October 25, 2005

Kevin C. Christenson
City Clerk
City of Hamilton
71 Main Street West, 2nd Floor
Hamilton, ON
L8P 4Y5

Dear Mr. Christenson:

Re: Compliance Audits – Mssrs. Di Ianni, Best and Caplan

Attached are copies of the compliance audits for Mssrs. Di Ianni and Best. Our compliance audit for Mr. Caplan is delayed while we await copies of bank records for his municipal election campaign account. We expect to complete the compliance audit for Mr. Caplan within the next two weeks.

These compliance reports are being provided to you in your capacity as City Clerk as well as to distribute copies to Council, as required under Section 81(7) of the Ontario Municipal Elections Act, 1996. We confirm that we are also sending copies of the reports to the candidates and to the applicant, Ms. Joanna Chapman.

Please call me if you have any questions regarding these reports.

Yours sincerely

Ken Froese, CA•IFA, CFI
Director

cc: Mayor Larry Di Ianni
Mr. John Best
Ms. Joanna Chapman
Report for the City of Hamilton

Municipal Election Compliance Audit on
Campaign Finances of Candidate
Larry Di Ianni

October 25, 2005
Report for the City of Hamilton
Re: Municipal Election Compliance Audit
October 25, 2005

Background to the Compliance Audit

This compliance audit was the result of an appeal by an elector, Joanna Chapman ("Chapman"), regarding her request for a compliance audit under Section 81 of the Municipal Elections Act, 1996 (the "Act"). Justice Timothy Culver ordered the City of Hamilton to conduct an audit of the financial statements submitted by three candidates in the 2003 municipal election in Hamilton – John Best, Marvin Caplan and Larry Di Ianni.

Ken Froese of LECG Canada Ltd. ("LECG") was retained to conduct a compliance audit in accordance with the Act. We are submitting separate reports for each of the three candidates.

Subsection 81(6) of the Act requires that the auditor "prepare a report outlining any apparent contravention by the candidate." This report contains our findings related to Mayor Larry Di Ianni's ("Di Ianni") campaign finances.

Approach to the Compliance Audit

The compliance audit is an audit of Di Ianni's financial statement for the period from April 30, 2003 to December 31, 2004, as submitted to the City of Hamilton on March 1, 2005, although our report also addresses the process to reach the final financial statement and events subsequent to the filing of that financial statement. The compliance audit addressed contributions to Di Ianni's campaign as well as campaign expenses.

Subsection 70(7) of the Act states that candidates are only to accept contributions from persons or entities that are entitled to make contributions. The compliance audit was conducted on the basis of information reasonably available to Di Ianni when contributions were accepted, without assuming that he had the level of information potentially available from conducting a forensic investigation of contributions to his campaign.

What the Act Says About Contributions

The Act only permits contributions from an individual normally a resident in Ontario, a corporation that carries on business in Ontario, a trade union that holds bargaining rights for employees in Ontario, and the candidate and/or his or her spouse or same-sex partner (Subsection 70(3)).

The Act also states that contributions can only be made from money that belongs to the contributor (Subsection 74(1)). It does not address whether one cheque can be made on behalf of two or more individuals or entities. We have interpreted the Act to permit contributions on other's behalf where there is supporting documentation, such as a letter, advising the candidate that the funds are being contributed on the other party's behalf, using the other party's funds. For example, where a candidate is advised that a contribution is being made on behalf of a
number of individuals, each of whom is reimbursing the entity, or where the funds are being charged to their shareholder loan account, or a similar situation.

The Act permits contributions on behalf of deceased persons by their personal representatives, but only where the deceased person's will directs that a contribution be made to a named candidate out of the funds of the Estate.

The Act permits contributions from associated corporations but only to the same contribution level as applies to a single corporation. Associated corporations are defined in Section 72 of the Act by reference to Section 256 of the Income Tax Act (Canada). The Income Tax Act relies on the concept of control, either directly or indirectly, by the same corporation, individual or related group of individuals. Control relates primarily to share ownership, not to the position an individual holds within a corporation – such as being an Officer and/or Director. Corporate searches identify Officers, Directors and Administrators of a corporation but do not identify shareholders. As a result, the ability to identify associated companies relies in large part on information only available from the contributor.

The Act, by identifying only corporations, does not permit contributions from income trusts, limited and general partnerships, unincorporated co-tenancies, and other legal but non-corporate entities through which business is conducted in Ontario.

