Philip Horgan Law Office

Philip H. Horgan, B.A., J.D.
e-mail: phorgan@carltonlaw.ca

Mary E. Zettel, B.Sc., J.D.
e-mail: mzettel@carltonlaw.ca

File No.

FREW 1315

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Delivered

Council of the Township of Springwater
2231 Nursery Road
Minesing, ON
L9X 1A8

Attention: Your Worship, Mayor Don Allen, and Members of Council

Re: Withdrawal of *Municipal Elections Act* Charges Against Bill French

I acted as counsel to former Springwater Mayor Bill French.

I have been requested to provide a brief response to several inaccurate statements made at a previous Township Council Meeting, on April 3, 2019. The exchanges were made prior to the April 17, 2019 withdrawal of all charges under the *Municipal Elections Act* ("*MEA*") as against former Springwater Mayor Bill French.

Comments on Withdrawal of Charges

Mr. French had acknowledged that bookkeeping errors were made in his post-campaign filings from the 2014 election.

The *MEA* does not mandate perfect compliance, but rather that candidates take all reasonable steps to comply. Mr. French believed that he did so. He retained an expert accountant to assist in his *MEA* filing from the 2014 campaign. There was no effort to deceive voters, or conceal expenses, as acknowledged by the auditors involved. The quantum of the errors was minimal, and the acknowledged expenditures by Bill French ($15,214.72, according to Froese), was well within the allowed spending limit ($20,363.90). In fact, both auditors retained to provide reports came to very similar conclusions on the quantum of amounts involved, and the errors that were found.

By withdrawing the charges, no finding of guilt under the *MEA* has been made. It should be noted that Bill French was quite prepared to defend himself on each of the charges. But in the interests of resolving the proceedings, which were beneficial neither to Mr. French nor to the Springwater taxpayers who were paying the prosecution's costs, Mr. French was willing to acknowledge some mistakes, and make a charitable donation to resolve the file.

Comments on Springwater Council Meeting, April 3, 2019

I take the opportunity to address certain comments made at your meeting of April 3, 2019, given that statements were made in respect of comments previously provided by me.

CAO Brindley informed Council that "the original audit was not a thorough, investigative, *forensic* audit, even though the *MEA* contemplates one" (emphasis added).

But the *MEA* does not mention the availability of a second audit, or use the word "forensic". It was a discretionary decision of the Compliance Audit Committee ("CAC") to seek a further *compliance* audit.

The second audit by Ken Froese was not stipulated to be *forensic*, and was merely a further *compliance* audit (by the authorizing motion and its own terms) and made very similar findings to the earlier Grant Thornton report. On the basis of information provided by Mr. French himself, Mr. Froese additionally found some modest errors in several donation receipts. Both audits agreed in dismissing all issues raised in the original Dan McLean application for a Compliance Audit, with the possible exception of some internet expenses.

The CAC demand for a second compliance audit ultimately resulted in two and one half years of delay in the proceedings (October, 2015 to May, 2018). Much of the delay in court proceedings can be attributed to the intransigence of the CAC itself, which chose not to seek a quicker alternative.

CAO Brindley asserted at your council meeting that Bill French had delayed the process for roughly two years, but Mr. Brindley made no mention of the original Dan McLean judicial review application, which Mr. French and Grant Thornton had opposed (and were successful). CAO Brindley did not mention that the two audits insisted on by the CAC found very similar bookkeeping errors, and were both paid for by taxpayers of Springwater at excessive cost.

You need not rely upon my views, as a lawyer engaged in this file only since October, 2018. Some guidance can be found from judges involved in these earlier hearings: in January of 2017, Superior Court Justice Frances Kiteley noted that the Compliance Audit matter was developing a "life of its own" and advised the parties to seek a less expensive and early resolution. That effort failed in May, 2017, following the CAC's insistence to proceed with court hearings.

In January, 2018, Superior Court Justice Ann Molloy noted in her decision that the Township could have had standing to intervene *if Compliance Audit costs were excessive*, and that the CAC had misunderstood its role by attempting to intervene to defend its decision.

