



Agenda Reference

**MUSKOKA COMPLIANCE AUDIT COMMITTEE MEETING**

**DATE:** July 31, 2019

**RESOLUTION NUMBER:** MCAC- 7-31/07/19

**MOVED BY:**

*Joan Pajunen*

**SECONDED BY:**

*Beverley Webb*

Be it resolved that the Muskoka Compliance Audit Committee rejects the application for a Compliance Audit of the 2018 municipal election campaign finances of Frank Jaglowitz, Candidate for District and Township Councillor, Ward C, for the reasons outlined in the July 31, 2019 attached Decision.

- MEMBER BOB PANIZZA (Chair)
- MEMBER JOAN A. PAJUNEN (Vice Chair)
- MEMBER BEVERLEY WEBB

MOTION CARRIED

MOTION DEFEATED

CHAIR *Bob Panizza*



**Decision of the Muskoka Compliance Audit Committee**  
**Made pursuant to subsection 88.33(7) of the *Municipal Elections Act, 1996* and with respect to an**  
**application by Heather Bonett for a compliance audit of the election campaign finances of Frank**  
**Jaglowitz in the 2018 municipal election of the Township of Muskoka Lakes**

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The Muskoka Compliance Audit Committee (the "Committee"), established in accordance with subsection 88.37(1) of the *Municipal Elections Act, 1996* (the "MEA"), met on Friday, July 19, 2019 at 9:00 a.m. and on July 31, 2019 at 9:00 a.m. to deal with an application for a compliance audit (the "Application"), made by Heather Bonett (the "Applicant") pursuant to subsection 88.33(1) of the MEA, of the 2018 municipal election campaign finances of Frank Jaglowitz (the "Candidate"), candidate for the office of District and Township Councillor Ward C in the 2018 municipal election of the Township of Muskoka Lakes.

Subsection 88.33(1) of the MEA entitles an elector who believes on reasonable grounds that a candidate has contravened a provision of MEA relating to election campaign finances to apply for a compliance audit.

The Committee may decide that there are reasonable grounds to believe that a contravention of the MEA has occurred but it may still nevertheless decide that an audit is not warranted. A finding of reasonableness does not automatically mean that an audit is warranted. In other words, even where the Committee is satisfied that the MEA has been breached, or probably breached, it is not compelled, after considering all of the circumstances, to appoint an auditor.

The Committee has found that there are reasonable grounds to believe that the Candidate has contravened the MEA. Notwithstanding, the Committee has decided that an audit is not warranted in the circumstances for the reasons set out below. Accordingly, the Committee rejects the Application.

In coming to this decision, the Committee considered the Application and the submissions (both written and oral) that the Applicant and the Candidate made at the Committee's meeting on July 19, 2019, as well as the responses of the parties to the Committee's questions. The Committee has made its decision for the following reasons.

**Issue 1**

The Applicant alleged the Candidate did not account on his financial statements for the cost of operating a campaign website. The Candidate explained that he did account for this expense under the phone and internet section of his disclosure and provided evidence with respect to the value of the website services in question. Absent any compelling evidence to the contrary, the Committee accepts the Candidate's evidence as credible and finds the Candidate properly accounted for these expenses.

**Issue 2**

The Applicant raised an issue with the Candidate's campaign income and expenses on the basis that the amount of his income matched exactly the amount of his expenses as shown on his financial disclosure, and alleged that this suggests the Candidate likely omitted to disclose a surplus or deficit. The Candidate explained that he kept a close account of his campaign finances in order to use the full amount of contributions with respect to his campaign and not be left with a surplus. The Committee accepts this evidence as credible and finds there is no basis to believe that a contravention of the MEA has occurred on this basis.

**Issue 3**

The Applicant raised the issue of whether the Candidate opened a separate bank account for election purposes as required by the MEA and that the Candidate failed to provide bank statements. The Candidate provided evidence of the account number and financial institution with respect to the separate bank account and that he used this separate bank account for his campaign. The Candidate is not required to produce bank records under the MEA.

**Issue 4 & 5**

The Applicant alleged that the Candidate failed to properly disclose contributions made to his campaign, either by himself or from others on the basis that the Candidate incurred campaign expenses before receiving contributions that would permit such expenditures. At the meeting, the Candidate provided evidence that he had contributed money to his own campaign which he then paid back to himself before the end of the campaign

period. The Candidate submitted that this was done in error as he had interpreted the provisions of the MEA with respect to refunds or surplus funds to permit the actions he took. At the meeting, the Candidate showed the Committee, through portions of a revised financial statement that he prepared for the purposes of responding to the Application, how he would have accounted for this contribution, had he known it was required to be accounted for in this manner.