Subsection 1(1) of the Act defines trade unions by reference to the Labour Relations Act, 1995 and the Canada Labour Code (Canada). The definition includes "a provincial, national or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency" and "a central, regional or district labour council in Ontario."

The Act does not contain any language related to association between trade unions and union-related entities, and thus appears to permit contributions from trade union entities that otherwise would not be permitted by corporations. The Act also does not address association such as that of a trade union owning a corporation.

What are Reasonable Expectations from a Candidate?

Our compliance audit considered what reasonable expectations should be for candidates in conducting their due diligence on campaign contributions. At the time contributions are received, a candidate can reasonably be expected to identify contributions that exceed the limits or are clearly from inappropriate sources, such as contributions from out-of-Provence businesses, charities, federal or provincial political parties, or similar sources.

Prior to finalizing a financial statement, a candidate can also reasonably be expected to identify multiple contributions that result in an over-contribution, contributions from different individuals or corporations sharing a common address, or other commonalities that suggest a possible
association resulting in an over-contribution. Their responsibility is then to promptly refund over contributions. However, in our view the candidate cannot be reasonably expected to do more than enquire of the contributors as to whether they are associated or are otherwise not permitted to contribute to the candidate’s municipal election campaign.

Compliance Audit of Contributors’ Activities

We have proposed to the City of Hamilton that the compliance audit be extended to address additional matters where the information provided by contributors either does not resolve the issue or the information raises further questions as to whether the contributions were appropriate. Any apparent contraventions of the Act in these matters will be on the part of the contributors as opposed to the candidates. Sixteen of these matters related to contributions to Di Ianni’s campaign and can be categorized as follows:

- Contributions made by apparent associated companies¹;
- Contributions made by certain councils, associations and labour organizations²;
- Contributions made by companies that do not appear to be corporations; and
- Contributions listed as “in-kind”.

Our Findings – Apparent Contraventions of the Act - Contributions

Mayor Di Ianni has been fully cooperative and forthcoming throughout the course of our compliance audit. He provided the documentation we requested in a timely manner and attempted to obtain additional information when requested. We found Di Ianni to be open and frank in our discussions with him and on several occasions he advised us that he never intentionally contravened the Act.

Di Ianni realizes that controls should be put in place to address the issues of compliance with the Act. He indicated that he would recommend to anyone running in a municipal election that they develop and use a checklist against which each contribution could be evaluated for compliance with the Act.

Subsequent to Chapman raising concerns with contributions to Di Ianni’s election campaign, Di Ianni commissioned Taylor Leibow LLP to examine the contributions to his election campaign. Their engagement included sending confirmation letters to contributors asking them to confirm

¹ Corporate searches reveal only Officers, Directors and Administrators, not shareholders, and the Election Finance Act is based on share ownership, according to Subsection 72.

² Contributions received from labour associations and / or labour-related organizations that do not appear to hold bargaining rights for workers in Ontario, as required by Subsection 70 (3).
whether they were associated with other contributors. The findings from that engagement were as follows:

1. There were 24 corporations or groups of associated corporations that had exceeded the $750 limit. The total of the excess contributions was $10,950.

2. There were two individual contributors that had exceeded the $750 limit. The total of the excess contribution was $500.

The excess contributions referred to above were refunded to the contributors prior to Di Ianni filing his final financial statement on March 1, 2005.

We identified five apparent contraventions of the Act that had not been identified by Taylor Leibow as over contributions to Di Ianni’s election campaign. These apparent contraventions were addressed promptly when they were brought to Di Ianni’s attention. Had the five apparent contraventions been identified as such by Taylor Leibow, it is reasonable to expect that Di Ianni would have refunded the contributions prior to filing his final financial statement, consistent with his treatment of other matters identified during the course of the Taylor Leibow engagement.

(1) YMCA of Hamilton-Burlington (“YMCA”)

On August 25, 2004 the YMCA, a registered charitable organization, made a $750 contribution to Di Ianni’s campaign. The contribution was a contravention of the Act as a charity is not a corporation and is a non-profit entity as opposed to a business.

When we advised Di Ianni that the contribution by YMCA was an apparent contravention of the Act, he immediately refunded the $750 to the YMCA.

