas Rd Dundas, ON L9H 5E3	Cheque	Personal
1/28/2016	75	Derrick Shebib	80 Lowinger Ave Ancaster, ON L9K 1P3	Paypal	Personal
2/16/2016	100	Jane Gibson	166 Sulphur Springs Rd Ancaster, ON L9G 4T7	Cheque	Personal
2/20/2016	100	Anne Tennier	136 Markland St Hamilton, ON L8P 2K1	Cheque	Personal
2/26/2016	100	Eddy (Ed) VanHooydenk	837 Widemere Ave Toronto, ON M6S 3M5	Paypal	Personal
3/2/2016	100	Al Wilson	55 Chatham St Hamilton, ON L8P 2B3	Paypal	Personal
3/1/2016	100	Cid Pietrantonio	229 Oaklands Park Crt Burlington, ON L7T 4S9	Cheque	Personal
3/14/2016	150	Tony Di Silvestro	7 Harbourview Lane Hamilton, ON L9A 5E7	Cheque	Personal
3/1/2016	200	Peter Vanderbeek	8 Helen St Dundas, ON L9H 1N3	Cheque	Personal
4/6/2016	375	Robert James	72 Sydenham St Dundas, ON L9H 2V2	Cheque	Personal
2/14/2016	400	Paula Stark	75 Emmett Ave Unit 1015 Toronto, ON M6M 5A7	Cheque	Personal
4/14/2016	400	Dan Karpenchuk	74 Murray Tabb St Bowmanville, ON L1C 0P8	Cheque	Personal

# 260.16

Date	From	To	Method	Amount	Category
3/4/2016	500 Steve Klemenic	96 Fowler Drive Binbrook, ON L0R 1C0	Cheque		Personal
2/26/2016	Well-Prepared	(Kelly White)	Paypal		Personal (Sole Proprietor)
					\$35 RETURN

2025.16 Total Personal Donations

\$ 860.16  
 \$ 100 or less  
 \$ 2025.00 Greater than \$ 100  
\$ 2885.16

Table 2

Date	Amount	Donor	Address	President or Business Manager	Authorized Representative	Method	Type
2/5/2016	150	Judy Marsales Realty	988 King St West Hamilton, ON L8S 1L1	Judy Marsales	Judy Marsales	Cheque	Corporate
2/7/2016	150	Peter Mercanti Holdings	1520 Stone Church Road East Hamilton, Ontario L8W 3P9	Peter Mercanti	Peter Mercanti	Cheque	Corporate
3/1/2016	150	PJ Mercanti Holdings	1520 Stone Church Road East Hamilton, Ontario L8W 3P9	PJ Mercanti	PJ Mercanti	Cheque	Corporate
3/28/2016	200	Lakeside Insurance & Financial	887 King St East Hamilton, ON L8M 1C3	Phil Pindili	Phil Pindili	Cheque	Corporate
3/22/2016	200	Glenbrook Hills Properties	85 Milne Crt Ancaster, ON L9G 4T3	Nando Decaria	Nando Decaria	Cheque	Corporate
3/1/2016	500	Multi-Area Developments	10-301 Fruitland Rd Stoney Creek, ON L8T 5M1	Aldo DeSantis	Aldo DeSantis	Cheque	Corporate
3/7/2016	500	T. Valeri Construction Ltd.	2140 King St East Hamilton, ON L8K 3W6	Tony Valeri	Tony Valeri	Cheque	Corporate
3/22/2016	100	190/162 Ontario Ltd. (Suttons Home)	1059 Upper James St., Suite #210 Hamilton, ON L9C 3A0	Michael Chianello	Michael Chianello	Cheque	Corporate
	2450	Total Corporate Donations					
2/24/2016	300	Carpenters Hamilton-Niagara Political Action Committee	1342 Stone Church Rd E Hamilton, ON L8W 2C8	Gary Baverstock	Gary Baverstock	Cheque	Union
3/1/2016	750	LIUNA Local 837	44 Hughson St South Hamilton, ON L8N 2A7	Joseph Mancinelli	Manuel Bastos	Cheque	Union
	1050	Total Union Donations					
	3500	Total Union and Corporate Donations					

DATE	AMOUNT	DESCRIPTION	IN KIND	PERSONAL
12/10/2016	141.25	Joanna St Jacques IN KIND	IN KIND	Personal
12/10/2016	45.2	Howard Rabb - Website	IN KIND	Personal
	156.45	Total In Kind Donations		
12/17/2015	1000	Howard Rabb	Cheque	
1/21/2016	1000	Howard Rabb	Cheque	
2/12/2016	7500	Howard Rabb	Cheque	
2/20/2016	1500	Howard Rabb	Cheque	
	11000	Total Personal Contribution		

211 Glendale Ave N  
Hamilton, ON L8L 7K2  
100 Balmoral Ave N

100 Balmoral Ave N  
100 Balmoral Ave N  
100 Balmoral Ave N  
100 Balmoral Ave N





Hamilton

OFFICE OF THE CITY CLERK

CITY OF HAMILTON

APPLICATION FOR ELECTION COMPLIANCE AUDIT

AUG 18 2016 4.1 (b)

**Applicant Information:**

First Name: Christina Last Name: Crane

Mailing Address: 24 Searle L9A 2V5 HAMILTON

E-mail Address: [REDACTED] Phone Number: [REDACTED]

Identify the address and type of property that qualifies you as an elector in Hamilton:  
as per mailing address - owner

**Requesting Compliance Audit of Election Campaign Finances of:**

Name of Candidate: Howard Rabb

Candidate for office of: Mayor  Councillor

Date of election for the office: March 21, 2016

I, the undersigned applicant:

- 1) am an elector as defined under Section 17(2) of the *Municipal Elections Act, 1996*, namely a person who:
  - (a) resides in Hamilton or is the owner or tenant of land there, or the spouse of such owner or tenant;
  - (b) is a Canadian citizen;
  - (c) is at least 18 years old; and
  - (d) is not prohibited from voting under Section 17(3)<sup>2</sup> or otherwise by law.
- 2) have reasonable grounds for believing that the candidate has contravened the *Municipal Elections Act, 1996* relating to the candidate's election campaign finances.

Which sections of the *Municipal Elections Act, 1996* relating to election campaign finances do you believe have been contravened?

As per attached Appendix

What are the reasonable grounds for your belief? (Attach supporting documentation, if any)

As per attached Appendix

I, Christina Crane, being an eligible elector in the City of Hamilton,

- (a) believe the facts and information submitted above to be true, and I request a compliance audit of the candidate's election campaign finances.
- (b) understand Council is entitled to recover the auditor's costs from me, as provided under section 81(15) of the *Municipal Elections Act, 1996*, to recover the auditor's costs from me, if the auditor indicates there was no apparent contravention and the Election Compliance Audit Committee finds that there were no reasonable grounds for the application.

Original Signed by Christina Crane

Aug 17 / 2016  
Date

  
Signature of Applicant

This form contains information collected and maintained specifically for the purpose of creating a record available to the general public and may be inspected by any person at the Clerk's office at a time when the office is open. (Section 88(5) of the *Municipal Elections Act, 1996*).

<sup>1</sup>Section 81(3) of the *Municipal Elections Act, 1996*:

The application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) the candidate's supplementary filing date, if any, under section 78;
- (c) the filing date for the final financial statement under section 79.1; or
- (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires.

