

**Zachary Al-Khatib**

Tel: 780-784-7500

Fax: 780-421-4872

[alkhatib@libertylaw.ca](mailto:alkhatib@libertylaw.ca)

November 29, 2021

**SENT VIA EMAIL ([complianceaudit@toronto.ca](mailto:complianceaudit@toronto.ca))**

Compliance Audit Committee  
C/O City Clerk's Office  
Toronto City Hall  
13th Fl. W., 100 Queen St. W.  
Toronto, ON M5H 2N2

Dear Compliance Audit Committee:

**Re: *Elections Compliance Audit of Jim Karygiannis and Prosecution***

I act for Adam Chaleff, one of the applicants who sought the compliance audit of Jim Karygiannis.

Mr. Chaleff submits that Mr. Karygiannis should be prosecuted under the *Municipal Elections Act* (“MEA” or “Act”) for the infractions outlined in the report submitted by MNP LLP titled *City of Toronto Elections Compliance Audit, Candidate Jim Karygiannis* (“MNP Report” or “audit”).<sup>1</sup> The findings in the MNP Report are enough to justify a prosecution in this case, and there is reason to believe that the MNP Report did not go far enough, as will be detailed below.

Karygiannis signed a declaration attesting that he contravened the expense limits in the MEA. That alone is justification for prosecution since there is no doubt as to his culpability. (Alternatively, he filed a fraudulent statement, which is also an offense). On Mr. Karygiannis’ best case, his admitted offense will trigger an automatic fine of \$25,963.20 dollars in addition to other possible penalties (including possible jail time if his conduct is found to be wilful).

Mr. Karygiannis is an experienced two-term City Councillor and politician since 1988. It beggars belief that he did not understand the relevant rules. The Court of Appeal found that he had not demonstrated that this was “mere ‘clerical error’.”

---

<sup>1</sup> Available online at: <http://www.toronto.ca/legdocs/mmis/2021/ea/bgrd/backgroundfile-173436.pdf>

Public confidence in our elected officials demands they be held to a high standard. This is the paradigm case for serious sanctions. The City of Toronto subsidizes campaign funds, and the price of that subsidy is that surplus campaign funds must be returned to the municipality. Mr. Karygiannis improperly spent the surplus from his campaign after benefitting from the donation rebate program. This open misappropriation of public money requires significant deterrence. If Mr. Karygiannis is not prosecuted for his breaches of the *Municipal Elections Act*, the message to the public, as well as incumbent and aspiring politicians will be that the City is unwilling to enforce a level playing field in municipal elections. That cannot be.

1. This submission is organized as follows:
  - a. Background
  - b. Standard for Commencing a Prosecution
  - c. Karygiannis's Apparent Contraventions Warrant Prosecution
  - d. Additional Sanctions are Warranted
  - e. Conclusion
  - f. Order Sought

## **Background**

2. The 2018 Municipal Election in the re-districted Ward 22 was hotly contested. Jim Karygiannis, who had previously served as Councillor for Ward 39, was up against Norm Kelly, another long-time elected official. On October 22, 2018, Mr. Karygiannis won Ward 22 by less than 3000 votes, a margin of less than 10%.
3. Like all candidates for City Council, Mr. Karygiannis was required to submit a financial statement outlining his campaign income and expenses. Mr. Karygiannis filed his financial documents on March 27, 2019 – the last possible day for doing so without penalty.
4. Upon reviewing those documents, Mr. Chaleff came to believe that Mr. Karygiannis had inappropriately sought an advantage in a tight race.
5. Mr. Chaleff applied for a compliance audit of Karygiannis' 2018 campaign for City Councillor for Ward 22 (Scarborough—Agincourt). The Committee granted Chaleff's application on July 2, 2019. In its decision, the Committee referenced several grounds on which it granted the audit, including that there were "reasonable grounds to believe that" Karygiannis had:
  - a. Misclassified honouraria payments in his audited financial statement, thereby exceeding the relevant spending limit;
  - b. Misclassified a promotional mailing expense as fundraising; and