(2) 9043-8284 Quebec Inc

A $750 cheque dated November 6, 2003 from 9043-8284 Quebec Inc, was contributed to Di Ianni’s campaign. The company from which the cheque was sent is a corporation registered in the Province of Quebec, an apparent contravention of the Act, which requires contributions to be from corporations carrying on business in Ontario. At the time of the contribution, 9043-8284 Quebec Inc. was 100% owned by a company in which Philip Fracassi, an Ontario resident, held 50% of the voting power through preference shares. 9043-8284 Quebec Inc., in turn, owned 3.97% of the common shares of Capital Environmental Resource Inc., a company operating a business in Ontario (now Waste Services (CA) Inc.).
When we provided Di Ianni with the information regarding the apparent contravention, he immediately refunded the contribution. There was some discussion on whether the company was able to contribute to the election in Hamilton based on information provided to Taylor Leibow which stated that the individual who held 50% of the voting power was a resident of Ontario and that the small percentage ownership the Quebec company held in a business operating in Ontario.

However, despite the place of origin of the principal shareholder, the contribution was made from the Quebec corporation.

In our view this contribution is an apparent contravention of the Act. As noted above, the contribution has since been refunded to the contributor.

(3) Estate of Nick Schwartz

A cheque dated May 3, 2004 for $750 was contributed to the Di Ianni campaign. The cheque was drawn on an Effort Trust Company account and the cheque included the handwritten comment "Re: Contribution from Estate of Nick Schwartz".

Contributions from an Estate are only permitted where the contribution is included in the Will of the deceased person. There was no accompanying letter from Effort Trust advising of the request by Mr. Schwartz in his will to have a contribution made to Di Ianni's municipal campaign.

We received a letter dated September 30, 2005 from David S. Diamond of Diamond & Diamond advising that the contributor should have been listed as Debbie Diamond, as she was the sole beneficiary of the Estate of Nick Schwartz.

However, given that the funds were still in the Estate at the time of the contribution and there was no documentation that the contribution was provided for in Mr. Schwartz's will, we are of the view that the contribution is an apparent contravention of the Act. When we advised Di Ianni that the contribution was an apparent contravention of the Act, he immediately refunded the $750.

(4) Milligan, Gresko

A $750 cheque dated October 3, 2003 from Milligan, Gresko was deposited to the Di Ianni campaign account. At the time the cheque was issued, Milligan, Gresko was a partnership with two partners – James Milligan and George Gresko.

We were informed by Mr. Gresko that the cheque was issued by Milligan, Gresko and paid for by the partnership.
Therefore, in our view the contribution is an apparent contravention of the Act since the partnership is an unincorporated entity. When we advised Di Ianni that the contribution was an apparent contravention of the Act, he immediately refunded the $750.

(5) Hamilton Bulldogs Hockey Club LP ("Bulldogs")

On September 16, 2004 a $300 cheque from the Bulldogs was deposited to the Di Ianni campaign account. The Bulldogs, as a limited partnership, is not a corporation and therefore cannot contribute to a municipal election campaign. Ruth Liebersbach, CFO of the Bulldogs, advised us that the cheque was issued by the limited partnership.

In our view this is an apparent contravention of the Act. When we advised Di Ianni that the contribution was an apparent contravention of the Act, he immediately refunded the $750.

Our Findings – Apparent Reporting Contraventions

We identified one potential contravention of the Act where the contributors provided additional information to us that resulted in the contribution complying with the Act. However, the additional information changed the contributor from the entity that was recorded in Di Ianni's financial statement to an individual, an apparent financial statement reporting contravention.

(1) Village Green Denture Clinic

A Village Green Denture Clinic cheque dated June 24, 2003 for $1,000 was made payable to Larry Di Ianni as a campaign contribution. The cheque had a note on it which read "Comment: from Paul Pacifici". The $250 over-contribution was refunded on August 13, 2004 to Paul Pacifici.

In reviewing the financial statements we noted the contribution was listed as being from Village Green Denture Clinic, an unincorporated business. Paul Pacifici confirmed to us that the contribution was made on his behalf, using his funds from his personal business.

Therefore, in our view this contribution (after the $250 was refunded) was not a contravention of the Act. However, there is a reporting contravention as the financial statements should have listed Paul Pacifici as the contributor and not the Village Green Denture Clinic.

Our Findings – Contributions “In-Kind”

We identified one “in-kind” contribution that raised further questions.

The financial statements of Di Ianni indicated an “in-kind” contribution from Fercan Investments and Italo Ferrari, each for $750. Fercan Investments should have been captured in the financial
statements as Fercan Developments Inc. ("Fercan"), the correct name of the corporation. The "in-kind" contribution from Fercan was for the rental of the office space in which Di Ianni had his campaign office. Fercan was the owner of the office building.

