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By Email: complianceaudit@toronto.ca

Compliance Audit Committee
City of Toronto
10th floor, West Tower, City Hall
100 Queen St W
Toronto ON M5H 2N2

Attention: Ms. Julie Amoroso

Dear Members of the Compliance Audit Committee:

**Re: Jim Karygiannis re Compliance Audit for 2018 Municipal Election
EA9.1 Compliance Audit Report for the City of Toronto Re: Jim
Karygiannis (Ward All - Statutory: Municipal Elections Act, SO 1996)**

We are the lawyers for James Karygiannis. We respond to the MNP report dated October 18, 2021, which was delivered to us on November 10, 2021. For the reasons that follow, we believe that the Compliance Audit Committee should simply receive the MNP report with no further action to be taken. Mr. Karygiannis was automatically removed from office by reason of the mis-filing of his supplementary financial statements. There is nothing left to do with the matter. None of the issues raised in the MNP report rise to the level where proceedings in court are required.

Concerns with MNP Report

MNP misapprehended its role as compliance auditor and went beyond its role to identify “apparent contraventions” per 88.33(12) of the *Municipal Elections Act* (“**MEA**”). The MEA reads, in part:

Duty of auditor

(12) The auditor shall promptly conduct an audit of the candidate’s election campaign finances to determine whether he or she has complied with the

provisions of this Act relating to election campaign finances and shall prepare a report **outlining any apparent contravention by the candidate**. 2016, c. 15, s. 63.

Decision

(17) The committee shall consider the report within 30 days after receiving it and, **if the report concludes that the candidate appears to have contravened a provision of the Act** relating to election campaign finances, **the committee shall decide whether to commence a legal proceeding against the candidate for the apparent contravention**. 2016, c. 15, s. 63.

[emphasis added]

Examples of MNP’s overreach are found within its conclusions, such as in paragraph 6.2, which state that “it appears that ... are in *violation* of ...” Findings of violations were not open for MNP to make under the MEA. MNP’s role was to identify “apparent contraventions.” A contravention is not necessarily the same as a violation. It has not been found that Mr. Karygiannis committed any violations. Similarly, paragraph 6.4 should not have concluded that the items were not violations of the Act; rather, MNP should have concluded that those items were “not apparent contraventions”.

Another example is the use of bullet points in the report, which made what were supposed to be instances of apparent contraventions read more like *conclusions* that the MEA was violated, versus in each case “appears to be” contravened.

The Compliance Audit Committee has a role to play in deciding whether it wants a court adjudication of apparent contraventions. That process would have its own built-in procedural fairness and natural justice safeguards whereas the report by MNP did not.

MNP also overstepped its role when it opined that \$43,000 in campaign funds were potentially part of the Surplus (per 6.2 – 4th bullet) and included in the balance paid to the Clerk. MNP’s role was to provide apparent contraventions, not to make comments on whether an amount should possibly have been paid to the Clerk.

Response to MNP Findings

Santorini Grill Event

Mr. Karygiannis repeats and relies upon affidavits he swore on November 12, 2019 and July 24, 2020 to respond to the MNP report before the Compliance Audit Committee. Excerpts from those affidavits are found on pages 22 to 24 of the MNP report.

We have bolded relevant sections of the November 12, 2019 affidavit for the Compliance Audit Committee's consideration.

"Following voting day, I was approached by a number of people who expressed an interest in donating to my campaign. On December 27, 2018, I held a dinner party at Santorini Grill to which I invited persons who had agreed to contribute to my election campaign following election day. This was not an event to which my supporters in general were invited, but rather, was an event to which I invited only those persons who agreed to make contributions to my election campaign. It was an opportunity for people who had agreed to contribute to my campaign to network with one another, and was not open to the public or to my supporters in general."

"In my view, the expenses for this party were incurred for the purpose of fundraising and were not subject to either the general spending limit or the spending limit for expressions of appreciation after the close of voting. The expenses were characterized in this fashion (i.e. not subject to any spending limit) in the financial statement I filed with the City Clerk in March 2019 ... "

"The supplementary financial statement as filed contains an error."

"More specifically, the information in the original financial statement ... about two specific expenses was that they were not subject to either of the spending limits. In the supplementary financial statement ..., this information was modified, and the expenses were represented to be subject to the spending limit for parties and other expressions of appreciation. The entries in question pertain to a \$5,000 expense for a victory party after voting day and a \$27,803 expense for the December 2018 fundraising dinner ... "

"The supplementary financial statement shows on its face that my total expenses for parties and other expressions of appreciation were \$32,083.50 [\$27,803.50 + 5,000] and that the spending limit for these expenses was \$6,720.80. In light of

this, the City Clerk notified me by letter dated November 6, 2019 that my office as a member of City Council had been forfeited and is deemed to be vacant."

"Insofar as the expense for the December 2018 party is concerned, I remain of the view that it was properly characterized as a fundraising expense for the reasons set out above. It was not a party for my supporters generally, but rather was a function only for persons who were invited in exchange for their agreement to contribute to my campaign."

"The proper characterization of the expense in respect of the December 2018 party was a question on which reasonable people could differ, and the non-compliance, if any was found, could not possibly have affected the election result because voting had concluded more than two months earlier. I would have urged the committee to exercise its discretion in a manner that did not risk depriving the residents of Ward 22 of their elected representative in these circumstances."

"If the compliance audit committee had not been persuaded by this submission in respect of the December 2018 party, and if legal proceedings were authorized, and if a conviction had been entered, I would have submitted to the presiding judge that the contravention of the Act was the result of a good faith error in judgment, and I should not forfeit my office."