- c. Misclassified a voter appreciation event as a fundraising event, thereby exceeding the relevant spending limit.
6. On July 16, 2019, Karygiannis appealed the Committee's decision to order a compliance audit. The MEA provides that, in these situations, a candidate must file a supplementary campaign financial statement that discloses money raised for the appeal (a Form 4). According to the MEA, this supplementary statement should only have been used to account for compliance audit-related expenses and income.
7. October 28, 2019 was the last possible day Mr. Karygiannis could file his supplementary campaign financial statement without being subject to automatic forfeiture of office. However, instead of using the supplementary statement properly (i.e. to account for compliance audit-related expenses), Mr. Karygiannis used it to *restate* certain expenses from his original financial statement.
8. The MNP report details all of the adjustments Karygiannis made to his financial statements (see Table 1 on page 10 of the MNP Report). The significant adjustments were:
  - a. Moving the costs of the Victory Party (\$5,000) from Fundraising Expenses into Parties and Other Expressions of Appreciation; and
  - b. Moving \$26,134 out of Fundraising Expenses and adding \$27,084 into Parties and Other Expressions of Appreciation for a single event noted as the "December 2018 Appreciation dinner," which is also known as the Santorini Grill event.
9. It appears that, in seeking to re-classify some fundraising expenses, Mr. Karygiannis failed to appreciate that Section 88.23(2) of the MEA provides that the penalty for exceeding the expense limit for parties and other expressions of appreciation, was among other things, automatic forfeiture of office.
10. On November 6, 2019, the City of Toronto Clerk ("Clerk") issued Mr. Karygiannis a Notice of Default under section 88.23(3) of the *MEA* and advised Mr. Karygiannis that he was removed from office.
11. Legal proceedings ensued, eventually reaching the highest provincial court in Ontario. During this time, on or around January 28, 2020, Mr. Karygiannis dropped his initial appeal of the Committee decision to order an audit of his campaign. The audit commenced shortly thereafter.
12. On June 24, 2020, the Court of Appeal released its decision in *Karygiannis v. Toronto (City)*, 2020 ONCA 411. The Court of Appeal upheld Mr. Karygiannis' removal from office. It made a number of significant findings:
  - i. That it was not clear from the record whether and how many of the guests at the Santorini Dinner had actually donated to Mr. Karygiannis' campaign, or when the funds had been received (para 32);

- ii. That Mr. Karygiannis violated s. 88.25(6) of the MEA by inappropriately using his supplementary financial statement to change information in his initial financial statement (para 41);
  - iii. That Mr. Karygiannis could not demonstrate, as he claimed before the Court, that this re-allocation was the result of “clerical error” (paras 45 and 120);
  - iv. That automatic forfeiture of office under s. 88.23(2) of the MEA should be upheld against Mr. Karygiannis (para 121).
13. The Supreme Court of Canada denied Mr. Karygiannis leave to appeal on September 24, 2020. As a result of this decision, Mr. Karygiannis forfeited his seat on Toronto City Council and was barred from seeking municipal office until after the 2022 general election.

### **Standard for Commencing a Prosecution**

14. The question facing the Committee is whether to commence a prosecution against Mr. Karygiannis. This decision should be made in accordance with ordinary administrative law principles applied in regulatory proceedings.<sup>2</sup> This means that the Committee should exercise its power for the purpose for which it was granted and on the basis of “relevant considerations.”
15. The paramount concern is *maintaining the confidence of the electorate*, the integrity of the elections process, and the values of public accountability and transparency.<sup>3</sup>
16. There is a dearth of case law on the specific issue before the Committee. Mr. Chaleff submits that a useful analogy can be drawn to the exercise of prosecutorial discretion by the Crown regarding contraventions of criminal or regulatory statutes. In those circumstances, the applicable questions are:
- a. whether there is a reasonable prospect of conviction; and
  - b. whether it is in the public interest to prosecute.<sup>4</sup>
17. A few important points should be borne in mind:
18. First, a “reasonable prospect of conviction” does not require that the Committee determine that the candidate committed the offences beyond a reasonable doubt, nor does this standard require the Committee to conclude that there is a “probability of conviction”.<sup>5</sup> It is sufficient that the Committee

---

<sup>2</sup> [Jackson v. Vaughan \(City\), at ¶125 \(cited to S.C.J.\), ¶118 \(cited to C.A.\)](#)

<sup>3</sup> [Jackson v. Vaughan \(City\), at ¶99-101 \(cited to S.C.J.\)](#)

<sup>4</sup> [Romanic v. Michael Johnson, 2012 ONSC 3449 at paras. 44-47.](#)

<sup>5</sup> See e.g. [Romanic v. Michael Johnson, 2012 ONSC 3449 at para. 45.](#)

determine that there is a reasonable prospect of conviction of one or more breaches of the MEA based on all the materials before it, including the auditor's report.

