



Election Compliance Audit Committee

DRAFT Minutes 3

Wednesday, 15 July 2015

9:30 a.m.

Champlain Room, 110 Laurier Avenue West

- Notes:**
1. *Please note that these Minutes are to be considered DRAFT until confirmed by Committee.*
 2. *Underlining indicates a new or amended recommendation approved by Committee.*

Present: Chair J.P. Kingsley
Vice-Chair D. Wallace
Members C. Bédard, L Russell, J. Vézina

Others: B. Duchesne, Committee Legal Counsel
R. O'Connor, City Clerk and Solicitor
L. Donnelly, Deputy City Clerk
J. Monfils, Committee Coordinator

DECLARATION OF INTEREST

There were no declarations of conflict of interest.

CONFIRMATION OF MINUTES

Minutes 2 - July 10, 2015

Member Vézina provided some amendments to the minutes. The minutes were then presented to the committee and CONFIRMED, as amended.

POSTPONEMENTS AND DEFERRALS

CITY MANAGER

CITY CLERK AND SOLICITOR

1. APPLICATION FOR A COMPLIANCE AUDIT OF THE 2014 ELECTION CAMPAIGN FINANCES OF CANDIDATE RILEY BROCKINGTON, RIVER WARD

ACS2015-CMR-CCB-0085

CITY WIDE

This item was adjourned from the Election Compliance Audit Committee meeting of July 10, 2015.

REPORT RECOMMENDATION

That the Election Compliance Audit Committee consider whether the application for a compliance audit of the election campaign finances for the 2014 Municipal Election campaign of Candidate Riley Brockington, River Ward be granted or rejected.

The Election Compliance Audit Committee [the “Committee”] received the following correspondence at the July 10, 2015 Election Compliance Audit Committee meeting, (held on file with the City Clerk and Solicitor), in addition to the application for

compliance audit made by Mr. Patrick Ready and received by the City Clerk on June 15, 2015:

- Written submission from Mr. Patrick Ready, Applicant, prepared on July 4, 2015;
- Affidavit of Candidate Riley Brockington sworn on July 9, 2015 and the exhibits attached thereto, received on July 9, 2015, from Mr. William Hunter, Vice & Hunter LLP, on behalf of Candidate Riley Brockington.

The Committee received the following correspondence at the July 15, 2015 meeting (held on file with the City Clerk and Solicitor):

- Supplementary Affidavit of Candidate Riley Brockington sworn on July 14, 2015 and the exhibits attached thereto, received on July 14, 2015, from Mr. William Hunter, Vice & Hunter LLP, on behalf of Candidate Riley Brockington;
- Affidavit of Lise Clark sworn on July 14, 2015 and the exhibits attached thereto, received on July 14, 2015, from Mr. William Hunter, Vice & Hunter LLP, on behalf of Candidate Riley Brockington;
- Affidavit of Anand Aggarwal sworn on July 14, 2015, received on July 14, 2015, from Mr. William Hunter, Vice & Hunter LLP, on behalf of Candidate Riley Brockington;
- Memorandum of Law, received on July 15, 2015 from Mr. William Hunter, Vice & Hunter LLP, on behalf of the Candidate Riley Brockington; and
- Written submission from Mr. Patrick Ready, the Applicant, received on July 15, 2015.

The Committee heard from the following delegations:

Mr. Riley Brockington, the Candidate provided a summary of his activities during the election campaign, including his registration for the election on September 12, 2014, and he explained to the committee that his campaign team included a Chief Financial Officer (CFO).

Mr. Brockington told the committee that contributions to his campaign were slow to come in at first and that the majority of the donations came in during the last two weeks. This included the donations from Linden Developments and 1823174 Ontario Inc., which came in during the last week of the election campaign.

The Candidate explained that for all contributions, the CFO reviewed where the cheques came from, ensured that they did not exceed the \$750 per contributor limit, that the company was from Ontario, and that they were from corporations. The candidate explained that the donation cheque from Linden Developments and the donation cheque from 1823174 Ontario Inc. looked different from one another, were different colours, had difference corporate names, were from different banks, and were signed by different individuals.

After the election, the CFO made several attempts to obtain more information from the companies in order to fill out the Form 4, Campaign Financial Statement. Mr. Brockington explained that he had met with Mr. Aggarwal and had asked him if these two companies were associated, to which Mr. Aggarwal replied that they were not. The Candidate asked other successful candidates in the 2014 election how they processed contributions from companies that may appear to be associated and they said that they asked senior members of the organization.

Mr. Brockington concluded by saying that the best authorities to verify if the companies are associated are the senior members of those companies. His campaign team approached the two companies and received assurances that they were not associated.

Member Wallace referred to the application for a compliance audit which states that the candidate's financial statement listed the two companies and identified that each had the same President, Business Manager, address, and that the Authorized Representatives share the same surname.

Mr. William Hunter, Candidate's Legal Counsel, replied that the names of the Authorized Representatives are incorrect and now that he has looked further into the matter, it is his understanding that the applicant had based his application on the incorrect contributor information included in the Candidate's financial statements.

The Candidate provided the committee with an affidavit from Mr. Aggarwal and the Corporate Search results for the two companies.

