Report for the City of Hamilton
Municipal Election Compliance Audit on
Campaign Finances of Candidate
Marvin Caplan

February 6, 2006
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 Marvin Caplan’s ("Caplan") campaign finances.

Approach to the Compliance Audit

The compliance audit is an audit of Caplan’s financial statement for the period from June 30, 2003 to December 31, 2003, as submitted to the City of Hamilton on March 23, 2004, although our report also addresses events subsequent to the filing of that financial statement. The compliance audit addressed contributions to Caplan’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 Caplan 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 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 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-Provinc 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.

**Our Findings Related to Possible Ineligible Contributions**

The City of Hamilton approved our request 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. Two of these matters related to contributions made to Caplan’s campaign.

(1) The Hand Association of Sewer, Watermain and Road Contractors (“Hand Association”)

The Hand Association contributed $750 to Caplan’s campaign. This contributor is an Association whose corporate status was “Cancelled by Companies Branch” according to the Corporate Profile Report filed with the Ministry of Consumer and Business Services (“MCBS”).

The company provided the information we requested. Information provided to us included the Incorporation Document, Financial Statements for the 2005 year-end, and the T2 Corporation Income Tax Return for the year ended January 31, 2005. This documentation disclosed that the Hand Association continues to operate as a corporation, despite the apparent cancellation of its charter in 1994. The documentation indicated that the corporation is a non-profit organization. We confirmed that they are not a registered charity.

Accordingly, we have concluded that there was no apparent contravention of the Act in relation to this contributor.

(2) Carling Building Co (“Carling”)

A $750 contribution was listed in Caplan’s financial statements as being from Carling, an unincorporated co-tenancy.

In a letter dated February 20, 2005 from Caplan to the Clerk, City of Hamilton, Caplan explained that he was misinformed about one of his campaign contributions. He advised the City that the Carling Co-Tenancy was an unincorporated group of entities and therefore the $750 contribution should have been reported as:

- Danna Construction Inc for $187.50
- EAF Holdings Limited for $187.50
- Ninco Construction Limited for $187.50
- Sunshine Construction Inc for $187.50

Attached to Caplan’s letter was one from Effort Trust Company dated January 12, 2005, detailing the Carling Co-Tenancy distribution.
Carling was also listed in the financial statements as having the same municipal address as Renimmob Properties Ltd.

Based on our review of the companies' shareholder registers and documents from their 2003 T2 Corporation Income Tax Returns, we are satisfied that the companies' shareholder composition and income tax reporting is consistent with the companies not being associated.

Accordingly, we have concluded that there were no apparent contraventions of the Act in relation to these contributors. However, there is a reporting contravention, as the financial statement should have listed the four corporations as the contributors and not Carling Building Co., as subsequently reported by Caplan in February 2005 in his letter to the Clerk, City of Hamilton.

Inability to Locate Financial Records

Caplan informed us that he could not locate the supporting documentation for his financial statement as he had moved and, in the process of moving, had misplaced his 2003 election files. We drafted and obtained an authorization from Caplan to obtain bank documentation directly from the bank he used for his campaign account. This documentation consisted of copies of the bank statements and cancelled cheques. We did not obtain copies of cheques from contributors or obtain copies of invoices and other supporting documentation for Caplan’s financial statement filings.

According to section 69(1) of the Act:

"a candidate shall ensure that,
(f) records are kept of,
(1) The receipts issued for every contribution,
(2) The value of every contribution,
(3) Whether a contribution is in the form of money, goods or services, and
(4) The contributor’s name and address;
(g) records are kept of every expense including receipts obtained for each expense;..."

Given Caplan’s inability to produce the records to support his financial statement, we have concluded that this is an apparent contravention of the Act. We accept Caplan’s explanation that the records were misplaced and not purposefully destroyed.
Our Findings – Apparent Reporting Contravention

A contribution for $200 was listed on Caplan’s financial statements as being from Turkstra Mazza. In discussing the matter with Caplan, he informed us that he believed the contribution was from an individual lawyer at the firm, Scott Snider. We confirmed that the contribution was from Mr. Snider personally and not from the law firm.

In our view this contribution was not a contravention of the Act. However, there is a reporting contravention, as the financial statements should have listed Scott Snider as the contributor and not Turkstra Mazza.

Our Findings Related to Other Potential Ineligible Contributions

Chapman, through court filings, letters to City Council and in discussions with LECG, identified contributors to the Caplan campaign who were potentially ineligible contributors or who were potentially associated with other contributors.

We determined that the following contributors were eligible to contribute to the Caplan campaign and thus do not represent apparent contraventions of the Act. Note, however, that in several instances these contributors were not accurately disclosed in the financial statements, thus giving the indication that they may not be eligible contributors.

- The financial statements disclosed a contribution from Arctic Experience Gallery, whereas the contribution was from Arctic Experience Inc., a registered corporation;
- The financial statements disclosed a contribution from Real Estate Board, whereas the contribution was from Realtors Association of Hamilton-Burlington, a registered corporation, and a new name for this organization that was registered on September 15, 2003;
- The financial statements disclosed a contribution from Girolama Holdiongs (sic) Inc., which we confirmed is a registered corporation (Girolama Holdings Inc.); and
- The financial statements disclosed a contribution from Jamestown Construction, whereas the contribution was from Jamestown Construction Limited, a registered corporation.
LeCG

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Our Findings – Campaign Expenses

We did not identify any apparent contraventions in relation to the expenses incurred by the Caplan campaign. However, we were unable to review the supporting receipts or invoices for expenditures.

There is an unexplained discrepancy between the contributions as listed in the financial statements, totaling $17,935.00, and the total deposited into Caplan’s campaign account, being $18,589.19. The discrepancy between the two amounts was $654.19. Without access to the source documentation we were unable to confirm the reason for the discrepancy.

Concluding Comments

We identified one apparent contravention of the Act as it relates to Caplan’s retention of his campaign finance records, two apparent reporting contraventions, and three instances where the corporate names listed in the financial statements were not accurately disclosed.

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.

Yours truly

Ken Froese, CA•IFA, CFI
Director
LeCG Canada Limited