Italo Ferrari was Fercan's General Manager and Di Ianni's main contact at Fercan. Mr. Ferrari states that his in-kind contribution was also for rent of the same space in a property owned by Fercan. However, Mr. Ferrari was not an owner/shareholder of Fercan. In discussions with Mr. Ferrari, he advised that he had personally reimbursed Fercan, through a deduction on his pay stub, for the $750 "in-kind" contribution listed as his contribution to Di Ianni's campaign.

In our view Di Ianni has complied with the Act in relation to this contribution "in kind" as the contributor has provided information to Di Ianni confirming compliance with the Act.

We have not examined Mr. Ferrari's pay stub or other evidence of reimbursement of Fercan but propose that this procedure be part of the "Compliance Audit of Contributors' Activities" referred to earlier in this Report as one of the sixteen other matters.

Our Findings – Campaign Expenses

We did not identify any apparent contraventions in relation to the expenses incurred by the Di Ianni campaign.

The salary of Di Ianni's campaign manager was $12,000, whereas the Di Ianni financial statements only disclosed $6,000 under the expense category "Salaries & Benefits / Professional Fees". However, our compliance audit confirmed that a further $6,000 paid to the campaign manager was included under the expense category "Fund-Raising Function", an appropriate classification considering the functions performed by the campaign manager.

We were also provided information on contracts the City of Hamilton entered into with Di Ianni's campaign manager subsequent to the election that, in our view, are outside the scope of this compliance audit. We will refer this issue to the City of Hamilton's Internal Audit Department.

Our Findings – Resolution of Other Contributions

Chapman, through court filings, letters to City Council and in discussions with LECG, identified contributors to the Di Ianni campaign who, based on the financial statement information filed by Di Ianni, were potentially not eligible contributors or who were potentially associated with other contributors. Several of the contributors identified by Chapman remain on our list of sixteen issues that we recommended be addressed through an extension of the compliance audit. (As noted previously, any apparent contraventions of the Act in these matters will be on the part of the contributors as opposed to the candidates.)
We determined that the following contributors were eligible to contribute to the Di Ianni campaign and thus do not represent apparent contraventions of the Act or the over contributions were refunded prior to the filing of Di Ianni's final financial statement:

- DeSantis associated companies were refunded their over-contributions prior to the filing of the final financial statement;

- Dival Developments Ltd. was refunded its over-contribution prior to the filing of the final financial statement;

- Dufferin Construction Company, St Lawrence Cement and TCG Asphalt & Construction Inc. were associated companies and refunded their over-contribution prior to the filing of the final financial statement;

- Fortran Traffic Systems Limited was refunded its over-contribution prior to the filing of the final financial statement;

- Homelife Effect Realty Inc. was refunded its over-contribution prior to the filing of the final financial statement;

- Pasquale Smith and Pasquale Paletta were incorrectly captured on the original financial statements and were correctly recorded as Paletta International Corporation and Tender Choice Foods in the final statements. They were associated companies and were refunded their over-contribution prior to the filing of the final financial statement;

- Ramada Plaza Hotel and Sahar's Hospitality Inc were associated companies and refunded their over-contribution prior to the filing of the final financial statement;

- Starwood Homes Management and 1419690 Ontario Inc were associated companies and refunded their over-contribution prior to the filing of the final financial statement;

- Venetor Equipment Rental Inc. was refunded its over-contribution prior to the filing of the final financial statement;

- 456941 Ontario Ltd. was refunded its over-contribution prior to the filing of the final financial statement;

- Buzzelli & Company, which we determined was a contribution from Buzzelli & Company Corporate Finance Inc., a registered corporation;

- Halton Farming, which was actually a contribution from Halton Farming (1992) Ltd., a registered corporation, and which was accurately identified in the final financial statements;

- Adcom Advertising and Design, which we determined was the operating name for 604787 Ontario Ltd., a registered corporation; and

- The contribution from Jerry V. Inggrassia Barrister & Solicitor, which we determined was from an individual, Jerry V. Inggrassia, and not from the law firm.
Concluding Comments

We identified five apparent contraventions of the Act in relation to contributions and one apparent reporting contravention.