<sup>2</sup>Section 17(3) of the *Municipal Elections Act, 1996*:

The following are prohibited from voting:

- 1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
- 2. A corporation.
- 3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
- 4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

## OVERVIEW

Mr. Rabb submitted his Form 4 by the filing deadline but on the surface, the statements do not appear to be in keeping with the filing requirements of the MEA.

To begin with, the Income & Expense statement appears to be more in keeping with a Balance Sheet. It is next to impossible to run a campaign whereby contributions and expenses net out equally. On the surface, it appears that estimates were used and/or contributions adjusted in order to net zero excess/deficiency of income over expenses prior to any eligible refunds to the candidate for personal contributions.

As confirmed by the auditing firm:

- (a) their opinion does not include whether or not all donations of goods and services, and receipts and disbursements were included in the accounting records that they reviewed, and
- (b) Their audit does not include a determination of whether or not contributions reported include only those which may be properly retained in accordance with the MEA.

It is my belief that further explanations, additional documents (such as complete bank records) and an audit is warranted for the alleged violations. The vast majority of these violations involve deemed municipal contributions. This particular candidate seems to have received an over-abundance of direct and indirect assistance from the City via City Councillors, and City Employees.

For committee's benefit, a brief history of the candidate's employment might be helpful. Prior to announcing his candidacy, Mr. Rabb was employed by the City of Hamilton as a special assistant in one of the Ward Councillor's office. Following the municipal by-election, it appears the candidate is being retained as a political consultant for the same Councillor again. It is unclear whether this is an employment agreement or not, and whether said agreement was established after Voting Day.

The specific alleged infractions (numbered and detailed separately) fall under the following sections of the MEA:

### **Contributions**

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

### **Additional rules**

**(2)** Without restricting the generality of subsection (1), the following rules apply in determining whether an amount is a contribution:

1. The following amounts are contributions:

iii. if goods and services used in a person's election campaign are purchased for less than their market value, the difference between the amount paid and market value

### **Expenses**

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

### **Additional rules**

**(2)** Without restricting the generality of subsection (1), the following amounts are expenses:

2. The value of contributions of goods and services

### **Election campaign period**

**68. (1)** For the purposes of this Act, a candidate's election campaign period for an office shall be determined in accordance with the following rules:

1. The election campaign period begins on the day he or she files a nomination for the office under section 33.

2. The election campaign period ends on December 31 in the case of a regular election and 45 days after voting day in the case of a by-election.

### **Duties of candidate**

69. (1) A candidate shall ensure that,

(d) contributions of goods or services are valued;

(e) receipts are issued for every contribution and obtained for every expense;

(f) records are kept of,

(i) the receipts issued for every contribution,

(ii) the value of every contribution,

(iii) whether a contribution is in the form of money, goods or services, and

(iv) the contributor's name and address;

(g) records are kept of every expense including the receipts obtained for each expense;

(k) financial filings are made in accordance with sections 78 and 79.1;

(m) a contribution of money made or received in contravention of this Act is returned to the contributor as soon as possible after the candidate becomes aware of the contravention;

(n) a contribution not returned to the contributor under clause (m) is paid to the clerk with whom the candidate's nomination was filed;

### **Who may contribute**

70. (1) A contribution shall not be made to or accepted by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 70 (1).

### **Only during election campaign period**

(2) A contribution shall not be made to or accepted by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 70 (2).

(3) Only the following may make contributions:

1. An individual who is normally resident in Ontario.

2. A corporation that carries on business in Ontario.

3. A trade union that holds bargaining rights for employees in Ontario.

4. Subject to subsection (5), the candidate and his or her spouse. 1996, c. 32, Sched., s. 70 (3); 1999, c. 6, s. 43 (4); 2005, c. 5, s. 46 (4).

### **Same**

(4) For greater certainty, and without limiting the generality of subsection (3), the following shall not make a contribution:

1. A federal political party registered under the Canada Elections Act (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party.

2. A provincial political party, constituency association, registered candidate or leadership contestant registered under the Election Finances Act.

3. The Crown in right of Canada or Ontario, a municipality or local board. 1996, c. 32, Sched., s. 70 (4); 2002, c. 17, Sched. D, s. 27.

### **Contributors**

(7) A contribution may be accepted only from a person or entity that is entitled to make a contribution. 1996, c. 32, Sched., s. 70 (7).

### **Expenses**

76. (1) An expense shall not be incurred by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 76 (1).

### **Only during election campaign period**

(2) An expense shall not be incurred by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 76 (2).

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

### **Total credits**

(2) For the purposes of subsection (1), the total credits are the sum of,

(a) the candidate's contributions under section 66;

(b) any amounts of \$10 or less that were donated at fund-raising functions;

(c) interest earned on campaign accounts; and

(d) revenue from the sale of election materials. 2009, c. 33, Sched. 21, s. 8 (44).

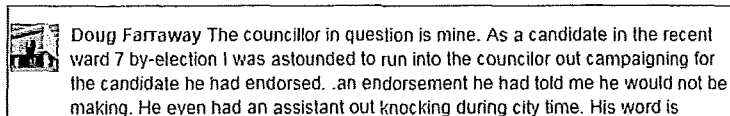
**ALLEGED VIOLATIONS:**

- 1. the candidate has not declared a contribution for services received from Councillor Terry Whitehead's personal assistant during regular business hours. Councillor Whitehead's assistant is a City of Hamilton employee. Under the circumstances, this contribution is likely deemed a municipal contribution. By the city employee contravening section 70(4), the candidate has contravened section 70(7).**

According to another candidate's recent post on Facebook, Councillor Whitehead's assistant canvassed on behalf of Mr. Rabb during regular work hours. Unless this assistant obtained a leave of absence without pay from the City of Hamilton, the time attributed to canvassing would be deemed to be municipally paid services.

The candidate should be required to submit proof of docked pay as evidence that the municipality has not made a contribution to the candidate's campaign.

Post on Facebook by a different candidate stating violation:



- 2. the candidate has accepted municipal contributions to the campaign. Councillor Terry Whitehead canvassed door to door on behalf of the candidate. A municipal elected official contravening section 70(4), results in the candidate contravening section 70(7).**

In addition to a different candidate stating above that Councillor Whitehead was out campaigning for the candidate, Councillor Whitehead was also quoted in an article in the Hamiltonian confirming he knocked on hundreds of doors with one of the candidates :

Do you think the will of the people where this issue is concerned is understood?


I speak with residents of my ward every day, and during the recent by-election also had opportunity to knock on hundreds of doors with one of the candidates. The response I got during my own election in 2014 and the by-election this spring was overwhelmingly opposed to the LRT along its current route.

Thank-you Clr. Whitehead for engaging with Hamiltonians on The Hamiltonian.

