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BY E-MAIL ONLY: Renee.Chaperon@springwater.ca

Council of the Township of Springwater
c/o Renee Chaperon, Clerk
2231 Nursery Road
Minesing, ON L9X 1A8

Dear Members of Council:

RE: Report re: Prosecution under *Municipal Elections Act*, 1996, SO 1996, c. 32
Defendant: Charles William French
Our file No. 32597-1

This is in response to your request for a summary report on the prosecution of the above-related charges under the *Municipal Elections Act*, 1996 (the "MEA"). We understand that the defendant in this matter is scheduled to appear before Council as a delegation and as such, you require a summary of the steps taken in relation to the prosecution and ultimate diversion of the charges.

Background

The MEA requires that municipalities establish an election compliance audit committee to hear applications for compliance audits of the election campaign finances of candidates and registered third-party advertisers (the "Committee").

An elector may apply for a compliance audit of a candidate's election campaign finances, following which the Committee shall decide whether the application is granted or rejected. If it decides to grant the application, it then must appoint an auditor to conduct a compliance audit of the candidate's campaign finances. The MEA requires that the Committee consider the report of the auditor 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.

In this case, the Committee reviewed the auditor's report and opted to commence a legal proceeding against the candidate for the apparent contraventions of the MEA as set out by the auditor. Our office was appointed as prosecutor to proceed with this legal proceeding under the

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MEA. We are aware of the legal proceedings related to the earlier decision of the Committee, but that was not considered as part of our appointment.

Role of Prosecutor

I reviewed the file in its entirety to determine if there was a reasonable prospect of conviction on any of the apparent contraventions. As prosecutor in this matter, and for every matter which I am retained to act as prosecutor, I follow my ethical duty to act independently, fairly and objectively. Following a review of the evidence, I determined that there was a reasonable prospect of conviction on 10 counts under the *MEA*. Charge documents were sworn before a Justice of the Peace alleging 10 contraventions of the *MEA*, and the prosecution was commenced by serving the necessary summons on the defendant.

Appearance Dates

Court appearances in this matter took place on the following dates:

1. First appearance: November 2, 2018
2. Second appearance: December 7, 2018
3. Judicial Pre-trial: March 28, 2019
4. Last appearance: April 17, 2019

Judicial Pre-trial

A judicial pre-trial took place on March 28, 2019. At the pre-trial (and prior to attending the pre-trial) defence counsel raised the possibility of bringing several applications to challenge the prosecution, including the prosecutor's alleged lack of jurisdiction, abuse of process, and bias on the part of a Committee member. We considered these propositions from the defence, but concluded that they were all without merit. At the pre-trial, defence counsel also raised the prospect of diversion as a means to resolve the prosecution.

Diversion

Diversion, also known as "direct accountability", is an alternative resolution to a prosecution proceeding to trial. It is a mechanism commonly used by courts across Canada in cases where the prosecution has considered mitigating factors such as: seriousness of the offence(s), the prospect of lengthy trials and motions, the defendant taking responsibility for his or her actions, and a lack of criminal or quasi-criminal record.

In this case, the prosecutor and defence counsel discussed the potential for diversion both during and following the pre-trial. The prosecutor took the following factors into consideration when ultimately opting to pursue diversion:

- The offences under the *MEA* did not involve an exceedance of any spending limits, misuse of contributions or deliberate breaches of the *MEA* which attract higher penalties in accordance with the relevant case law;

- The defendant accepted responsibility and stated his remorse for the contraventions of the *MEA* and in doing so made a donation to charity;
- The defendant had no prior convictions under the *MEA*;
- The defendant was cooperative with the auditors during the audit process; and
- The potential fines in this matter would likely have been nominal given the relatively minor nature of the offences, the fact that Mr. French was not successful in the 2018 campaign and compared to the costs to prosecute the pre-trial motions attacking the jurisdiction of the prosecution and conduct a 2-3 day trial we determined that it was in the public interest to pursue diversion.

Summary

As prosecutor in this case, I concluded that 10 of the apparent contraventions of the *MEA* as set out in the auditor's report warranted charges being laid against the candidate. Throughout the process, I remained confident that there was a reasonable prospect of conviction on those charges. Upon consideration of the potential for diversion and the relevant mitigating factors, as well as the financial burden to taxpayers in proceeding to trial in the face of an admission of responsibility and an offer to make a substantial donation to charity from the defendant, I concluded that diversion in this case was in the interests of justice. I have attached a copy of the statement that was read into the Court as part of the diversion process.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP



Tony E. Fleming, C.S.
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TEF:als

Statement re: Diversion

Prosecution under *Municipal Elections Act*, 1996, SO 1996, c. 32

Defendant: Charles William French

Date: April 17, 2019

Mr. French acknowledges that he contravened provisions of the *Municipal Elections Act* during his 2014 Election campaign. Mr. French has accepted responsibility for the contraventions. He was cooperative with the compliance auditor and has accepted personal responsibility and remorse for the errors that led to the contraventions of the Act.

Mr. French advises that these contraventions were not committed intentionally. Though the Act doesn't require that contraventions be intentional for convictions to issue, the Prosecution acknowledges the absence of intention is a mitigating factor.

Mr. French has voluntarily agreed to make a \$2,000.00 donation to the Elmvale and District food bank in order to settle this matter and as a gesture of goodwill.

The Prosecution is aware of the cost to the Public associated with continuing the prosecution of Mr. French. In light of Mr. French's acknowledgement of responsibility for his contraventions, the Prosecution has determined that a costly trial is no longer necessary, nor would it be in the interests of justice.

The Prosecution has determined that diversion of the charges by withdrawing them does not offend the interests of justice.