19. Second, a decision to commence legal proceedings is not the same as conducting an actual prosecution. If the Committee authorizes the commencement of legal proceedings, a prosecutor appointed by the Committee will be responsible for reviewing the evidence and considering the strength of the case, including possible defenses, to determine if the prosecution should continue or be terminated. The prosecutor will have the discretion to “withdraw charges if the available evidence does not provide a reasonable likelihood of obtaining a conviction; conduct pre-trial and trial proceedings as necessary; enter into negotiations...” etc.<sup>6</sup> As a result, the Committee need not weigh the evidence at this stage.
20. Finally, if the Committee concludes that there is a reasonable prospect of conviction on one or more of the apparent contraventions, *the Committee should commence proceedings*, unless the public interest weighs against commencing proceedings. Given the MEA's important rules for ensuring the fairness and transparency of elections, it will generally be in the public interest to commence proceedings against the candidate where there is a reasonable prospect of the candidate being convicted of one or more apparent contraventions.

### **Karygiannis's Apparent Contraventions Warrant Prosecution**

21. There are two main reasons Mr. Karygiannis should be prosecuted:
  - a. First, Mr. Karygiannis admits to contravening the MEA in relation to his expenses. That infraction carries automatic penalties separate and apart from automatic disqualification.
  - b. Second, Mr. Karygiannis has breached the public trust. He used \$43,000 of campaign funds for non-campaign purposes and an additional \$25,963.20 beyond the spending limit for parties and other shows of appreciation instead of remitting those funds to the City of Toronto.

*Karygiannis admits he exceeded campaign expense limits*

22. Mr. Karygiannis should be sanctioned for recklessly violating campaign expense limits. He took surplus campaign funds that were supposed to be remitted to the City of Toronto and spent it on a lavish party for his supporters at the Santorini Grill event.
23. The MNP report concluded that Karygiannis contravened *MEA* sections 88.20(6) and 88.20(9). There are *prima facie* grounds to pursue a prosecution.
24. Moreover, the prospect of conviction for apparent contraventions of sections 88.20(6) and 88.20(9) is high. Mr. Karygiannis himself admitted to this overspend. His supplementary financial statement of October 28, 2019, includes a signed declaration stating that it was true that he overspent his expense

---

<sup>6</sup> [\*Jackson v. Vaughan \(City\)\*, supra ¶52 \(cited to C.A.\)](#)

limit. The Ontario Court of Appeal did not accept Karygiannis' assertion that his financial statements were a "clerical error".<sup>7</sup>

25. Finally, prosecution is in the public interest. These provisions are intended to create a level playing field. Mr. Karygiannis, by violating them, gave himself an unfair advantage.
26. The *MEA* sets two different expense limits in sections 88.20(6) and 88.20(9). The first limit creates a level playing field for candidates in the period up to and including Election Day. Essentially, all expenses up to the close of voting are subject to the general expense limit save for expenses associated with fundraising functions. The second expense limit is for parties and other expressions of appreciation. This second limit is intended to limit candidates' ability to curry favour with voters and reward their supporters with lavish parties, meals, gifts and bonus payments.
27. The expenses involved in the December 18, 2018 Santorini Grill party underscore why the Ontario Legislature set strict limits on parties and other expressions of appreciation. As part of this party, Karygiannis included a \$10,000 payment for Margot Doey-Vick ("Doey-Vick"). In an interview with MNP, Ms. Doey-Vick confirmed that she served as Karygiannis's campaign manager.<sup>8</sup> However, according to each of Karygiannis's financial statements, the campaign spent \$0.00 on campaign staff salaries or other payments. Aside from this party, Doey-Vick only received payment for her work on fundraising functions, according to the invoices submitted as part of Karygiannis's filings with the City of Toronto.
28. Both expense limits also serve to discourage candidates from raising excessive sums of money for their campaign. The desire for candidates to fundraise only what a candidate requires meets two public policy imperatives. First, reducing the amount of money in elections reduces the influence of special interest groups that coordinate contributions to campaigns. Second, Toronto provides a rebate to campaign contributors up to 75% of the value of their contribution. By discouraging candidates from raising vast sums of money, the pro-democratic contribution rebate program remains affordable to the municipality.
29. In sum, the facts, the law, and fairness itself militate in favour of a prosecution for the Santorini Grill event violation.