We also identified sixteen potential contraventions by contributors, with the categories of potential contraventions identified earlier in this report. In our view these sixteen potential contraventions were appropriately addressed by the candidate. Any apparent contraventions of the Act in these matters would be on the part of the contributor as opposed to the candidate.

Di Ianni advised us that he never intentionally contravened the Act. In addition, he has repaid contributions to contributors that are identified in this report as apparent contraventions of the Act. These repayments were made subsequent to the date his financial statement was filed with the City of Hamilton.

This Report is respectfully submitted by Ken Froese of LECG Canada Ltd. I was assisted in the compliance audit by Kelly Malcolm and Ashley Barr.

LECG Canada Ltd.

Ken Froese, CA•IFA, CFI
Director
Report for the City of Hamilton

Municipal Election Compliance Audit on
Campaign Finances of Candidate John Best

October 25, 2005
Report for the City of Hamilton
Re: Municipal Election Compliance Audit
October 25, 2005

Background to the Compliance Audit

This compliance audit was the result of an appeal by an elector, Joanna Chapman ("Chapman"), regarding her request for a compliance audit under Section 81 of the Municipal Elections Act, 1996 (the "Act"). Justice Timothy Culver ordered the City of Hamilton to conduct an audit of the financial statements submitted by three candidates in the 2003 municipal election in Hamilton - John Best, Marvin Caplan and Larry Di Ianni.

Ken Froese of LECG Canada Ltd. ("LECG") was retained to conduct the compliance audits in accordance with the Act. We are submitting separate reports for each of the three candidates.

Subsection 81(6) of the Act requires that the auditor "prepare a report outlining any apparent contravention by the candidate." This report contains our findings related to Mr. John Best’s ("Best") campaign finances.

Approach to the Compliance Audit

The compliance audit is an audit of Best’s financial statement for the period from April 14, 2003 to July 14, 2004, as submitted to the City of Hamilton on September 15, 2004, although our report also addresses the process to reach the final financial statement and events subsequent to the filing of that financial statement. The compliance audit addressed contributions to Best’s campaign as well as campaign expenses.

Subsection 70(7) of the Act states that candidates are to only accept contributions from persons or entities that are entitled to make contributions. The compliance audit was conducted on the basis of information reasonably available to Best when contributions were accepted, without assuming that he had the level of information potentially available from conducting a forensic investigation of contributions to his campaign.

What the Act Says About Contributions

The Act only permits contributions from an individual normally resident in Ontario, a corporation that carries on business in Ontario, a trade union that holds bargaining rights for employees in Ontario, and the candidate and/or his or her spouse or same-sex partner (Subsection 70(3)).

The Act also states that contributions can only be made from money that belongs to the contributor (Subsection 74(1)). It does not address whether one cheque can be issued on behalf of two or more individuals or entities. We have interpreted the Act to permit contributions on another’s behalf where there is supporting documentation, such as a letter, advising the candidate that the funds are being contributed on the other party’s behalf, using the other party’s funds. For example, where a candidate is advised that a contribution is being made on behalf of a
number of individuals, each of whom is reimbursing the entity, or where the funds are being charged to their shareholder loan account, or similar situations.

The Act permits contributions from associated corporations but only to the same contribution level as applies to a single corporation. Associated corporations are defined in Section 72 of the Act by reference to Section 256 of the Income Tax Act (Canada). The Income Tax Act relies on the concept of control, either directly or indirectly, by the same corporation, individual or related group of individuals. Control relates primarily to share ownership, not to the position an individual holds within a corporation - such as being an Officer and/or Director. Corporate searches identify Officers, Directors and Administrators of a corporation but do not identify shareholders. As a result, the ability to identify associated companies relies in large part on information only available from the contributor.

The Act, by identifying only corporations, does not permit contributions from income trusts, limited and general partnerships, unincorporated co-tenancies, and other legal but non-corporate entities through which business is conducted in Ontario.

What Are Reasonable Expectations From a Candidate?

Our compliance audit considered what reasonable expectations should be for a candidate in conducting their due diligence on campaign contributions. At the time contributions are received, a candidate can reasonably be expected to identify contributions that exceed the limits or are clearly from inappropriate sources, such as contributions from non-corporate legal entities, out-of-Province businesses, charities, federal or provincial political parties, or similar sources.