**3. the candidate has accepted municipal contributions to the campaign. Councillor Terry Whitehead campaigned on behalf of the candidate during a meeting of Council in City Hall. A municipal elected official contravening section 70(4), results in the candidate contravening section 70(7).**

On Wednesday, March 2<sup>nd</sup>, 2016 a letter was issued by Councillor Whitehead endorsing the candidate. Lots of individuals and federal/provincial politicians have made endorsements, so on the surface, this particular endorsement might seem okay. However, in this case, the letter was handed out to the media by the Councillor at a meeting of Council *at city hall*. The letter was signed from the Ward 8 Councillor:

Sincerely,



Ward 8 Councillor  
Terry Whitehead

Various media personnel in attendance subsequently tweeted this announcement out:



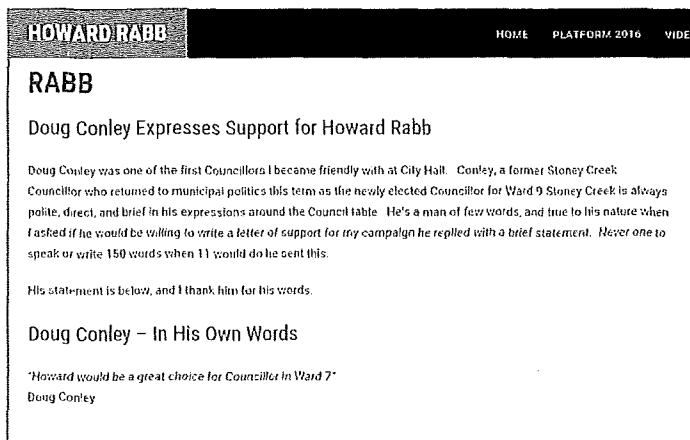
Our Municipal Elections Act clearly states municipalities are not allowed to make contributions and candidates are not allowed to accept municipal contributions. These are 2 separate regulations as to what is and what is not allowed. For clarity, our city also has published *Guidelines for City Resources during an Election* which state *"Based upon Section 70 (4) of the Municipal Elections Act, any use of city facilities, services, and property, and the use of city staff on paid municipal time, for election purposes would be interpreted as a contribution from the municipality and therefore a violation of the Municipal Elections Act.* The Guide also goes on to reference our Procedural ByLaw Section 7 which deals with Election Campaign Work and states: *No member of Council shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of the public.*

In this case, it seems reasonable to conclude that it is worth ordering a compliance audit to investigate whether the actions qualify as violations.

- the candidate has accepted municipal contributions to the campaign. With respect to the endorsement letter issued by Councillor Terry Whitehead, the candidate posted the endorsement on his campaign website later that same day. Clearly, the candidate accepted the contribution from an ineligible contributor. The candidate has contravened section 70(7).

In addition to accepting municipal contributions from Councillor Whitehead, the candidate, by his own admission, actively sought municipal contributions during the campaign from at least one other councillor.

Posting on website:



Various City Councillors and a Hamilton Public School Board trustee also “liked” or made comments of support on the candidate’s campaign Facebook during the by-election. Had these comments been made from personal social media accounts, they could be overlooked. It is my opinion though, when comments of support are made from municipal social media accounts, these endorsements should be scrutinized by an auditor who specializes in municipal elections issues to determine if they are municipal contributions. This type of audit, as confirmed by the Opinions of the auditing firm, is beyond the scope of the audit submitted with the candidate’s financial filings.

- the candidate has accepted municipal contributions to the campaign. On Voting Day, the candidate placed at least 5 election campaign signs on municipal property at the top of the Sherman Cut. This by-law infraction, to the best of my knowledge, was not dealt with by city employees. By the City allowing an infraction, the city has contravened section 70(4) resulting in another contravention of section 70(7) by the candidate.




- 6. the candidate does not appear to have included the initial nomination filing fee personally paid, prior to opening the campaign bank account, as a contribution from the candidate. This contravenes sections 66(1), 69(1)(d), (e), (f) and (k).

According to the Form 4, candidate's 4 deposits amount to \$11,000 and were made from December 17, 2015 to February 20, 2016. The additional \$100 fee paid on December 10, 2015 was not declared as a contribution.

- 7. the candidate does not appear to have included the 'revenue from the sale of election materials' as Income to the campaign. Some expenses declared as part of the campaign, are now being used by Howard Rabb Consulting however it does not appear that a deemed fair market value was established and shown as a contribution to the campaign by the candidate. This is an alleged contravention of section 79(2)(d).

Following the by-election, the candidate's campaign website: electhoward.ca was changed to howardrabb.com. Howard Rabb Consulting is an independent business and political consulting entity. The website, facebook account, linked in account etc contains campaign materials such as the professional photography. Unlike assets used for personal use following a campaign, The Act accommodates the accounting method that is to be used when campaign assets are subsequently used for non-personal purposes. In this case, campaign assets are being used by a business and were used without any lapse in time between the campaign and the business.



**Howard Rabb** 304  
connections

Owner at Howard Rabb Consulting  
Hamilton, Ontario, Canada | Government Administration

**Current** Howard Rabb Consulting

**Previous** Juch-Tech Inc, City Of Hamilton, Cool Sounds

**Education** Adler International Learning

**Recommendations** 2 people have recommended Howard

**Websites** Company Website  
Personal Website

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- 8. the candidate didn't declare all the Website Hosting Fees during the full campaign period. The filing reflects in-kind contributions for December, January, February and March. There are no in-kind contributions upto and including the end of the campaign period which was May 5, 2016. This contravenes sections 66(1), 69(1)(d), (e), (f) and (k).



9. the candidate appears to have bought publicly traded securities (Credit Union shares) with campaign funds and subsequently declared the trading fee as an expense; neither of which are eligible campaign expenses under the Act. The Act specifically states costs incurred for goods or services are eligible expenses. Candidate has violated section 67(1).

10. the candidate's Advertising expenses appear to be high. The candidate did not do any print advertising in the Hamilton Mountain News as per a review of all of their printed editions during the campaign period. To the best of my recollection, the candidate did not do any print advertising in the Hamilton Spectator nor were any radio advertisements run on the local CHML station. The candidate's advertising I believe was limited to a billboard and approximately 10 City of Hamilton Bus Shelters throughout Ward 7.

The candidate declared \$7,959.60 in Advertising over and above @ \$6,700 for brochures/flyers and signs. While I appreciate that no 2 campaigns are alike, other candidates in this by-election who did place multiple ads in the Hamilton Mountain News and/or advertised on bulletin boards, declared Advertising expenses in the range of \$1,700 to \$8,600.

In comparison, Mr. Rabb's expenses seem high and require further explanation along with proof of receipts.

More importantly however, it is my belief a forensic auditor should make a determination as to whether advertisements placed on city property (the bus shelters) via a third party (CBC Outdoors I believe) agreement with the city of Hamilton, on property that is owned by the city, is considered a municipal contribution.

I'm also of the opinion a list of the actual sites where the bus shelters were located should be requested from the candidate. Some voting poll locations have bus shelters located on municipal property immediately outside the doors or at the parking lot entrances. Campaign materials are not allowed "at" polling stations.