*Mr. Karygiannis failed to remit money back to the City as required*

30. The second ground justifying a prosecution is Mr. Karygiannis' use of surplus campaign funds to benefit himself politically by hiring his supporters or potential supporters to perform work unrelated to the campaign rather than remitting all surplus funds to the City as required by the *MEA*.

---

<sup>7</sup> [Karygiannis v. Toronto \(City\)](#), 2020 ONCA 411 at para. 120.

<sup>8</sup> [MNP Report, page 24, beginning at paragraph 5.45](#)

31. Again, Mr. Karygiannis's own admissions provide a strong prospect of conviction. MNP found that \$43,000.00 that should have been remitted to the City Clerk was spent on improper purposes; on its face, this is a contravention of section 88.22(1)(c) of the MEA.
32. This is no minor infraction. As with his other apparent contraventions, Karygiannis funneled payments to the individuals of his choosing from funds that would otherwise have been turned over to the Clerk to use for the benefit of all Torontonians.
33. Again, both the law and public interest are served by prosecuting Mr. Karygiannis for failing to remit public money back to the City.

### **DETERRENCE IS CRITICAL IN THIS CASE**

34. It is not enough that Mr. Karygiannis has forfeited elected office (a penalty he fought until the Supreme Court refused to hear his appeal) and is automatically barred from running again until after the 2022 general election. This is the paradigm case calling for serious deterrence. If Mr. Karygiannis' only sanction is a brief hiatus from public view, it will mean that the Committee deems candidates can walk away from serious violations of the MEA.
35. A significant fine would mean accountability for financial impropriety and would restore some of the money that should have been remitted to the public purse. In accordance with section 92(3) of the MEA, "If the expenses incurred by or under the direction of a candidate exceed the amount determined for the office under section 88.20, the candidate is liable to a fine equal to the excess, in addition to any other penalty provided for in the Act." This means that at a minimum, Mr. Karygiannis should face a \$25,963.20 fine, as well as a fine of up to \$25,000.00 for each contravention of the MEA.
36. A flagrant breach of financial rules is really a breach of trust and a fraud on the electorate. Moreover, they lead to unfairness in elections, and a serious lack of confidence in our elected officials.
37. The public must know that election finance rules will be enforced for all candidates, whether they are new challengers or experienced incumbents. Elections can never be fair if they are not run on an even playing field. Anything less than prosecution suggests that cheating is acceptable.
38. Mr. Karygiannis's apparent contraventions are particularly insidious. He fundraised 3.5 times his spending limit by the time he filed his initial financial statement, and then sought ways to spread around his campaign largesse to his favoured supporters. This is a form of unduly securing loyalty. It was deemed to be such a problem for the public interest that the Ontario Legislature tried to put further limits on the practice by placing a limit on Parties and Other Expressions of Appreciation when it adopted Bill 181 in 2016.
39. While Mr. Karygiannis' use of campaign funds benefitted himself, it came at the expense of City of Toronto taxpayers. If not spent to benefit Karygiannis's supporters, those funds would have been turned over to the Clerk in order to defray the costs of providing contribution rebates to individuals

who donate to candidates for Toronto City Council.<sup>9</sup> Consequently, it is in the interest of every ratepayer in Toronto to have candidates held accountable for failing to turn over all appropriate funds to the Clerk.

