



Agenda Reference

MUSKOKA COMPLIANCE AUDIT COMMITTEE MEETING

DATE: July 31, 2019

RESOLUTION NUMBER: MCAC- 6 -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 Phil Harding, Candidate for Mayor, 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

A blue ink signature of Bob Panizza, the chair, written over a horizontal line.



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 Phil Harding 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 Friday, July 19, 2019 at 9:00 a.m. and on Wednesday 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 88.33(1) of the MEA, of the 2018 municipal election campaign finances of Phil Harding (the "Candidate"), candidate for the office of Mayor 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 has found that there are no reasonable grounds to believe that the Candidate has 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 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.

The Applicant alleged that the Candidate contravened section 7.10 of the Ministry of Transportation's Corridor Signing Policy. The Committee finds that this issue is irrelevant to its determination of whether there are reasonable grounds to believe a contravention of the MEA has occurred and whether the Committee should grant or reject the Application. As such, the Committee has not, and, indeed, lacks the jurisdiction to, make any determinations with respect to this issue.

The Applicant alleged that the Candidate contravened the MEA by not accounting for the value of advertising that was done with respect to the Candidate's campaign by way of airplane advertising, which, as alleged by the Applicant, included a banner in tow. The Applicant indicated that he did not personally see this occur. The Candidate's evidence in rebuttal was that he became aware of this occurrence only after the fact, that the owner and operator of the airplane was a personal friend whom he did not pay to do this, and that there was no banner; rather, there was only one of the Candidate's election signs. In this regard, there was a contradiction between the evidence of the parties regarding whether the signage in question was a banner behind the plane or simply an election sign.

Subsection 88.15(4) of the MEA exempts the value of services for voluntary unpaid labour from classification as a contribution.

The Committee accepts the Candidate's evidence that the owner and operator of the airplane was his friend and that the Candidate did not pay him with respect to the incident in question. The Committee is satisfied that the airplane advertising was done on a voluntary basis. As such, there was no obligation on the Candidate to account for the value of such services (in other words, what the airplane advertising *would* have been worth on the free market) as the MEA explicitly exempts the value of any voluntary unpaid labour from classification as a contribution. As this was not a contribution, there was no obligation on the Candidate to account for it, and, therefore, there can be no contravention of the MEA by the Candidate for "failing" to do so.

While the banner would have constituted a contribution, as it would have been a "good", the Committee, based on the distinct lack of evidence on this point, cannot find that there was any banner that needed to be accounted for in this manner.

The Applicant alleged that the Candidate used stakes in his campaign that were not properly accounted for as expenses through his financial disclosure. The Candidate's evidence in rebuttal was that he did not account for the stakes because he did not pay any money for them as he already owned them and had acquired them for purposes unrelated to his participation as a candidate for office in an election in the municipality.

An expense for an election campaign is defined under subsection 88.19(1) as "*costs incurred for goods or services by or under the direction of a person wholly or partly for use in his or her election campaign...*" [emphasis added].

The Committee accepts the Candidate's evidence that he did not buy the stakes for this or a previous election. No evidence to the contrary was provided. As such, the Committee finds these stakes were not an expense within the meaning of the MEA since the Candidate did not purchase them wholly or partly for use in this or a previous election. As such, he did not need to account for their value on his financial disclosure and "failing" to do so cannot constitute a contravention of the MEA.

The Applicant raises a question with respect to mileage and whether this would constitute an expense under the MEA. This issue is not before the Committee with respect to the Application and so the Committee will make no determination in this regard.


Based on the foregoing, the Committee finds there are no reasonable grounds to believe 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.