"Unfortunately, Mr. Froese's firm prepared the supplementary financial statement on the basis of my intended response to the anticipated compliance audit procedure and provided information in the supplementary financial statement about these expenses that is inconsistent with the information in the original financial statement. I reviewed the supplementary financial statement before I submitted it, but did not advert to the error."

We have bolded relevant sections of the July 24, 2020 affidavit for the Compliance Audit Committee's consideration.

"Prior to the end of the election campaign period, on December 27, 2018, I hosted a dinner party at a restaurant called Santorini Grill. I did not invite members of the public or his supporters generally. Rather, I invited only those individuals who had agreed to make contributions to the costs of the campaign following the election. The purpose of the dinner was to provide an opportunity for people who had agreed to contribute to his campaign to network with one another."

Regarding the Supplementary Financial Statement: "In respect of the Santorini Grill dinner expense, I deposed that it was properly characterized as a fundraising expense (which is not subject to spending limits) because it was not open to supporters generally, but was an invitation only event for people who agreed to contribute to my campaign expenses. **I deposed that if the auditor disagrees, my alternative submission to the compliance audit committee would be that the committee should exercise its discretion *not* to authorize legal proceedings because the dinner was held two months *after* the election and could not possibly have affected the election result.**"

"My further evidence was that I did not advert to the error in the supplementary financial statement, namely that it did not comply with the statutory requirement to repeat the same information in the original financial statement for the original campaign period when I reported on expenses in the extended campaign period in the supplementary financial statement. **I deposed that my forensic accountant had simply made an error, and prepared the supplementary financial statement on the basis of my intended response to the anticipated compliance audit proceeding.**"

"The application judge granted the application and ordered relief from the forfeiture of office to which I was elected as a member of Toronto City Council for Ward 22. The application judge accepted my evidence that my forensic accountant had prepared the supplementary financial statement, that **the "error that set out the Santorini Grill expense in a different section in the Supplementary Financial Statement was made inadvertently", and that when I signed the supplementary financial statement he did not advert to the error. The application judge found that I had acted in good faith and that "there was no attempt to hide the expense" related to the Santorini Grill dinner. His Honour noted that there has been "no finding that [I] incurred expenses in excess of the prescribed limits."**

The above sworn statements demonstrate Mr. Karygiannis' good faith belief about the events and their impact on the election. There is nothing to refer to the courts as a result.



Payment of Honoraria

Mr. Karygiannis paid honoraria on the basis of an email received from a City of Toronto employee. We have bolded relevant sections for the Compliance Audit Committee's consideration:

From: Gail Baker [<mailto:Gail.Baker@toronto.ca>]
Sent: July-06-18 9:44 AM
To: 'jim@karygiannis.net'
Subject: RE: Chartered Accountant Expenses

Good morning,

As per our conversation yesterday, here is the **section of the Act that shows any expenses incurred after voting day do not count towards your general spending limit:**

The Municipal Elections Act, 1996, s 88.20 (6) states 'during the period that begins on the day a candidate is nominated under section 33 and ends on voting day; his or her expenses shall not exceed an amount calculated in accordance with the prescribed formula'

Also, the Provincial Candidates' Guide, page 24 states '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. Note: If you incur an expense before voting day, but don't get around to paying for it until after voting day, it would still be subject to the spending limit.'

For example, **expenses like honorariums**, office expenses, bank charges, etc. **that are incurred after voting day are exempt from the general spending limit.**

In regards to an auditor expenses relating to accounting and auditing are not subject to the spending limit (same as last election).

Regards,
Gail Baker
Project Manager. Election Services

MNP acknowledges in its report that this email was silent on reconciling back to the election campaign:

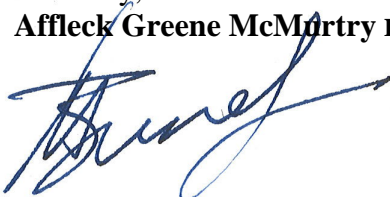
5.72 The email from Ms. Gail Baker reiterates what the Provincial Candidates' Guide states regarding expenses incurred after voting day and the end of the campaign are not subject to the spending limit. Ms. Gail Baker also provides an example including honoraria expenses incurred after voting day are exempt from the general spending limit. **The email from Ms. Baker was however silent on how these expenses reconcile back to the election campaign as per Section 88.22(1)(c) of the Act**, which states that campaign funds must be exclusively for purposes of a Candidate's campaign.

Mr. Karygiannis states that he honestly believed that the payment of honoraria as he made them was an appropriate use of the funds in question. The question of transitioning from 44 wards to 25 was properly a campaign issue. It certainly was a hot topic in the media and the courts at the time.

If Mr. Karygiannis' honest belief was not correct, then the point is likely moot. Any expenses related to his functions as a councillor would have properly formed part of Mr. Karygiannis' office budget. Soon after the election, City Council doubled each councillor's office budget. There were more than adequate funds to pay persons assisting in the transition from 44 wards to 25. Notwithstanding that it was not open for MNP to have opined that any surplus should have been returned to the City, any returned funds would have just flowed back out from his office budget. The City would have been in the same position regardless of the timing of those payments. The honoraria paid were for *bona fide* reasons and the MNP report does not suggest otherwise. In fact, MNP concluded that about half of the honoraria paid have no issues.

For the above reasons, we request that the Compliance Audit Committee simply receive the MNP report with no further action to be taken.

Sincerely,
Affleck Greene McMurry LLP

A handwritten signature in blue ink, appearing to read 'Michael I. Binetti'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael I. Binetti