It is my understanding that one such advertisement was questioned by an Election Official during polling and that Polling Manager was advised it was okay because the candidate paid to "rent" the space. In my humble opinion, whether paid or free, campaign materials are clearly not allowed on municipal property and clearly not allowed at Polling Stations, inclusive of the municipal land that surrounds the building. What's next? Allowing candidates to "rent" electronic billboards during elections from City Hall, our schools, rec centres and the churches that are used as polling locations

Pic of Entrance into Sackville Hill Senior's Rec Centre where candidate placed ad (Advance Poll Voting Location and Election Day Voting Location)



Pic of Parking Lot Entrance into Harmony Baptist Church (Election Day Voting Location) as another example of where a bus shelter is located:

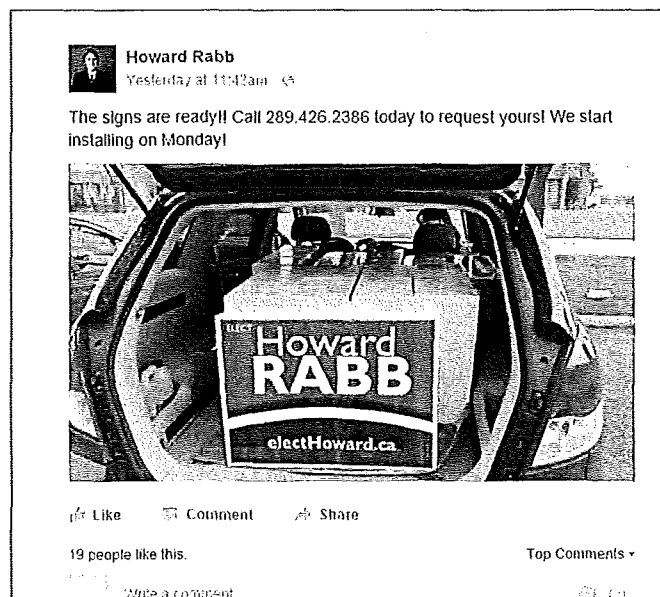


11. the candidate's Sign expenses appear to be less than fair market value and it seems likely an in-kind donation from the sign company was provided but not declared. This contravenes sections 66(1), 66(2)(1)(iii), 69(1)(d), (e), (f), (g) and (k).

Sign costs vary a great deal. The rates usually drop the more that you order and can vary depending on the time of the year. During the regular 2014 municipal elections, signs were @ \$3 each , however due to the exchange rate fluctuation signs were higher during this by-election and had increased to @ \$4.50 each for the small two colour signs. The candidates signs were three colour and fair market values appears to be @ \$3.50 to \$3.75 per sign.

The candidate appears to have purchased 10 bundles in pic at 100 signs / bundle = 1,000 signs

Declared \$3,050.80 after tax = \$2,700 before tax = \$2.70 per sign including stakes. This amount appears to be substantially below the fair market value at the time of the by-election



12. the candidate operated his campaign from his home office with personal equipment and inventory such as cell phone, furniture, computer, supplies, etc. The candidate appears to have declared the value of Money but appears to have not reported the value attributed to any of these goods as a contribution from candidate and/or the value attributed as expenses used during the campaign (excluding those listed for in-kind donations of the website hosting fees).

This contravenes sections 66(1), 67(2)(2), 69(1)(d), (e), (f) (g) and (k).

Declared Contribution from Candidate: \$11,000 (which shows as Money deposited to the campaign account since In-Kind donations for Website Hosting are listed separately):

Schedule 1 - Contributions	
Part I - Summary of Contributions	
Contribution from candidate (Include the value of inventory listed in Table 5)	+ \$ 11,000.00
Contribution from spouse	+ \$ _____

The candidate has declared Office Expenses, Phone, and/or Internet expenses in the sum of only \$45.20 (all of which is Website Hosting). The candidate continually used a cell phone during campaign to tweet, post and record campaign videos. No expenses have been declared for the use of this equipment.

13. the candidate received a donation from the Carpenters Hamilton-Niagara Political Action Committee. As per previous documentation provided from Local 18 and submitted to Committee by candidate Maria Pearson, "the Local 18 Political Action Committee is just a sub-committee of Local 18 funded by the membership of local 18". As such, although this sub-committee receives funds from a trade union who holds bargaining rights in Ontario (which is the United Brotherhood of Carpenters & Joiners of America Local 18 Hamilton to the best of my knowledge), the sub-committee itself is not a trade union entity. It is therefore an ineligible contributor. The contravention of section 70(3) by the contributor has resulted in the candidate contravening sections 66(1),69(1)(k), (m) and (n) and 70(7)


From Proceedings on another Candidate:

ECAC July 8  
Exhibit 3

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**Pearson, Maria**

**From:** Dan Timofejew <dan@local18.ca>  
**Sent:** June-30-15 2:39 PM  
**To:** Pearson, Maria  
**Subject:** Local 18 Political Action Committee



Good afternoon Councilor Pearson,  
I would like to shed light on the Carpenter's Union structure. Basically, Local 18 is one of twelve self-supported affiliated locals of our Provincial Council (The Carpenter's District Council of Ontario) that covers the Hamilton-Halton-Niagara area. The Local 18 Political Action Committee is just a sub-committee of Local 18 funded by the membership of local 18. The campaign contributions for the past election in question only came from this local union, not any other entity related to the Council.  
If you require any further information, please don't hesitate to contact me.  
Regards,

*Based on this evidence, it is reasonable to conclude that the committee operates with a separate and distinct bank account from that of the trade union.*

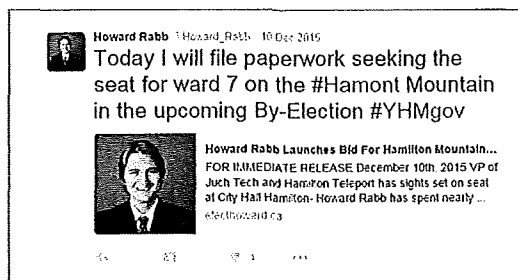
From Candidate's Form 4:

2/24/2016	Carpenters Hamilton-Niagara Political Action Committee	1342 Stone Church Rd E Hamilton, ON L8W 2C8 44. Huphson St. South	Gary Baverlock	Gary Baverlock	Cheque	Union
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*Point of Clarity: The contravention occurs if the candidate does not return an ineligible contribution "as soon as possible" after being made aware of the contravention. At this stage, (unless the candidate has subsequently returned the contribution), it appears only a forensic auditor has the experience to make a determination whether a violation has occurred. Hence, a compliance audit is warranted.*

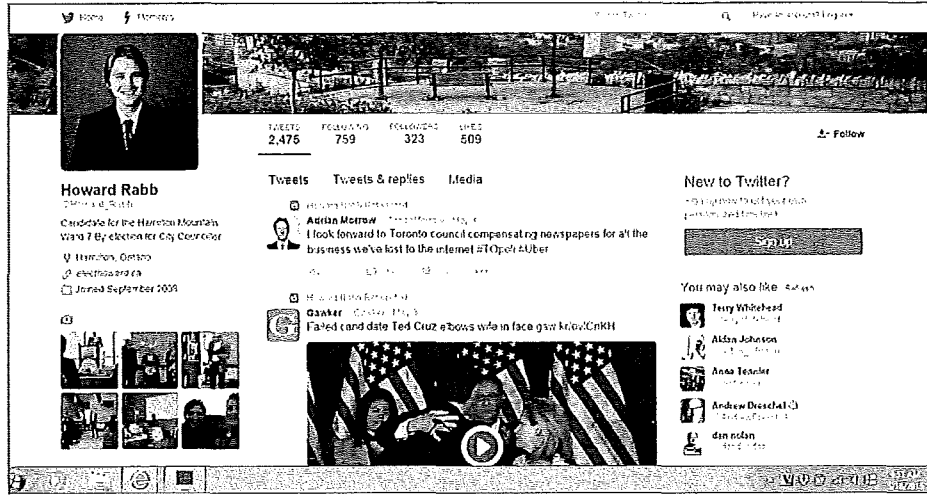
14. Candidate's campaign period was December 10, 2015 to May 5, 2016. All campaign activity must not start before December 10, 2015 and must have ceased by May 5, 2016. On at least 8 occasions, the candidate has campaigned and is campaigning outside of the legally defined campaign period. This contravenes sections 70(2), 76(1) and 76(2)

