



Agenda Reference

MUSKOKA COMPLIANCE AUDIT COMMITTEE MEETING

DATE: July 31, 2019

RESOLUTION NUMBER: MCAC-5 -31/07/19

MOVED BY:

SECONDED BY:

Be it resolved that the Muskoka Compliance Audit Committee rejects the application for a Compliance Audit of the 2018 municipal election campaign finances of the Muskoka Lakes Association, Registered Third Party, 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



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 Don Furniss for a compliance audit of the election campaign finances of the Muskoka Lakes Association in the 2018 municipal election of the Township of Muskoka Lakes

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 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 Don Furniss (the "Applicant") pursuant to subsection 88.35(1) of the MEA, of the 2018 municipal election campaign finances of the Muskoka Lakes Association (the "MLA"), a registered third party in the 2018 municipal election of the Township of Muskoka Lakes.

Subsection 88.35(1) of the MEA entitles an elector who believes on reasonable grounds that a registered third party has contravened a provision of MEA relating to election campaign finances to apply for a compliance audit.

The Committee has found that there are no reasonable grounds to believe that the MLA have contravened any provision of the MEA. As such, the Committee has decided to reject the Application.

In coming to this decision, the Committee considered the Application and the submissions (both written and oral) that the Applicant and the MLA 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.

The Applicant alleged that the MLA was not eligible to register as a third party advertiser on account of the fact that the MLA is a cottagers' association and the MEA does not permit a cottagers' association to register as a third party advertiser. While whether the MLA was or was not eligible to register as a third party advertiser does not bear on the Committee's determination of the Application on its merits, the issue has been raised and so the Committee, for the sake of completeness, will address the issue.

While it is true that cottagers' associations cannot register as third party advertisers, despite the names by which it calls itself, legally speaking, the Committee is satisfied on the basis of the evidence provided by the MLA that the MLA is, as evidenced by its articles of incorporation, a corporation for the purposes of the MEA. As such, the Committee finds the MLA was eligible to register as a third party advertiser.

The Applicant alleged that the MLA did not account for some of the contributions it received and did not use a separate bank account as required by the MEA, and further questioned if a separate bank account was used in the Town of Gravenhurst for similar activities.

At the meeting, the MLA provided evidence that the majority of its contributions were self-funded, as permitted by the MEA, and that it did in fact use a separate bank account for its third party advertising activities. The MLA provided proof of the separate bank account used in the Township of Muskoka Lakes by way of a copy of a bank statement of account. Further, the MLA provided proof of the separate bank account used in the Town of Gravenhurst by way of a copy of a bank statement of account. The Committee accepts the MLA's oral and documentary evidence on this issue and, in the absence of any compelling evidence to the contrary, finds that there are no reasonable grounds to believe that there has been a contravention of the MEA as alleged.

The Applicant alleged the MLA failed to include required information on some of its advertising materials. At the meeting, the MLA provided evidence that the advertising materials in question did not constitute third party advertisements within the definition of this term in the MEA and therefore there was no obligation on the MLA to comply with the third party advertisement requirements in the MEA. In support of this, the MLA provided the advertising materials in question to the Committee and demonstrated that these materials did not promote, support or oppose any one or more candidates. The MLA addressed issues in the election, such as "Vote to stop waterfront subdivisions". The MLA's evidence also showed that, in the instances where the MLA did promote or support a candidate or candidates through their advertising, these materials included the required information and these materials were accounted for. The MLA also provided evidence that it had been informed by the Township that the materials in question were not third party advertisements within the meaning of the MEA. The Committee has determined on the basis of this evidence that there are no reasonable grounds to believe that the MLA contravened the MEA by not accounting for these advertising materials in its financial disclosure.

The Applicant alleged that the MLA orchestrated robocalls in support of candidates and did not account for this in its financial disclosure. The MLA provided evidence that it did account for the expenses it incurred with respect to the robocalls. The Committee accepts this evidence. Further, the applicant alleged that some of these calls

were made by a famous Canadian actor and that the value of these specific calls was not accounted for as an expense. In terms of the alleged robocalls by the famous Canadian actor, the MLA denied any association with these calls and no compelling evidence to the contrary was provided. On this basis, the Committee finds that there are no reasonable grounds to believe the MLA contravened the MEA by failing to account for expenses with respect to the robocalls, because the evidence shows that the robocalls they did make were properly accounted for and that the robocalls by the famous Canadian actor were not related to their efforts.

The Applicant alleged that the MLA failed to account for signage that it placed throughout the Township. The MLA responded that it did not need to account for this signage as this signage, as discussed above, was not third party advertising within the meaning of the MEA. As such, there was no obligation to account for it and the MLA's not doing so cannot constitute a contravention of the MEA for this reason. As such, the Committee finds there are no reasonable grounds to believe a contravention of the MEA has occurred with respect to this matter.

While not included in the Application, at the meeting, the Applicant made an additional allegation that the MLA coerced Safe Quiet Lakes ("SQL") to support its efforts and that, therefore, certain activities of SQL in relation to the election should be attributed to the MLA. The MLA responded that this was not the case. The Committee finds that there is no evidence to support the allegation and that it is based on mere speculation and conjecture.

Based on the foregoing, the Committee finds there are no reasonable grounds to believe that a contravention of the MEA has occurred. Accordingly, the Committee rejects the Application.

Dated at the Township of Muskoka Lakes this 31st 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.