

Compliance Audit Report
For the Toronto District School Board
Re: David Smith

June 3, 2016

Contents

Introduction	1
Background to the Compliance Audit	1
Our Approach to the Compliance Audit	1
Procedures Performed.....	2
What the Act Says about the Candidate’s Duties.....	2
What the Act Says About Contributions	3
What the Act Says About Expenses.....	3
What the Act Says about Fundraising.....	4
Our Findings	6
Campaign Bank Account.....	6
Contribution Receipts.....	6
Financial Statements	8
Financial Statements	8
Restrictions and Limitations	9

Introduction

Background to the Compliance Audit

This Report is the result of a request for a compliance audit under Section 81 of the Municipal Elections Act, 1996 (“the Act”) in relation to the campaign finances of David Smith (“Mr. Smith” or “the Candidate”).

Mr. Smith filed for election as Trustee for Ward 19 of the Toronto District School Board on August 6, 2014.

Mr. Smith’s 2014 campaign spending limit issued by the City Clerk was \$54,588.15.

On May 20, 2015, Mr. Smith attested that the financial statement for the campaign period from August 6, 2014 to December 31, 2014 (the “Financial Statement”) was true and correct to the best of his knowledge and belief.

Mr. Scott Harrison (“the Applicant”) submitted a request for a compliance audit to the Compliance Audit Committee of the Toronto District School Board (“CAC”).

On July 9, 2016, the CAC ordered a compliance audit of the financial statements for the 2014 election campaign finances of Mr. Smith pursuant to Subsection 81(7) of the Act and on appointed on January 7, 2016 Julie B. Baetz, CPA, CA, LPA of Millards Chartered Professional Accountants to conduct the compliance audit in accordance with the Act.

Subsection 81(9) of the Act requires that the auditor prepare a report “outlining any apparent contravention by the candidate.” This Report contains our findings in relation to our compliance audit of the Financial Statements submitted by Mr. Smith.

Our Approach to the Compliance Audit

The objective of our compliance audit is to report any apparent contraventions of the Act identified through the course of our compliance audit related to the Financial Statement filed by Mr. Smith.

The audit also addressed other matters identified through the compliance audit process, including:

1. Whether the Candidate maintained separate bank accounts for the campaign;
2. Whether the Candidate kept proper books and records for the campaign;
3. Whether Mr. Smith performed candidate duties in accordance with the Act; and
4. Whether the Financial Statement was prepared in accordance with the Act and the 2014 Candidates’ Guide for Ontario Municipal and School Board Elections (“the 2014 Candidates’ Guide”).

Mr. Smith cooperated fully with the compliance audit process and provided detailed explanations as requested.

Procedures Performed

Our procedures related to the compliance audit included:

1. Review of the information presented to the CAC in relation to the compliance audit, including the Candidate's response to the issues identified by the Applicant;
2. Review of the Financial Statement, campaign bank statements and supporting documents;
3. Review of the Municipal Elections Act, 1996 and the 2014 Candidates' Guide;
4. Discussion with Mr. Smith and various communications; and
5. Inquiries of Mr. Logan Senathi-rasa, CPA, CA of Senathi & Associates Chartered Professional Accountants, the campaign auditor, in relation to accounting for campaign finances and the Financial Statement.

The campaign bank account was opened on October 29, 2014. We have been provided statements for the campaign bank account from October 29, 2014 to January 7, 2015.

What the Act Says about the Candidate's Duties

Subsection 69(1) of the Act, under the heading "Duties of candidate", requires candidates to ensure that:

1. One or more bank accounts are opened in the name of the candidate's election campaign exclusively for the purposes of the election campaign (69(1)(a));
2. All contributions are deposited into campaign bank account(s) (69(1)(b));
3. All payments of expenses are made from the campaign bank account(s) other than the nomination filing fee (69(1)(c));
4. All contributions of goods and services are valued (69(1)(d));
5. Records are kept of,
 - a. the receipts issued for every contribution,
 - b. the receipts issued for every contribution,
 - c. the value of every contribution,
 - d. whether a contribution is in the form of money, goods or services, and
 - e. the contributor's name and address (69(1)(f)).
6. All receipts are retained for all recorded and disputed expenses (69(1)(g) and (h)) for the term of office of the members of council or until their successors are elected;
7. Proper direction is given to persons who are authorized to incur expenses and accept or solicit contributions on behalf of the candidate (69(1)(l)); and

8. 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 (69(1)(m));

Subsection 78(1) of the Act, under the heading “Financial Statement and Auditor’s Report”, states that *“on or before 2 p.m. on the filing date, a candidate shall file with the clerk with whom the nomination was filed a financial statement and auditor’s report, each in the prescribed form, reflecting the candidate’s election campaign finances.”*

What the Act Says About Contributions

Subsection 66(1) of the Act states that *“money, goods and services given to and accepted by or on behalf of a person for his or her election campaign are contributions.”*

Subsection 70(3) of the Act states that *“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.”*

Subsection 70.1(1) of the Act authorizes and the Toronto District School Board has passed a bylaw banning contributions of money, goods and services from corporations and trade unions.

