



**October 25, 2010 Municipal Elections
City of Vaughan**

APPLICATION FOR A COMPLIANCE AUDIT

Name of Applicant: Carrie liddy

Address: 36 Humberview Woodbridge Ont L4H 1B1

State the location or description of the property that qualifies the applicant as a voter in Vaughan:
same as above

Telephone: 9-850-7322 E-mail Address: carrie.liddy@sympatico.ca

I believe the following candidate has contravened the *Municipal Elections Act, 1996*, relating to election campaign finances.

Candidate Michael Di Biase for the office of: (check one)
(name)

Mayor Local and Regional Councillor Councillor Ward _____

SECTION/PROVISION OF THE MEA	COMMENTS
ALL sections	see attached

Please add any other information that you feel is relevant by attaching additional sheets as necessary.
NOTE: City Council may recover costs from an Applicant if a finding is made that there were no reasonable grounds for the Application.

Declaration of Applicant

I, the undersigned applicant, am entitled to vote for members of Vaughan City Council according to the *Municipal Elections Act 1996*. I have reasonable grounds for believing that the candidate has contravened a provision of the *Municipal Elections Act, 1996*, relating to election campaign finances. I believe the facts and information submitted above to be true and I understand that City Council may be entitled to recover auditor's costs from me. I hereby request a compliance audit of the candidate's campaign finances.

Date: June 21/2011 Signature: [Handwritten Signature]

The personal information on this form is collected under the authority of the *Municipal Elections Act, 1996*, and will be used for the purpose of the compliance audit process and will be available for public inspection in the office of the City Clerk, City of Vaughan until the next municipal election. Questions about this collection of personal information should be directed to the City Clerk, 2141 Major Mackenzie Drive, ON L6A 1T1, 905-832-8504.

Total number of pages of the application 74

This complaint is a request for a legal ruling with regards to the election finances of Regional councillor Michael Di Biase. Specifically, it is requested that an investigation be completed into whether or not campaign donations have been used to pay non-campaign expenses.

The specifics are that in the 2010 financial expense claim, submitted by Regional Councillor Di Biase to the City of Vaughan clerk on March 24, 2011, accounts for the payment of \$54,938.31 and \$17,764.29 towards recount expenses claimed as part of the 2006 deficit.

The complaint is as follows:

Shortly following the 2006 election an audit was requested on the finances of Michael Di Biase. As a result of the audit, several charges were laid. These charges included (and they are summarized informally) failure to disclose donors and failure to properly account for campaign donations made to cover legal fees incurred by Di Biase with regards to bringing the recount request forward.

During the trial, Eric Gillespie, lawyer for Di Biase, argued that the recount was brought forward by Di Biase as a voter and not as a candidate. However, this then changes the nature of the expenses from campaign expenses to voter expenses. Voter expenses are not eligible as candidate expenses. The charges were dismissed based on this defence and on a second defence of exceeding the statutory limits for paying charges.

[13] The Defendant principally raises two (2) defences. The first defence proceeds on the basis that Mr. Di Biase's involvement in the post election re-count proceedings and litigation was as a voter and not as a candidate. As such, the regulatory provisions of the M. E. A. relating to the conduct of a candidate were not engaged by Mr. Di Biase. At its core the defence asserts that the regulatory provisions in the M.E.A. have no application to Mr. Di Biase in the post election re-count litigation proceedings.

[19] For reasons which I will now articulate, I have concluded that either of the defences advanced are sufficient to allow me to find the defendant, Michael Di Biase, not guilty of all seven (7) charges against him, specifically counts 3, 4, 5, 6, 7, 8, and 20 of the information. All charges against Mr. Di Biase are dismissed.

The total recount expenses claimed on the 2006 were \$75,000. Without the recount expenses, Di Biase would have had a surplus with regards his 2006 campaign.

However, having claimed the recount expenses were not campaign related expenses, but rather were voter expenses, these expenses were not subject to the MEA. The reasons for the dismissal of the charges were based both on this and the statutory time contraventions. In the 2010 financial statements, Di Biase now restates the recount expenses as campaign related expenses and furthermore now claims the recount expenses as a "previous campaign expenses deficit", reports moneys collected as a

candidate in the 2010 election to pay the 2006 campaign recount expenses and in doing so, contradicts that legal defence and reestablishes the expenses as campaign expenses.

The substance of this complaint is to investigate the true nature of the recount expenses, as these expenses have been claimed on 2006 as both voter and candidate expenses, claimed as voter expenses during the court trail returning to be claimed as candidate expenses on the 2010 filing, and 2010 candidate donations claimed to offset the expenses. The distinction being that voter expenses are not subject to MEA, and not eligible for payment through candidate campaign donations and candidate campaign expenses are.

In his 2010 return, Di Biase now claims the recount expenses and deficit were incurred as a candidate thereby claiming the opposite on his 2010 financial statements and reestablishing the expenses as campaign expenses.

The 2010 campaign filing specifically states:

- Deficit carried forward by the candidate from immediately preceding election if offices with respect to same jurisdiction, and
- Recovery of expenses as a result of the settlement of liabilities, from immediately preceding election
- Recount expenses, from immediately preceding election, paid by candidate, and
- Deficit carried forward by the candidate

The 2006 campaign deficit was reclaimed on the 2010 return, and the recount deficit remaining was paid out of the contributions from the 2010 donations and as such is subject to audit under the MEA as filed in the 2010 return. The amounts of \$54,938.31 and \$17,764.29 were both claimed on the 2010 return and applied to the surplus funds of the 2010 return and as such, these amounts are also subject to audit under the MEA, with regards to the claims made on the 2010 return.

The investigation requested is into the true nature of the recount expenses claimed on the 2010 return, as a candidate deficit carried forward from an immediately preceding election campaign, as election expenses and paid through the use of 2010 lection campaign donations, when these expenses were clearly stated in the defence in the audit charges trials as being incurred as a voter and not as a candidate, making them ineligible as expenses for payment through the 2010 campaign donations.

An investigation is required into the true nature of the donation, given opposing claims made by Di Biase in his 2006 and 2010 financial returns and in his defence to the courts. Should the defence be accepted as the truth, then a request is made to conduct an investigation into the contravention of the MEA on the 2010 return of Di Biase for false claim of candidate expense deficit and use of campaign donations to pay non-

campaign costs, and appropriate charges be laid.

In the alternative, should the expenses be identified as campaign expenses, then the deficit carried forward and paid using 2010 donations and reported external amounts claimed against the campaign deficit on the 2010 return must be audited and contraventions of the act identified and charges laid accordingly. Should the expenses, truly identified as campaign expenses (as the 2010 return claims) there may be an issue of misleading the courts, in this case, however this may well fall outside of the purview of the MEA.