## **THERE IS EVIDENCE THAT THE MNP REPORT DID NOT GO FAR ENOUGH**

40. The violations found in the MNP Report are sufficient to warrant prosecution. Yet there is evidence the MNP Report does not go far enough.
41. Mr. Karygiannis's conduct during the audit suggests a lack of remorse for his actions, which should militate in favour of a full prosecution:
- a. The MNP Report states that Mr. Karygiannis was uncooperative: the auditors had to invoke their powers as a commission of inquiry in order to secure interviews with Karygiannis and some individuals from his campaign.<sup>10</sup>
  - b. Additionally, Karygiannis inappropriately asserted legal privilege in denying the auditors access to his accountants and their retainer documents.<sup>11</sup> It is widely recognized that accounting advice and accounting agreements do not attract legal privilege.<sup>12</sup>
  - c. The supplementary financial statements are themselves problematic: the auditor who prepared them did not sign them and the auditor who signed them stated that he disagrees with the re-allocations.
  - d. The MNP Report clearly states that a greater level of disclosure was expected, and that the lack thereof contributed to their inability to come to definitive conclusions about the extent of Mr. Karygiannis' impropriety. In particular, because Mr. Karygiannis did not provide supporting documentation regarding the Santorini Grill event,<sup>13</sup> the MNP Report falls short of finding that he acted in bad faith by re-classifying it,<sup>14</sup> even while concluding he violated s. 88.20(9) of the *MEA*.<sup>15</sup>
  - e. Finally, the audit uncovered evidence that Mr. Karygiannis lied in his supplementary financial statements. Mr. Henderson, the accountant who signed the Initial Financial Statements, said

---

<sup>9</sup> EX27.3, 2018 Municipal Election Related Matters, adopted by Toronto City Council at its October 2-4, 2017 meeting: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX27.3>

<sup>10</sup> [Para 2.5 of the MNP Report.](#)

<sup>11</sup> [Paras 2.6 and 5.130 & 5.134 of the MNP Report.](#)

<sup>12</sup> [Tower v. M.N.R., 2003 FCA 307, at paras 35-48.](#)

<sup>13</sup> [Paras 4.7 and 5.56 of the MNP Report.](#)

<sup>14</sup> [Paras 4.7 and 5.58 of the MNP Report.](#)

<sup>15</sup> [Para 5.59 of the MNP Report.](#)



in his interview that “he did not agree with some of the reallocations that were made, yet he did sign the Supplementary Financial Statements.”<sup>16</sup>

42. These are not the types of actions that suggest the breaches of the *MEA* were committed due to an error in judgement. Rather than give Mr. Karygiannis the benefit of the doubt, these actions should be held against him as evidence of obstruction.

### Conclusion

43. Mr. Karygiannis was a veteran politician who has many campaigns at the municipal and federal levels of government under his belt. The 2018 campaign was his second municipal election. There is no reason to think this was a case of inadvertence. At best, it was one of indifference.<sup>17</sup> And at worst, it was one of outright impropriety.

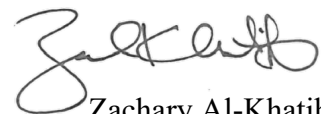
44. Given Mr. Karygiannis’ misuse of a supplementary financial statement to re-state campaign expenses – without the agreement of his accountant Mr. Henderson – in a way that would benefit him, it is more likely that Mr. Karygiannis knowingly engaged in this unlawful activity.

45. Either way, the City needs to send a clear message. Flagrant violations of campaign spending rules that lead to unfair elections, and the misappropriation of public money, should not be tolerated.

### Order Sought

The Applicant respectfully requests that the Committee commence legal proceedings against Karygiannis in respect of both the apparent contraventions identified in MNP’s report and in respect of any other contraventions that the prosecutor appointed by the Committee believes warrant prosecution.

Yours sincerely,



Zachary Al-Khatib  
Counsel, Liberty Law LLP

Member of the Bars of Ontario and Alberta

---

<sup>16</sup> [Para 5.129 of the MNP Report.](#)

<sup>17</sup> See [Ecker v. Hamilton-Wentworth Catholic District School Board, 2012 ONSC 2246 \(S.C.J.\) ¶13](#), where the Court said: “I would find the [candidate’s] conduct bespeaks indifference to the necessity of complying with campaign financing rules rather than acting in good faith. I would find indifference rather than inadvertence in all of the circumstances here.”