CAO Brindley also claimed that the second audit determined "again" that Mr. French had *contravened* the *Municipal Elections Act*. This betrays a misunderstanding of the role of the audit process, and of the court process. A finding of guilt under the *MEA can* be made by a court after a plea of guilty, or following a hearing on the merits, neither of which occurred here. The audit process merely finds *apparent* contraventions, but that may not necessarily mean the pursuit of charges or a finding of guilt.

The experience from other jurisdictions is helpful to know that apparent contraventions do not always lead to charges. Previous allegations against former Toronto Mayor Rob Ford or Sudbury Mayor Brian Bigger, involving higher cost amounts, did not lead to charges under the *MEA*.

Bill French was quite prepared to defend himself from the charges laid, but the better course of action was to reach a settlement, which involved a complete withdrawal of all of the charges.

CAO Brindley claimed that the prosecution was independent, and did not take direction from the Township of Springwater or the CAC. While that is true to some extent, some further explanation may be helpful.

There is no basis for an "independent prosecutor" in the *MEA*, though the phrase has been used to describe a lawyer acting on behalf of a CAC during its term. In other jurisdictions, a Crown Attorney has managed such *MEA* prosecutions.

But Mr. Brindley's comments should be contrasted with the views of the two Superior Court judges noted above about the excesses of the process, and a role available for the Township to intervene, if warranted.

CAO Brindley further claimed on April 3 that $200,000 of the $311,633 incurred to that date related to the "jurisdictional review," and that "unfortunately, this is out of the hands of this Council". However, the court in the judicial review decision pointed out that the Township might have had standing to intervene if excessive costs had been a factor. Mr. Brindley also omitted to delineate the costs related to the Dan McLean judicial review application, which failed, and the largely redundant second audit, as distinct from the French judicial review application. It may also be worth noting that the Township aligned itself to Mr. French's position in his court proceeding. Given its position, the Township was jointly responsible for any added delays or expenses encountered in that proceeding.

Regarding the now withdrawn *MEA* Provincial Court prosecution, CAO Brindley stated that Bill French was responsible for various court delays. This is incorrect. The first court date was adjourned at the request of the prosecution due to disclosure obligations. Two subsequent adjournments accommodated negotiations and exchanges between counsel.

The further trial of a quasi-criminal prosecution would have taken much more time if no resolution had been reached, at the further expense of the parties. Blaming Bill French for delays of the *MEA* process is unwarranted, in my view.

CAO Brindley acknowledged that the privately retained prosecutor was paid for by Springwater. Mr. Brindley denied that the Township had any option in curtailing those expenses. A fuller response could have made reference to: a) the obligation to pay the "associated costs" under the by-law which appointed the CAC, but whose term of office ended on November 30, 2018; or b) the previous statements, noted above, from Superior Court justices in respect of "excessive costs". Either reference could have been raised in response to your questions that evening, and might have resulted in a different answer.

More importantly, it seems that the concern over "excessive costs" was a factor that entered into the assessments made to reach a settlement on the complete withdrawal of charges, according to the statement read into the record at the final court proceeding of April 17.

I close by reminding the Council of the comments from the second auditor, Ken Froese, at the May 25, 2018 meeting of the CAC, on the "apparent" contraventions of the *MEA,* prior to its decision to proceed with charges:

- He found no unfair advantage or undue influence by French during the 2014 campaign.
- There were no issues of integrity with French's conduct during the 2014 campaign.
- French was totally transparent and the irregularities were in plain sight and not hidden or obscured.
- Both Bill French and his wife, Lori, fully cooperated with the audit process and provided detailed records to respond to all questions.
- There was no intent to mislead or mispresent incomes or expenses.

This process has been drawn out over 4 years, including throughout the most recent mayoralty campaign, in which Bill French lost by 82 votes on over 6,900 votes cast. But there is little doubt that the process had an adverse effect on the perceptions of voters last fall.

The process has been resolved with a withdrawal of all charges against Bill French.

I provide this further correspondence to ensure that some fuller responses were provided to the various questions you raised on the evening of April 3, 2019, and to correct various statements made "on the record" that evening.

Yours very truly,

PHILIP H. HORGAN

PHH/rf

cc. Bill French