Mr. Hunter added that he has not had time, since the last meeting, to look into the relationship of the individuals with the same surnames.

Mr. Wallace followed up by stating that there are no facts being provided to say that the two companies are associated, even though they share the same address and the Authorized Representatives share the same surname.

To that, Mr. Hunter replied that many companies share an address and that would not be proof of association. The Authorized Representatives' names were provided to the Campaign Manager, and those were the incorrect names, as stated in the Affidavit. Mr. Hunter added that Candidate Qaqish also had a contribution from 1823174 Ontario Inc. but had a different name for Authorized Representative in his financial statement.

Mr. William Hunter, Vice and Hunter LLP, Legal Counsel for the Candidate, spoke to the cheque from Riverstone Oakpark LP. He submitted an Affidavit from Lise Clark, Chief Financial Officer of Riverstone Oakpark, which speaks to the printing error on the cheque and notes that the contributor should be listed as "Riverstone Oakpark Inc."

Mr. Hunter then spoke to the allegations of the associated companies, he obtained a letter from Christine Prins, an accountant with Parker Prins Lebrano, a copy of which can be found attached to the Candidate's affidavit as exhibit D, which states that proving that companies are associated requires the companies to provide a lot of information including income tax returns, shareholder ledgers, and access to corporate minute books. The letter also states that the companies are not obligated to provide that information, even to an auditor. It was stated that it is unfair for any candidate who receives different cheques to have to prove that the companies are not associated. It is not the fault of the Candidate but of the companies.

Mr. Hunter referred to the Memorandum of Law he submitted to the Committee and to subsection 81(1) of the *Municipal Elections Act, 1996*. He submitted that the *Act* speaks to balancing the rights of the public, makes sure campaigns are properly run, as well as the rights of the candidates. He asked the Committee to weigh the evidence that is before them and submitted that there is no need for an audit. Mr. Hunter concluded by saying that his firm has done municipal law for 40 years and has never had a candidate go through a compliance audit process except for when they represented Shawn Little, which went to trial but was dismissed by the Court.

Member Russell commented that the Candidate has provided enough to answer the questions raised by the applicant relating to the associated corporations and the contribution from Riverstone Oakpark.

Member Wallace commented that on the financial statement the name of Riverstone Oakpark is incorrect as it is shown as a limited partnership. Mr. Hunter replied that the name was taken from the cheque and that it was an error, as the CFO of the company has stated in her affidavit.

Mr. Wallace added that with respect to the allegations of the two companies, Linden Developments and 1823174 Ontario Inc. being related, the application alleges certain facts upon which the applicant concludes they are related. The Committee heard how difficult it is to determine whether corporations are related and that it is also likely that even an audit would not be able to determine whether or not they are related.

Member Wallace then asked if those facts, together with the explanations that the Committee has heard, are sufficient to support the finding that there are reasonable grounds to believe that the corporations were associated and therefore that the two donations of \$750 each exceed the contribution limit allowed by the *Act*. The Committee has to take into account both what the applicant and what the candidate and his counsel have said.

Member Wallace concluded that the *Act* says that you cannot have incorrect information on your financial statement and that the Committee has heard that it takes very little departure from accuracy to constitute an offence under the *Act*. The member stated that he supports granting the application for a compliance audit.

Member Vézina commented that two issues were raised at the meeting on July 10th and the Committee requested, based on comments by the candidate's counsel, that the candidate bring forward the original documents that would support his position from the last meeting. Those documents were received by the Committee for today's meeting. From the member's perspective, the *Act* is not forgiving of errors. However seeing the documents provided answers, in the Member's view, to the two questions from the last meeting.

Member Vézina asked the committee's legal counsel for his view on what was discussed at the last meeting and what was brought forward today.

Mr. Duchesne summarized the case law on the threshold for determining reasonable grounds based on a common sense evaluation of whether there was a probable breach of the *Act*. Mr. Duchesne referenced the *Mastroggiuseppe* case from 2008, paragraphs 69 and 70, which outlines at the circumstances under which a candidate should be inquiring into two corporations to see if there is the suggestion that they are associated. The Committee heard that in *Mastroggiuseppe* the Court found that as soon as there is a similar address, a possibility of shared ownership, and individuals who seem to be working for both corporations, that there are sufficient grounds to trigger an inquiry into a potential association of companies and if the inquiry is not determinative to an acceptable level of satisfaction, being the Committee's level of satisfaction, then there are reasonable grounds within the meaning of the *Act*.

Mr. Duchesne commented that it is not up to the Committee or to the Candidate to determine if corporations are associated. The Candidate does not have a duty to obtain a tax audit as it has been suggested by Mr. Hunter.

The affidavit with respect to the Riverstone Oakpark contribution, the cheque numbers and the bank accounts seemed to Mr. Duchesne to be reliable.

Mr. Duchesne commented with respect to the associated corporations, that the affidavits state what they state, and that it is up to the committee to weigh the probative value of each of those affidavits. Mr. Duchesne pointed out that the corporate profiles and business name reports attached as exhibits to Mr. Brockington's supplementary affidavit do show a few facts of interest: that the two corporations have the same registered head office, but that there are separate directors and officers for each of the corporations.