(a) Pre-Nomination: Candidate Tweeted out message which contained a link to campaign website electhoward.ca as well as an immediate media release prior to actually filing nomination papers and receiving approval to be a candidate:

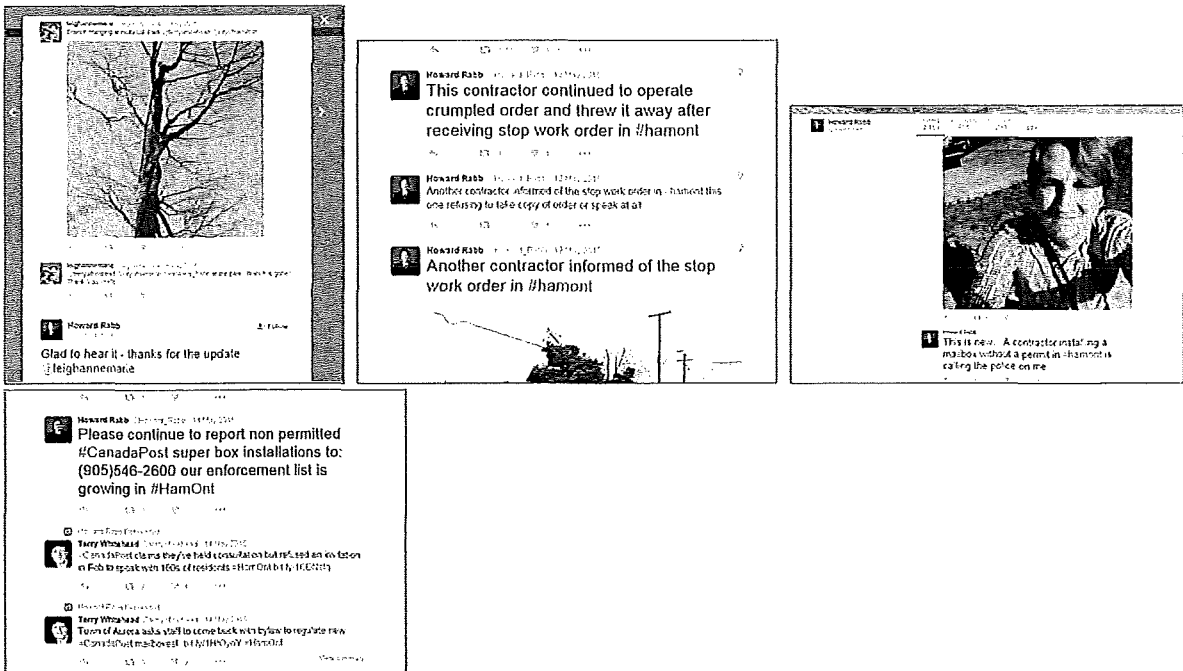


(b) The candidate appears to have incurred the campaign expense of the photographer prior to filing Nomination Papers since the official campaign photograph is part of the above tweet and website.

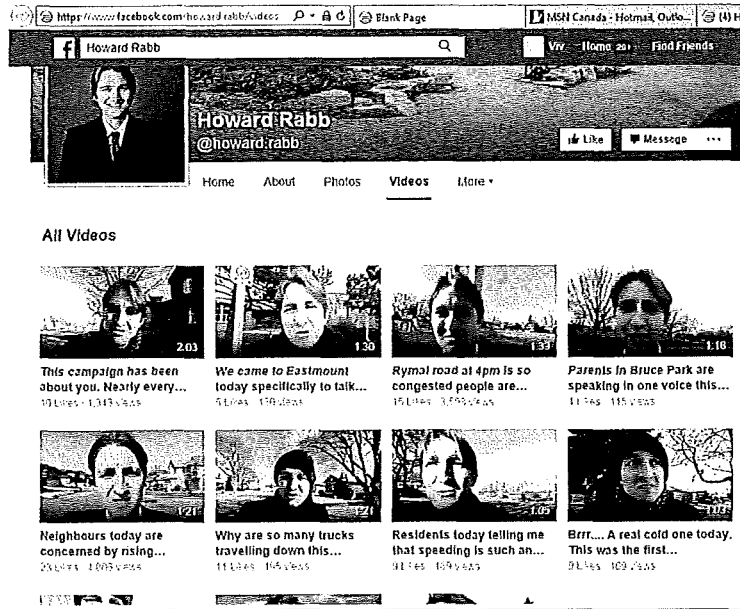
(c) Campaign Facebook and Campaign website (electhoward.ca) was still active as of May 10, 2016:



(d) Twitter Account: The candidate's twitter account was set up in September 2008. Not only are personal and campaign tweets for this by-election co-mingled; but in addition, tweets while a City of Hamilton employee during 2015, were accessible to voters and used to advertise the candidate. No separate social media account was set up. The spirit of the Act is a level playing field and a fair election. With the advent of social media accounts, candidates need to take additional measures in order to abide by the Act. Especially candidates whose social media accounts contain municipal issues, (such as Canada Post community mailboxes) positions on issues and City of Hamilton logos, while an employee of the City. A separate and distinct social media account should have been set up by the candidate during this by-election. Failing to do so, has again also led to an additional perceived contribution from the municipality. Eg:



(e) 11 Campaign videos are available on Campaign/Personal Facebook (as of July 9, 2016):



(f) 4 Campaign Update videos are available on Howard Rabb Consulting website (as of July 9, 2016):



(g) 13 Howard Rabb Campaign Videos on Youtube (still running as of July 9, 2016):



(h) Third Party Endorsements are being advertised on candidate's business website howardrabb.com as of today's date, July 22, 2016. These advertisements are campaign related and specifically speak as an endorsement to City Council although campaign period has ended. In my humble opinion, candidate is also pre-campaigning for the 2018 municipal election. In addition, since 2 of these endorsements are from current City Councillors, the municipality is also making an illegible contribution outside of an official campaign period.

Excerpt from City Guidelines:

"Guidelines for use of City Resources during the 2014 Municipal Election":

In addition to the City's code of conduct, Section 70(4) of the Municipal Elections Act specifically prohibits municipalities from contributing to election campaigns.

Based upon Section 70 (4) of the Municipal Elections Act, any use of city facilities, services, and property, and the use of city staff on paid municipal time, for election purposes would be interpreted as a contribution from the municipality and therefore a violation of the Municipal Elections Act.

**Please also use caution when using social media, twitter, Facebook, etc. that comes from a City paid site as this would also be a contravention of the Municipal Elections Act, 1996.**

If any of the above mentioned social media accounts were paid for by the City while an employee (or are being paid for/reimbursed currently while a consultant), an additional contravention has occurred.

**IN CONCLUSION:**

In total, there have been approximately 60 contraventions of the Act that stem from the 14 items presented.

I have not made these allegations lightly. They are not frivolous, vexatious or unsubstantiated.

They are deserving of your careful consideration.

We are on a slippery slope — Those in power are blatantly disregarding one of the main principles of conducting fair elections: A level playing field must be maintained.