Prior to finalizing a financial statement, a candidate can also reasonably be expected to identify multiple contributions that result in an over-contribution, contributions from different individuals or corporations sharing a common address, or other commonalities that suggest a possible association resulting in an over-contribution. Their responsibility is then to promptly refund over contributions. However, in our view the candidate cannot reasonably be expected to do more than enquire of the contributors as to whether they are associated or are otherwise not permitted to contribute to the candidate’s municipal election campaign.

Compliance Audit of Contributors’ Activities

We have proposed to the City of Hamilton that the compliance audit be extended to address additional matters where the information being provided by contributors either does not resolve the issue or the information raises further questions as to whether the contributions were appropriate. Any apparent contraventions of the Act in these matters will be on the part of the contributors as opposed to the candidates. One of these matters related to a contribution to Best’s campaign.
Our Findings – Apparent Contraventions of the Act

Mr. Best has been fully cooperative and forthcoming throughout the course of our compliance audit. He provided documentation we requested in a timely manner and attempted to obtain additional information when requested. We found Best to be open and frank in our discussions with him. He never denied that he may have contravened the Act, but on several occasions stated that he never intentionally contravened the Act.

Mr. Best advised us that, during an election campaign, a candidate is focused on getting contributions, spending those funds on the campaign and getting votes. In hindsight, Best realizes that more attention and controls should have been put in place to address the issues of compliance with the Act.

We identified three apparent contraventions of the Act that Best had either already addressed or addressed promptly when they were brought to his attention.

(1) **Citizen Action Group ("CAG")**

On October 16, 2003 CAG, a registered charitable organization, made a $500 contribution to Best’s campaign that was unrelated to fundraising events. The contribution was a contravention of the Act.

In our discussion with Best, we advised him that the $500 contribution made by CAG was a contravention of the Act. He stated that he was aware that CAG was a charitable organization because he had donated to the organization in the past but said “it wasn’t in his thinking at all” prior to reading about it in the Chapman-related court files.

On June 11, 2003 there was a further $300 deposited into Best’s account from CAG. The $300 was for three tickets to a fundraising event, with each ticket representing a $73.11 contribution.

The $300 may have been for tickets for which CAG was reimbursed by the individuals for whom the tickets were purchased. However, there was no documentation on file to indicate this and, in the absence of this documentation, Best’s financial statements properly showed the $73.11 x 3 tickets = $219.33, in combination with the $500, as a $719.33 contribution from CAG. The $219.33 was an apparent contravention of the Act.

Best advised us that he refunded $719.33 to CAG on January 15, 2005. We confirmed that the refund was reflected in CAG’s financial records.

On or about May 20, 2003, CAG purchased a table for Best’s fundraiser for $950. Included with the $950 cheque was a letter from CAG, also dated May 20, 2003 that stated that individuals were reimbursing the organization for the cost of each ticket. Best’s financial statements
disclosed the contributions related to the fundraiser as individual contributions. We concluded that this was not an apparent contravention of the Act as the contributions were in effect made by the individuals using their own funds.

(2) **Hamilton Children's Aid Society ("CAS")**

A $100 cheque dated May 28, 2003 from CAS, a registered charitable organization, was used to purchase a ticket for Best's fundraiser. The ticket order form listed Dominic Verticchio as the person attending the function but the payment was made by CAS without an accompanying letter stating that the funds were reimbursed to CAS by Mr. Verticchio.

This is an apparent contravention of the Act.

When we provided Best with the information about the CAS cheque, Best immediately refunded the contribution portion of the ticket to CAS.

(3) **Labourers' International Union of North American, Local 837 ("LIUNA, Local 837")**

On July 24, 2003 a $200 cheque was deposited to the Best campaign from LIUNA Local 837's Political Account. There was an accompanying letter dated July 14, 2003 that stated that the $200 was for the purchase of 2 tickets for the fundraiser (which had occurred on June 12, 2003).

In November 2003 there was a further contribution from LIUNA Local 837's Political Account for $750.

The $750 contribution was listed in Best's financial statements as a contribution by LIUNA Local 837, whereas the tickets were listed as a $146.22 contribution from Joe Mancinelli, President of LIUNA Local 837.

The two payments from LIUNA Local 837 are an apparent contravention of the Act in that they exceed $750 and are apparently from the same contributor.