Mr. Duchesne commented that what Mr. Hunter said earlier in submission is accurate in that corporate donors do not have to provide corporate minute books or copies of tax returns to candidates to justify their donations. However a compliance auditor would have the power to request minute books and corporate tax returns under the powers afforded to it in the *Public Inquiries Act*.

Mr. Duchesne commented that the Committee would have to consider the compliance auditor's report after the compliance auditor's inquiries, and then the Committee would decide whether compliance auditor's report shows that there are reasonable grounds to move forward to prosecution or not. At this point in the process, however, it is up to the Committee to weigh what has been presented by way of evidence.

The Chair commented that at the last meeting, the Committee agreed to postpone the consideration of this matter and by doing so, agreed to give proper weight to the evidence to be tendered at this meeting. The Chair commented that the evidence was before the Committee in the form of sworn affidavits, and that people who swear affidavits which are untrue run a foul of the law at their own risk. In terms of the Committee's mandate, the Chair stated he could only assume that the Committee is bound by the requirements of natural justice.

Member Russell commented that the Applicant had submitted correspondence to the Committee in addition to his application and requested from the Committee's legal counsel whether the document received should be received as a document in the application. On advice from Mr. Duchesne, Member Russell moved the following motion:

Motion No. ECAC 3 / 1

Moved by Member L. Russell

BE IT RESOLVED that the Election Compliance Audit Committee officially receive the written correspondence from Mr. Patrick Ready, the applicant.

CARRIED

Following the motion, Member Russell put forward a motion to reject the application for a compliance audit.

Motion No. ECAC 3 / 2

Moved by Member L. Russell

BE IT RESOLVED that the Election Compliance Audit Committee reject the application for a compliance audit of the election campaign finances for the 2014 election campaign of Candidate Riley Brockington, River Ward.

CARRIED

CARRIED, on a division of 4 yeas and 1 nays, as follows:

YEAS (4): Members J.P. Kingsley, L. Russell, J. Vézina and C. Bédard.

NAYS (1): Member D. Wallace.

2. PROCESS FOR APPOINTING AN AUDITOR

Chair Kingsley read the following motion prepared by staff:

WHEREAS on July 10, 2015 the Election Compliance Audit Committee granted applications for a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward; and

WHEREAS Subsection 81(7) of the Municipal Elections Act, 1996 requires that, if the Election Compliance Audit Committee decides to grant an application, the

Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances;

THEREFORE BE IT RESOLVED that the Election Compliance Audit Committee direct the City Clerk and Solicitor, in cooperation with the Committee's legal counsel, to provide this Committee with recommendations as to potential auditors to be retained for the purposes of the compliance audit;

BE IT FURTHER RESOLVED that this Committee be reconvened within 45 days of today for the purpose of appointing an auditor to conduct a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward.

After reading the motion, the Chair asked about the 45 day period contained in the draft motion text. Mr. Duchesne replied that it was to accommodate summer schedules for Committee Members and staff and to allow potential auditors to respond, but the time period specific does not prevent the Committee from meeting earlier than the expiry of the 45 days to appoint an auditor if responses are provided before the 45 day time frame.

The Chair asked whether the auditors will have expertise in forensic audits. Mr. Duchesne answered that it is included in the draft statement of work.

The motion was then put to the Committee.

Motion No. ECAC 3 / 3

Moved by Member C. Bédard

WHEREAS on July 10, 2015 the Election Compliance Audit Committee granted applications for a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward; and

WHEREAS Subsection 81(7) of the Municipal Elections Act, 1996 requires that, if the Election Compliance Audit Committee decides to grant an application, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances;

THEREFORE BE IT RESOLVED that the Election Compliance Audit Committee direct the City Clerk and Solicitor, in cooperation with the Committee's legal counsel, to provide this Committee with

recommendations as to potential auditors to be retained for the purposes of the compliance audit;

BE IT FURTHER RESOLVED that this Committee be reconvened within 45 days of today for the purpose of appointing an auditor to conduct a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward.

CARRIED

OTHER BUSINESS

At the beginning of the meeting, Chair Kingsley acknowledged the Committee's receipt of a letter from Candidate Taylor requesting that the Election Compliance Audit Committee reconsider its decision to grant a compliance audit on his 2014 election campaign finances. The letter from Candidate Taylor is held on file with the City Clerk and Solicitor.

Mr. Duchesne advised the Committee, according to the committee's Rules of Procedure, the matter would have to be added to the agenda by way of motion and that the Committee would then have to, by way of another motion, suspend its Rules of Procedure pursuant to section 3(2) of its Rules in order to proceed to a reconsideration as requested by Candidate. This procedure was to be followed as the Committee's Rules of Procedure do not provide for a power to reconsider a previous decision made on an application for a compliance audit.

Chair Kingsley asked the Committee Members if there was a motion to add the matter to the agenda. No motion to add the matter to the agenda was proposed by any Committee Member. The Chair ruled that the request from Candidate Taylor has been refused.

ADJOURNMENT

The meeting adjourned at 10:31 a.m.

Committee Coordinator

Chair