Campaigning on city property during municipal functions should not be tolerated. – in addition to what has been outlined by this particular candidate during this by-election a candidate wore his campaign button during the Mayor's New Year's levee at city hall, handed out campaign material at the front door of City Hall, and continually used the City of Hamilton logo in his campaign cover photos. A different candidate also wore her campaign button at an event at City Hall on March 5<sup>th</sup>. These campaigning actions would not have been tolerated by other municipalities outside our city limits.

More than ever we need to establish clear boundaries on what is or isn't a municipal contribution to a candidate's campaign

Committee only needs to concur that at least 1 of the 60 contraventions are reasonable grounds to warrant an audit.

In the best interests of the public and for establishing a precedent for future municipal elections, I respectfully request you vote to grant the Request for a Compliance Audit application.





Hamilton

## CITY OF HAMILTON

### APPLICATION FOR ELECTION COMPLIANCE AUDIT<sup>1</sup>

**Applicant Information:**

First Name: Vivian Last Name: Saunders

Mailing Address: 3 Frances Avenue, Stoney Creek Ontario L8E 2Y6

E-mail Address: [REDACTED] Phone Number: [REDACTED]

Identify the address and type of property that qualifies you as an elector in Hamilton:  
as above - owner of land

**Requesting Compliance Audit of Election Campaign Finances of:**

Name of Candidate: Uzma Qureshi

Candidate for office of: Mayor  Councillor

Date of election for the office: March 21, 2016

I, the undersigned applicant:

- 1) am an elector as defined under Section 17(2) of the *Municipal Elections Act, 1996*, namely a person who:
  - (a) resides in Hamilton or is the owner or tenant of land there, or the spouse of such owner or tenant;
  - (b) is a Canadian citizen;
  - (c) is at least 18 years old; and
  - (d) is not prohibited from voting under Section 17(3)<sup>2</sup> or otherwise by law.
- 2) have reasonable grounds for believing that the candidate has contravened the *Municipal Elections Act, 1996* relating to the candidate's election campaign finances.

Which sections of the *Municipal Elections Act, 1996* relating to election campaign finances do you believe have been contravened?

Section 78.1.b


What are the reasonable grounds for your belief? (Attach supporting documentation, if any)

*Candidate's campaign income and expenses both exceeded \$10,000 however candidate did not file an auditor's report by the deadline. The clerk has advised me that no extensions were applied for. It is my opinion that it is the Clerk's responsibility (as per Section 80.3) to impose the mandatory penalties outlined in Section 80.1; however, as evidenced by the attached correspondence, the Clerk is refusing to do this and is insisting that this violation be addressed through the compliance audit process. It seems to me to be a waste of resources for me to be asking Committee for an audit application to be granted, when quite honestly, the outcome of my application should be a rejection. An audit is not necessary when a clear violation of the Act is present, as in this case, and when the MEA clearly spells out the penalties and the process to be followed by the Clerk. It's also interesting to note that the recent amendments to the MEA, clarify the Clerk's role in this regard. Nevertheless, I am complying with the Clerk's request by filing this application however I do not have any intention of speaking before Committee nor appointing anyone to make a presentation. It should be obvious that any Decision rendered would include the fact that a violation has occurred.*

I, Vivian Saunders, being an eligible elector in the City of Hamilton,

- (a) believe the facts and information submitted above to be true, and I request a compliance audit of the candidate's election campaign finances.
- (b) understand Council is entitled to recover the auditor's costs from me, as provided under section 81(15) of the *Municipal Elections Act, 1996*, to recover the auditor's costs from me, if the auditor indicates there was no apparent contravention and the Election Compliance Audit Committee finds that there were no reasonable grounds for the application.

July 27/2016  
Date

  
Signature of Applicant

This form contains information collected and maintained specifically for the purpose of creating a record available to the general public and may be inspected by any person at the Clerk's office at a time when the office is open. (Section 88(5) of the *Municipal Elections Act, 1996*).

<sup>1</sup>Section 81(3) of the *Municipal Elections Act, 1996*:

The application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) the candidate's supplementary filing date, if any, under section 78;
- (c) the filing date for the final financial statement under section 79.1; or
- (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires.

<sup>2</sup>Section 17(3) of the *Municipal Elections Act, 1996*:

The following are prohibited from voting:

- 1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
- 2. A corporation.
- 3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
- 4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

OFFICE OF THE CITY CLERK

JUL 27 2016

REF'D TO \_\_\_\_\_  
REF'D TO \_\_\_\_\_  
REF'D TO \_\_\_\_\_

[Print](#)

[Close](#)

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## RE: Uzma Qureshi Form 4

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From: **Fallis, Tony** (Tony.Fallis@hamilton.ca)  
Sent: May-24-16 4:03:05 PM  
To: 'Lakewood Beach Community Council' (lakewoodbeachcc@hotmail.com)  
Cc: Caterini, Rose (Rose.Caterini@hamilton.ca); Murray, Chris (Chris.Murray@hamilton.ca)

Hi Ms. Saunders,

At no time did I say that a violation had not occurred. I just believed that there is a process in place to make that determination and the process should be played out.

Let me review this with Rose and I will follow up with you upon her return.

Regards,

Tony Fallis

Manager of Elections/Print & Mail

City Clerk's Department

71 Main St. W.

Hamilton, Ontario

L8P 4Y5

Phone: 905-546-2424 Ext. 2753

E-mail: [tony.fallis@hamilton.ca](mailto:tony.fallis@hamilton.ca)

**From:** Lakewood Beach Community Council [mailto:lakewoodbeachcc@hotmail.com]  
**Sent:** May-24-16 3:52 PM  
**To:** Fallis, Tony  
**Cc:** Caterini, Rose; Murray, Chris  
**Subject:** RE: Uzma Qureshi Form 4

Tony

No one is suggesting that you are an accountant or that you need to check the finite details for accuracy. However, the MEA is quite clear that if Form 4 (a statement) is not filed or if that statement is incomplete (due to no auditor's statement being filed), the City Clerk has a responsibility to the public to enforce Section 80(3).

Interpretation of that section is not debatable. It is a very clear administrative process.

I'm completely baffled how you can even suggest that there hasn't been an absolute clear violation?

Viv

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From: [Tony.Fallis@hamilton.ca](mailto:Tony.Fallis@hamilton.ca)  
To: [lakewoodbeachcc@hotmail.com](mailto:lakewoodbeachcc@hotmail.com)  
CC: [Rose.Caterini@hamilton.ca](mailto:Rose.Caterini@hamilton.ca); [Chris.Murray@hamilton.ca](mailto:Chris.Murray@hamilton.ca)  
Subject: RE: Uzma Qureshi Form 4  
Date: Tue, 24 May 2016 19:02:56 +0000

Hi Ms. Saunders,

Process and determination of financial statements alter greatly from municipality to municipality.

Some may choose to be more loose in their interpretation of the MEA and that is their right.

My responsibility is to administer the MEA and its administrative process'.

<  >

There also may be those that would believe I am trying to circumvent the Compliance Audit Committee process if I were to forward this to Council, without knowing absolutely that a violation had occurred.