Subsection 70(2) states that contributions should not be accepted by or on behalf of the candidate outside his or her campaign period.

Subsection 70(6) states that only a candidate or a person acting under the candidate’s direction may accept a contribution and 70(7) states that a contribution may not be accepted from a person or entity that is not entitled to make a contribution.

Subsection 71(1) of the Act limits the maximum contribution a contributor can make to any one candidate in an election to \$750.

If the candidate identifies an over-contribution, the 2014 Candidates’ Guide states: “You are obligated to return an ineligible contribution as soon as you become aware that it is not allowed under the Act. If you are not able to return it to the contributor, you must turn it over to the clerk.”

The 2014 Candidates’ Guide also limits cash contributions to \$25 or less (Subsection 70(8)):

“Only a contribution that is \$25 or less can be made in cash. All contributions above \$25 must be made by cheque, money order, or by a method that clearly shows where the funds came from.”

What the Act Says About Expenses

Subsection 67(1) of the Act states that *“costs incurred for goods and services by or on behalf of a person wholly or partly for use in his or her election campaign are expenses”*.

Section 76 outlines who may incur expenses, and states that only a candidate or an individual acting under a candidate’s direction may incur expenses (76(1) and 76(3)).

The 2014 Candidates' Guide notes that:

“Expenses must be paid from your campaign bank account. If you use a credit card to pay for purchases you should make sure that you keep clear records showing that the expense on the credit card was reimbursed from the campaign account.”

In regards to special discounts provided to the campaign by suppliers of goods and services, the 2014 Candidates' Guide states that:

“If you are given a special discount on a good or service that you are purchasing for your campaign, you should record the expense as if you were not given the discount (since the value of the discount is considered to be a contribution of the good or service to your campaign).”

Subsection 76(4) of the Act prescribes that the maximum amount of expenses to be incurred during the campaign should not exceed an amount calculated in accordance with the prescribed formula (i.e. the spending limit). The 2014 Candidates' Guide states the following when applying the spending limit of expenses:

“Your spending limit covers expenses that you incur between the beginning of your campaign and voting day. Expenses that you incur between the day after voting day and the end of your campaign are not subject to the spending limit.”

The 2014 Candidates' Guide specifically lists the following expenses as not being subject to the spending limit:

1. Expenses related to holding a fundraising event or activity;
2. Expenses related to parties and other expressions of appreciation after the close of voting;
3. Expenses relating to a recount;
4. Expenses relating to a court action for a controverted election;
5. Expenses relating to a compliance audit;
6. Expenses incurred by a candidate with a disability that are directly related to the candidate's disability and would not have been incurred if not for the election; and
7. Audit and accounting fees.

What the Act Says about Fundraising

The Act defines “fundraising function” as “*an event or activity held by or on behalf of a candidate for the purpose of raising funds for his or her election campaign*”.

The 2014 Candidates' Guide provides the following guidance:

“Fundraising functions are events or activities held by you or on your behalf for the primary purpose of raising money for your campaign. If you hold an event to promote your campaign and you happen to

receive some contributions or ask people to consider contributing to your campaign, this would not qualify as a fundraising event.”

“Similarly, if you have a sentence in your campaign brochure asking people to make a contribution or giving them information about how to contribute, this would not be a fundraising brochure since its primary purpose is to promote your campaign, not to raise money.”

Paragraph 5 of Subsection 67(2) of the Act includes *“the cost of holding fund-raising functions”* as a campaign expense, and Subsection 67(2.1) provides that fundraising costs do not include:

- 1. events or activities that are organized for such purposes as promoting public awareness of a candidate and at which the soliciting of contributions is incidental; or*
- 2. promotional materials in which the soliciting of contributions is incidental.*

The 2014 Candidates’ Guide further noted that *“any materials, events or activities must have fundraising as the primary purpose in order to be exempt from the spending limit. An incidental mention of contributions is not enough to qualify as fundraising.”*

The 2014 Candidates’ Guide reiterates, on page 30, that:

“The cost of holding fundraising events or activities is not subject to the spending limit. However, in order to be considered a fundraising cost, the primary purpose for the expense must be related to fundraising rather than promoting the candidate. Incidental fundraising that happens to occur during a promotional event is not sufficient to make it a fundraising event. Similarly, a line at the bottom of a campaign brochure asking people to donate does not make the production of the brochure a fundraising expense.”