The Committee finds the actions of the Candidate in this regard to constitute an apparent contravention of the MEA insofar as the Candidate failed to properly account for contributions he made to his own campaign.

#### **Issue 6**

The Applicant alleged the Candidate accepted an improper out of province contribution. This would constitute a contravention of the MEA. The Candidate provided evidence that, once he became aware of this contravention, he promptly repaid the amount. Clause 88.22(o) of the MEA requires Candidate's to return any contributions made in contravention of the MEA to the contributor as soon as possible after the candidate becomes aware of the contravention. The Committee accepts the Candidate's evidence on this issue and finds that, as such, there has been no contravention as the Candidate fulfilled his duties under this part of the MEA.

#### **Issue 7**

The Applicant alleged that the Candidate failed to record the actual amount of a contribution made to the Candidate for a "Meet and Greet" event, as the event was likely worth more than the \$50 accounted for by the Candidate. The Candidate explained that the \$50 was his portion of the value received for the event, as the event was also for other candidates and was distributed as between them. The Committee accepts this evidence and finds it is corroborated by the fact that another candidate's financial disclosure also shows a similar \$50 amount for what the Committee has inferred was the same event. As such, the Committee finds the Candidate's disclosure was accurate.

#### **Issue 8**

The Applicant alleges the Candidate's participation in a planning appeal constitutes campaign advertisement, the associated cost of which should have been disclosed through his financial disclosure. The Committee cannot find that the Candidate's participation in a planning appeal constitutes an expense within the meaning of the MEA and so does not accept this as reasonable grounds to believe a contravention of the MEA has occurred.

#### **Issue 9**

The Applicant alleges the Candidate incurred expenses with respect to robocalls made by a famous Canadian Actor. The Candidate explained that his friend arranged for the robocalls and that the calls were conducted on a voluntary basis. Absent any evidence to the contrary, the Committee accept the Candidate's evidence and considers it to be credible.

Subsection 88.15(4) of the MEA exempts the value of services for voluntary unpaid labour from classification as a contribution, regardless of the value of such labour. This has been confirmed in numerous Ontario court decisions. As such, and on the basis that the Committee has accepted the Candidate's evidence on this point, the Committee finds the robocalls in question were not contributions that the Candidate was obligated to disclose, as they were conducted as unpaid voluntary labour.

#### **Issue 10**

The Applicant alleges the Candidate did not properly account for the value of the signage used in his campaign, as the amount provided on disclosure was much lower than the actual value of such signage. The Candidate provided invoices proving the value of such signage, which align with what was disclosed. The Committee finds the Candidate complied with the applicable disclosure requirements with respect to this signage.

#### **Decision**

As noted above, the Committee finds that, on the basis of the evidence, the Candidate appears to have contravened the MEA insofar the MEA required the Candidate to disclose contributions made to his own campaign, which he did not do. Notwithstanding, the Committee has decided that an audit is not warranted.

On the basis of the Candidate's evidence and absent any compelling evidence to the contrary, the Committee accepts the Candidate's evidence that the apparent contravention arose out of inadvertence rather than an intent to circumvent the rules and, while this in no way is determinative of the Committee's decision on whether an audit is warranted in the circumstances, the Committee is entitled to consider the Candidate's intention as a relevant factor in coming to its decision.

Additionally, the Committee finds that it would not be in the public interest to order an audit, as, in the Committee's assessment, all an audit would show is what has been shown by the Candidate. The Candidate has explained that he did, in fact, provide a contribution to his own campaign, which he then repaid to himself. There is nothing, on the balance of the evidence, to suggest an audit would uncover anything beyond this finding, and, as such,

would serve no real purpose. The Committee does not believe it is in the public interest to order an audit on this basis.

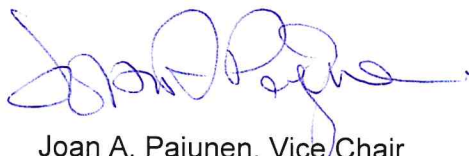
Based on the foregoing, the Committee finds there are reasonable grounds to believe a contravention of the MEA has occurred. Notwithstanding, the Committee has decided that an audit is not warranted in the circumstances. Accordingly, the Committee rejects the Application.

Dated at the Township of Muskoka Lakes this 31<sup>st</sup> day of July, 2019.

This decision was written and approved by the following members of the Committee:



Bob Panizza, Chair



Joan A. Pajunen, Vice Chair



Beverley Webb

**The Committee's decision may be appealed to the Superior Court of Justice within 15 days after the decision is made pursuant to subsection 88.33(9) of the MEA.**