Regards,

Tony Fallis

Manager of Elections/Print & Mail

City Clerk's Department

71 Main St. W.

Hamilton, Ontario

L8P 4Y5

Phone: 905-546-2424 Ext. 2753

E-mail: [tony.fallis@hamilton.ca](mailto:tony.fallis@hamilton.ca)

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**From:** Lakewood Beach Community Council [<mailto:lakewoodbeachcc@hotmail.com>]

**Sent:** May-24-16 2:53 PM

**To:** Fallis, Tony

**Cc:** Caterini, Rose; Murray, Chris

**Subject:** RE: Uzma Qureshi Form 4

Respectfully Tony yes, the Clerk's office does, at least in other municipalities. I've even seen some clerk's do this when the statement arrived 4 minutes late.

Under Section 80(3) the Clerk's office is suppose to notify the candidate and Council thereby saving the cost and time of the elector as well as the Compliance Audit Committee having to be borne by

the taxpayer for blatant violations.

Please advise if you will be addressing this.

Thank you,

Viv

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From: [Tony.Fallis@hamilton.ca](mailto:Tony.Fallis@hamilton.ca)  
To: [lakewoodbeachcc@hotmail.com](mailto:lakewoodbeachcc@hotmail.com); [Rose.Caterini@hamilton.ca](mailto:Rose.Caterini@hamilton.ca)  
CC: [Chris.Murray@hamilton.ca](mailto:Chris.Murray@hamilton.ca)  
Subject: RE: Uzma Qureshi Form 4  
Date: Tue, 24 May 2016 18:43:01 +0000

Hi Ms. Saunders,

Following up on my previous e-mail the Clerk's Office does not determine the validity of a candidates financial statements, including whether or not an auditor's statement is required.

The process for this is the Compliance Audit Committee, a process you are familiar with.

Regards,

Tony Fallis

Manager of Elections/Print & Mail

City Clerk's Department

71 Main St. W.

Hamilton, Ontario

L8P 4Y5

Phone: 905-546-2424 Ext. 2753

< [REDACTED] >

E-mail: [tony.fallis@hamilton.ca](mailto:tony.fallis@hamilton.ca)

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**From:** Lakewood Beach Community Council [<mailto:lakewoodbeachcc@hotmail.com>]  
**Sent:** May-24-16 2:36 PM  
**To:** Fallis, Tony; Caterini, Rose  
**Cc:** Murray, Chris  
**Subject:** Uzma Qureshi Form 4

Tony and/or Rose,

Is the City Clerk's office going to invoke penalty for failing to file an auditor's statement?

Viv

Lakewood Beach Community Council



Financial Statement – Auditor’s Report Form 4 Municipal Elections Act, 1996 (Section 78)

Instructions:

All candidates must complete Boxes A and B. Candidates who receive contributions or incur expenses beyond the nomination fee must complete Boxes C, D, Schedule 1, and Schedule 2 as appropriate. Candidates who receive contributions or incur expenses in excess of \$10,000 must also attach an Auditor’s Report.

All surplus funds (after any refund to the candidate or his or her spouse) shall be paid immediately over to the clerk who was responsible for the conduct of the election.

For the campaign period from (day candidate filed nomination) 2016 01 11 to 2016 03 21

- Primary filing reflecting finances to December 31 (or 45th day after voting day in a by-election)
Supplementary filing including finances after December 31 (or 45th day after voting day in a by-election)

Box A: Name of Candidate and Office

Candidate’s name as shown on the ballot: Last Name QURESHI, Given Name(s) UZMA GUL, Name of office for which the candidate sought election COUNCILLOR, Ward name or no. (if any) 7, Name of Municipality HAMILTON, Spending limit issued by clerk \$

I did not accept any contributions or incur any expenses other than the nomination fee. (Complete Box A and B only)

Box B: Declaration

I, UZMA QURESHI, a candidate in the municipality of HAMILTON, hereby declare that to the best of my knowledge and belief that these financial statements and attached supporting schedules are true and correct.

Declared before (clerk or commissioner) in the City of Hamilton on (yyyy/mm/dd) 2016/05/20. Signature of Clerk or Commissioner, Date Filed in the Clerk’s Office (yyyy/mm/dd)

Signature of Candidate

Jenis John Wayne Farr, a Commissioner, etc., Province of Ontario, for the City of Hamilton. Expires November 2, 2018.



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**Box D: Calculation of Surplus or Deficit**

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Excess (deficiency) of income over expenses (Income – Total Expenses) (C1 – C4)	+	\$	<u>10,017.19</u>	<b>D1</b>
Eligible deficit carried forward by the candidate from the last election	-	\$	<u>                    </u>	<b>D2</b>
<b>Total (D1 – D2)</b>	=	\$	<b><u>10,017.19</u></b>	
If there is a surplus, deduct any refund of candidate's or spouse's contributions to the campaign	-	\$	<u>10,000.00</u>	
Surplus (or deficit) for the campaign	=	\$	<u>17.19</u>	<b>D3</b>

If line D3 shows a surplus, the amount must be paid in trust, at the time the financial statements are filed, to the municipal clerk who was responsible for the conduct of the election.

Amount of \$17.19 paid to municipal clerk in the municipality of Hamilton.

**Table 2: Monetary contributions from corporations or unions**

Name (Legal and Carrying on Business As)	Full Address	President or Business Manager	Authorized Representative	Amount \$
<input type="checkbox"/> Additional information is listed on separate supplementary attachment				<b>Total</b>

**Table 3: Contributions in goods or services from individuals other than candidate or spouse  
(Note: must also be recorded as expenses in Box C)**

Name	Full Address	Description of Goods or Services	Value \$
<input type="checkbox"/> Additional information is listed on separate supplementary attachment			<b>Total</b>

**Schedule 2 – Fundraising Events and Activities**

**Fundraising Event/Activity**

Complete a separate schedule for each event or activity held

Additional schedule(s) attached

Description of fundraising event/activity Sherry Duvall Potluck Fundraiser

Date of event/activity (yyyy/mm/dd) 2016/02/13

**Part I – Ticket Revenue**

Admission charge (per person)

(If there are a range of ticket prices, attach complete breakdown of all ticket sales)

	+	\$	10.00	2A	
Number of tickets sold	X		90	2B	
<b>Total Ticket Revenue (2A x 2B) (Include in Schedule 1)</b>		=	\$		<b>900.00</b>

**Part II – Other revenue deemed a contribution**

(provide details (e.g. revenue from goods sold in excess of fair market value))

1.	+	\$		
2.	+	\$		
3.	+	\$		
4.	+	\$		
5.	+	\$		
<b>Total Part II Revenue (include in Schedule 1)</b>		=	\$	

**Part III – Other revenue not deemed a contribution**

(provide details (e.g. contributions of \$10 or less; market value of goods or services sold))

1.	+	\$		
2.	+	\$		
3.	+	\$		
4.	+	\$		
5.	+	\$		
<b>Total Part III Revenue (include in Box C)</b>		=	\$	

**Part IV – Expenses related to fundraising event or activity (provide details)**

1. Food for event at mosque on Feb 14 <sup>th</sup>	+	\$	1,035.70	
2.	+	\$		
3.	+	\$		
4.	+	\$		
5.	+	\$		
6.	+	\$		
7.	+	\$		
8.	+	\$		
<b>Total Part IV Expenses (include in Box C)</b>		=	\$	<b>1035.70</b>

Part II: List of Contributions From Each Single Contributor Totalling more than \$100