We provided Best with the details surrounding the over contribution by LIUNA Local 837's Political Account. Mr. Best was not aware of why the tickets were reflected as a contribution by Joe Mancinelli personally. In a letter dated September 23, 2005 to LIUNA, Local 837, Best explained the over contribution and provided LIUNA Local 837 with a refund cheque for the $146.22 contribution portion of the tickets.
Our Findings – Possible Contravention by a Contributor

The Best financial statements list two contributors that do not appear to be registered corporations - Bell Manor Apartments and Erie Manor. Each contributed $250 to the Best campaign. Accompanying the cheques was a letter from Effort Trust dated October 10, 2003 stating that the contributions were for Bell Manor Apartments and Erie Manor Apartments, as well as Old Colony Properties Inc. Although Old Colony Properties Inc. is an incorporated entity, the first two contributors did not appear to be registered corporations.

The contributions, even if potentially from associated companies, were less than the contribution limit of $750. Based on the information available to Best, we concluded that it was reasonable for him to have not identified the issue of a potential contribution from an unincorporated business.

A clarification letter from Effort Trust dated September 22, 2005 states that “Bell Manor is a co-tenancy (i.e. an unincorporated group) owned by Arthens Homes Limited and nine individuals; and Erie Manor is an operating account of Renimmob Properties Limited.”

Effort Trust thus advised that the Erie Manor contribution was from a bank account of a corporation, thus complying with the Act.

Effort Trust also advised that the Bell Manor contribution was from a bank account of an unincorporated co-tenancy. Effort Trust issued a further clarification letter that we received on October 24, 2005 that advised that Bell Manor was 60% owned by Arthens Homes Limited and 40% owned by the nine individuals. The letter stated that the contribution had been allocated to each of the co-tenant’s accounts.

This item remains a potential contravention of the Act by the contributor, subject to further review of the contributor’s financial records.

Our Findings – An Apparent Reporting Contravention

A $1,000 cheque dated September 18, 2003 from R Denniger Limited was contributed to the Best campaign. We were informed that, upon receipt of the cheque, Best promptly called Rudi Denniger and advised him of the over contribution. Mr. Denniger told Best that $500 was from himself personally and $500 was from his wife. Best spoke to his campaign accountant about the contribution and his accountant thought it would be best to flag the over contribution and ultimately refund the over contribution.

A $1,000 cheque dated September 14, 2004 was paid to R Denniger Limited from the Best campaign account. On the same date, there were deposits of $700 and $300 to the Best campaign account identified as “Dennigers”.
Best informed us that the $700 was from R. Denniger Limited and the $300 was from Rudi Denniger personally. Best called Dennigers at our request to ask for copies of the two cheques to confirm that the cheques were from two separate entities/people. He was provided a copy of the $700 cheque from R. Denniger Limited but did not receive a copy of the $300 cheque.

The financial statements filed on September 15, 2004 disclosed a contribution from R. Denniger Limited of $1,000. They did not reflect the refund and receipt of cheques on September 14, 2004 and thus disclosed an apparent over-contribution that had been addressed prior to the filing date. In our view this is not an apparent contravention of the Act in relation to the contribution, but does reflect a reporting contravention.

Our Findings – Campaign Expenses

We did not identify any apparent contraventions of the Act in relation to expenses incurred by the Best campaign.

Our Findings – Resolution of Other Contributions

Chapman, through court filings, letters to City Council and in discussions with LECG, identified contributors to the Best campaign who, based on the financial statement information filed by Best, were potentially not eligible contributors or who were potentially associated with other contributors. We determined that the following contributors were eligible to contribute to the Best campaign and thus do not represent apparent contraventions of the Act:

- Westpark and Hamilton International Airport, which we concluded are not associated companies;
- Homes by De Santis and Aldo DeSantis Realty Inc., which we concluded are not associated companies;
- Gown & Gavel, which we determined is a registered corporation; and
- Omni Media, which we determined was a contribution from Omni Media Productions Ltd., a registered corporation.

Concluding Comments

We identified three apparent contraventions of the Act in relation to contributions and one apparent reporting violation where contributions were unnecessarily reported as an over contribution.

We also identified one apparent contravention by a contributor (as outlined above) that in our view was appropriately addressed by the candidate. Any apparent contraventions of the Act in this matter would be on the part of the contributor as opposed to the candidate.
As noted earlier, Mr. Best advised us that he never intentionally contravened the Act. In addition, he has repaid contributions to contributors that are identified in this report as apparent contraventions of the Act. These repayments were made subsequent to the date his financial statement was filed with the City of Hamilton.

This Report is respectfully submitted by Ken Froese of LECG Canada Ltd. I was assisted in the compliance audit by Kelly Malcolm and Ashley Barr.