Our Findings

Campaign Bank Account

The David Smith campaign bank account was not opened until October 29, 2014, which is after the Voting Day of October 27, 2014. This account was only used for depositing campaign contributions. All expenses were paid through David Smith's personal accounts. This is directly opposed to the MEA requirement in 69(1)(c), which states "*A candidate shall ensure that all payments for expenses, except for a nominating filing fee, are made from the campaign accounts.*"

As David Smith's personal accounts were used for all payments for expenses, we were unable to trace various expense payments to clearance on a bank statement or credit card statement. There have also been expenses paid by cash, as indicated on the receipts, and we are not able to trace payments to a bank statement.

As the campaign bank account was not used for any expenses, we were unable to review all cheques in sequential order. The Candidate did provide some of the cheques made from his personal account for campaign expenses, however, there were some cheques missing from sequential order. As this was from a personal account, we cannot determine that these would have been for campaign purposes.

Cheques written for campaign expenses contained only authorized signature, David Smith, as the cheques were from his personal bank account. If the cheques were properly written from the campaign bank account, there would have been two required authorization signatures on the cheque.

A deposit for contributions was made to the campaign bank account February 2, 2015 as per the deposit slip. We were not provided with this bank statement. Although the actual deposit was made after the campaign period, the cheques deposited were dated before the campaign period end of December 31, 2014.

None of the contributions that were contributed by David Smith personally were deposited into the campaign bank account.

The campaign bank balance as at December 31, 2014, the end of the campaign period, was \$548.00.

Contribution Receipts

Contributions for the Candidate's campaign were a total of \$43,803.83 as per the Form 4 that has been filed. Of the total contributions, \$42,627.58 was contributed by David Smith and \$1,176.25 from other contributors.

From examining supporting documentation for the contributions (copies of cheques, deposit slips), the total from other contributors should have been \$1,186. We were able to vouch all contributions to duplicate deposit slips.

Receipts are required to be issued for every contribution, as stated in MEA 69(1)(e). No receipts have been issued for any of the contributions in the David Smith campaign. This includes the contributed amounts from David Smith personally.

Consequentially, as no receipts have been issued, there is no record of receipts to verify or determine if they were issued in sequential order.

Campaign Expenses

Our compliance audit includes procedures to examine the supporting documentation for all expenses and confirmed that supporting invoices for the above items were retained by the Candidate.

Accordingly, in our opinion there are no apparent contraventions of the Act in relation to keeping records of campaign expenditures.

Financial Statements

We reviewed campaign contributions and expenses as reflected in the Financial Statement and the corresponding supporting documentation, including invoices supporting the expenses.

We reviewed the categorization of expenses between expenses subject to spending limit and those not subject to spending limit.

Accordingly, in our opinion there are no apparent contraventions of the Act in relation to the financial statements.

The Financial Statement is as follows:

	Original
INCOME	
Total amount of all contributions	\$43,803.83
Refund of nominating filing fee	\$100.00
Total Campaign Income	\$43,903.83
EXPENSES	
<i>Expenses Subject to Spending Limit</i>	
Nomination filing fee	\$100.00
Advertising	\$10,779.56
Brochures / flyers	\$15,645.93
Signs	\$12,482.39
Office expenses incurred until voting day	\$106.71
Phone and/or internet until voting day	\$700.00
Other – Campaign office rent	\$2,400.00
Other – Travel expenses	\$1,689.78
Total Expenses Subject to Spending Limit	\$43,903.83
<i>Expenses Not Subject to Spending Limit</i>	
Accounting and Audit	\$1,017.00
Total Expenses Not Subject to Spending Limit	\$1,017.00
Total Campaign Expenses	\$44,920.83
SURPLUS (OR DEFICIT)	(\$1,017.00)

Restrictions and Limitations

This report was prepared for the Toronto District School Board in relation to the compliance audit regarding the 2014 election campaign finances of Mr. David Smith requested by the Compliance Audit Committee. This report is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through use of this Report for a purpose other than as described in this paragraph.

Although we reserve the right, we will be under no obligation to review and/or revise the contents of this Report in light of information which becomes known to us after the date of this Report.

This Report is respectfully submitted by Julie B. Baetz, CPA, CA, LPA.

Yours truly,

MILLARDS CHARTERED PROFESSIONAL ACCOUNTANTS



Julie B. Baetz, CPA, CA, LPA
Partner