Table 1: Monetary contributions from individuals other than candidate or spouse

Date	Type	Last Name	First Name	Initial	#	Street	Apt. #	City	Prov.	Postal Code	Amount	Payment Method
1/25/2016	A	Johnstone	Jan		743	Prince St.		Kincardine	On	N2Z1Z5	200	Paypal
2/8/2016	A	Khan	Raza-Muhammad		59	Tollgate Drive		Ancaster	On	L9G5E2	750	Paypal
2/10/2016	A	Khan	Tabinda		17	Valridge Crt		Ancaster	On	L9G4Y5	150	Paypal
2/21/2016	A	Mirza	Yasmeen		243	Plains Rd. W		Burlington	On	L7T1G1	200	Paypal
2/28/2016	A	Ahmed	Zakir		177	Templemead Drive		Hamilton	On	L8W3G4	200	Paypal
3/13/2016	A	Bhatti	Kamran		75	Mt. Pleasant Drive		Hamilton	On	L8W3H3	200	Paypal
3/18/2016	A	Crawford	Graham		1	Turner Ave		Hamilton	On	L8P3K4	500	Paypal
3/18/2016	A	Brennan	Jessica		71	Skyline Drive		Hamilton	On	L9H3S3	200	Paypal
3/18/2016	A	Deelstra	Tim		5	Hawarden		Brantford	On	N3T4H2	200	Paypal
3/19/2016	A	Stephenson	James		79	Empress Ave		Hamilton	On	L9A1M5	200	Paypal
2/8/2014	A	Hamdani	Hussein		5341	Jameson Cres.		Burlington	On	L7L6Z1	200	cheque
2/10/2016	A	Vandal	Mohammed & Nasreen		279	McCready Dr.		Milton	On	L9T0T5	150	cheque
2/14/2016	A	Pasha	Zafar & Mumtaz		451	Brigadoon Dr.		Hamilton	On	L9CGG8	500	cheque
2/14/2016	A	Urrahman	Fasih		1061	Fpearson Dr.		Oakville	On	LGH2A9	200	cheque
2/14/2016	A	Nadeem	Ejaz & Rukhsana		15	Pinto Dr.		Ancaster	On	L9K1L1	200	cheque
2/14/2016	A	Smadi	Mohammed	N A	212	Miller Dr.		Ancaster	On	L9G4T3	200	cheques
2/14/2016	A	Chaudhry	Jahan Zaib Ali									cheque
2/15/2016	A	Naeem	Khaled & Tasneem		277	Celtic Dr.		Stoney Creek	ON	L8E2T8	200	cheque
2/16/2016	A	Mirza	Javid	M	126	Appleblossom Dr.		Hamilton	On	L9C7P1	750	cheque
2/24/2016	A	Mackenzie	Andrew		71	Keith St.		Hamilton	On	L8L352	200	cheque
2/28/2016	A	Sahib	Uzma		18	Drakes Dr.		Stoney Creek	On	L8E4G5	200	cheque
2/28/2016	A	Barrafato	Diane		19	Coventry Crt		Ancaster	On	L9G4V8	650	cheque
3/02/2016	A	Qureshi	Shuja		23	Erminia Crt		Hamilton	On	L8W3K1	500	cheque
3/05/2016	A	Taylor	Monique								500	cheque
3/09/2016	A	Ghouse	Ali-Taher		1106	Old Mohawk Rd		Ancaster	On	L9G3K9	500	cheque
3/09/2016	A	Macaskill	Norman		88	McNaughton St		Cambridge	On	N1R1Z4	200	cheque

Date	Last Name	First Name	#	Street	Apt #	City	Prov.	Postal Code	Value	Description of Good/Service
01/23/2016	Hauch	David	230	Ottawa St. S		Hamilton	On	L8K 2E8	127.22	Staples - Office Supplies
03/09/2016	Hauch	David	230	Ottawa St. S		Hamilton	On	L8K 2E8	122.39	Staples - Office Supplies
Jan 21-Mar. 21	Shahh	Shah	1051	Upper James St		Hamilton	On		750	Campaign Office
			Total						999.61	

Total Value of contributions exceeding \$100/per contributor (line 1B) = \$17,000.61



Hamilton

CITY OF HAMILTON  
APPLICATION FOR ELECTION COMPLIANCE AUDIT 4.2 (b)

**Applicant Information:**

First Name: Christina Last Name: Crane

Mailing Address: 24 Searle L9A 2V5 HAMILTON

E-mail Address: [REDACTED] Phone Number: [REDACTED]

Identify the address and type of property that qualifies you as an elector in Hamilton:  
as above - owner of land

**Requesting Compliance Audit of Election Campaign Finances of:**

Name of Candidate: Uzma Qureshi

Candidate for office of: Mayor  Councillor

Date of election for the office: March 21, 2016

I, the undersigned applicant:

- 1) am an elector as defined under Section 17(2) of the *Municipal Elections Act, 1996*, namely a person who:
  - (a) resides in Hamilton or is the owner or tenant of land there, or the spouse of such owner or tenant;
  - (b) is a Canadian citizen;
  - (c) is at least 18 years old; and
  - (d) is not prohibited from voting under Section 17(3)<sup>2</sup> or otherwise by law.
- 2) have reasonable grounds for believing that the candidate has contravened the *Municipal Elections Act, 1996* relating to the candidate's election campaign finances.

Which sections of the *Municipal Elections Act, 1996* relating to election campaign finances do you believe have been contravened?

Section 78.1.b

What are the reasonable grounds for your belief? (Attach supporting documentation, if any)

*Candidate's campaign income and expenses both exceeded \$10,000 however candidate did not file an auditor's report by the deadline.*

*It is my opinion that it is the Clerk's responsibility (as per Section 80.3) to impose the mandatory penalties outlined in Section 80.1; however, the Clerk is refusing to do this and is insisting that this violation be addressed through the compliance audit process. An audit is not necessary when a clear violation of the Act is present, as in this case, and when the MEA clearly spells out the penalties and the process to be followed by the Clerk. It's also interesting to note that the recent amendments to the MEA, clarify the Clerk's role in this regard.*

*It should be obvious that any Decision rendered would include the fact that a violation has occurred.*

I, Christina Crane, being an eligible elector in the City of Hamilton,

- (a) believe the facts and information submitted above to be true, and I request a compliance audit of the candidate's election campaign finances.
- (b) understand Council is entitled to recover the auditor's costs from me, as provided under section 81(15) of the *Municipal Elections Act, 1996*, to recover the auditor's costs from me, if the auditor indicates there was no apparent contravention and the Election Compliance Audit Committee finds that there were no reasonable grounds for the application.

Original signed by Christina Crane

Aug 17 / 2016  
Date



Signature of Applicant

This form contains information collected and maintained specifically for the purpose of creating a record available to the general public and may be inspected by any person at the Clerk's office at a time when the office is open. (Section 88(5) of the *Municipal Elections Act, 1996*).

<sup>1</sup>Section 81(3) of the *Municipal Elections Act, 1996*:

The application must be made within 90 days after the latest of,

- (a) the filing date under section 78;
- (b) the candidate's supplementary filing date, if any, under section 78;
- (c) the filing date for the final financial statement under section 79.1; or
- (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires.

<sup>2</sup>Section 17(3) of the *Municipal Elections Act, 1996*:

The following are prohibited from voting:

- 1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
- 2. A corporation.
- 3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
- 4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.