Response of Mr Patrick Ready to
The Election Compliance Audit Report of the
2014 Campaign of Mr. Eli El-Chantiry
submitted by Raymond Chabot Grant Thornton

J.P. Kingsley
Chair: Election Compliance Audit Committee

Introductory Remarks

In my initial application for an Election Compliance Audit Committee (ECAC) Compliance Audit of this campaign, there were clearly reasonable grounds that the candidate had not complied with the Municipal Elections Act (MEA). Otherwise, it is reasonable to expect the ECAC would not have granted the Audit.

All that was required under the MEA is that there were reasonable grounds that at least one violation had occurred. While I did ensure that was the case, I believed that an ECAC compliance audit would identify the remaining violations. After reading the Audit, it appears as though there are still a number of MEA violations that the ECAC Audit has failed to properly identify.

Despite the ECAC Audit not presenting clear finding as to whether the candidate has complied with the provisions of MEA, the facts contained in the Audit (and clearly identified in this submission) confirm that the candidate appears to have violated multiple sections of the MEA.

9.0 Conclusion

Through our procedures performed, there was a clerical error in recording bookkeeping expenses of $1,754 as salaries, benefits, honoraria, professional fees incurred after voting day when it should have been classified as accounting and audit expenses not subject to the spending limit. Furthermore, there was also a clerical error in not recording the refund of the $100 nomination filing fee as income in the 2014 Financial Statements of Mr. El-Chantiry.

Section 92. (5) (a) of the MEA clearly states that this is an offence under the Act to file a document that is incorrect, or does not comply.

Section 94.1(1) is equally clear that "A person who contravenes any provision of this Act is guilty of an offence."

As indicated the court decision 'Lancaster v. Compliance Audit Committee et al., 2013 ONSC 7631', it would be ***'unwise to dismiss Form 4 as bureaucratic fodder undeserving of careful attention'***: http://tinyurl.com/ntr5n2s

> [21] One would be unwise to dismiss Form 4 as bureaucratic fodder undeserving of careful attention. The importance of the requirement to file a proper Form 4 is apparent from the penalty provisions of the *Act*.
>
> [22] If prosecuted under s. 92(5), a candidate who files a Form 4 "that is incorrect or otherwise does not comply with [s. 78(1)]" must forfeit "any office to which he or she was elected . . .": see s. 80(2)(a) of the *Act*.

I would suggest that *careful attention* to the line items (clearly identified in the financial statement), in addition to a professional audit of the financial statement (by an auditor of the candidate's choosing) should have prevented these apparent "clerical errors", which in fact remain apparent violations of the MEA.

The Duty of the Auditor under Paragraph 81.(9) of the MEA is to prepare a report outlining any apparent contravention by the candidate. Simply dismissing apparent violations as "clerical errors" isn't the role of the Auditor. If the ECAC makes the decision to pursue charges, it's up to the courts to make that determination.

ISSUE 1: Surplus Campaign Funds Payable to City of Ottawa

The most pressing issue for the ECAC to consider, is the eligibility of Mr. El-Chantiry to currently hold office as a City of Ottawa Councilor.

Mr. El-Chantiry's financial statement for the 2014 Municipal Election Campaign shows on it's face a campaign surplus of $1,099.73.

Paragraph 80. (1)(d) of the Municipal Elections Act is specific. If a campaign shows a surplus on it's face, and the candidate fails to pay the amount required by the relevant date, the candidate forfeits any office to which they were elected.

The ECAC Audit revealed that Ms. Annie Stuart made a contribution to the campaign outside the campaign period. It states that these funds were specifically to "cover the shortfall to pay the remaining surplus amount to the City of Ottawa". This clearly demonstrates that the candidate failed to pay the amount required by the MEA, which was $1,099.73 – they were partially paid by Ms. Stuart.

Other Findings #4

Contribution received after campaign period

Observations:

- There was a contribution received after the campaign period by Ms. Annie Stuart, CFO of $23 to cover the shortfall to pay the remaining surplus amount to the City of Ottawa.
- This contribution was not recorded in the 2014 Financial Statements.

Relevant guidance used:

- There is no clear guidance in the MEA or 2014 Candidate's Guide and open to interpretation whether to record the contribution.

Conclusion:

- Since there is no clear guidance we have not made an adjustment.

Paragraph 70. (2) of the MEA is very clear and unequivocal. It specifically says that a contribution shall not be made or accepted by, or on behalf of a candidate outside the campaign period.

Contributions only after nomination

70. (1) A contribution shall not be made to or accepted by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 70 (1).

Only during election campaign period

(2) A contribution shall not be made to or accepted by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 70 (2).

What are the circumstances surrounding, Ms. Stuart's payment of funds to cover the shortfall? The audit does not reveal how this transaction took place.

If Ms. Stuart paid those funds directly to the City, that would clearly be an apparent violation of Paragraph 80. (1)(d) of the MEA.

If those funds were deposited to the campaign account outside the campaign period (which is prohibited by the Act), and then used the to "cover the shortfall" in the payment to the City of Ottawa, that too would be an apparent violation.

Section 70.(2) of the MEA is clear and unequivocal. Ms. Stuart was not entitled to make, and the campaign was not entitled to accept that "contribution". Consequently, they were not entitled to use those funds to pay the amount owing to the City of Ottawa, as they weren't legally campaign funds.

The ECAC Audit focuses on the secondary issue of how an ineligible contribution should be recorded, and completely ignores the main issues involving the source of funds used for payment of the campaign surplus, and receiving a donation outside the campaign period.

Why were these issues not identified in the ECAC Audit as apparent Violations?

ISSUE 2: Income – Refund of Nomination Filing Fee

This is a much larger issue than the simple "clerical error" that the ECAC Audit has suggested.

The ECAC Audit addresses the refund of the $100 nomination Mr. El-Chantiry received from the City. However, he was actually refunded that Nomination Filing Fee twice (once from his campaign, and once from the City of Ottawa). Why did the ECAC Audit fail to address the refund of the Nomination Filing Fee from the campaign account?

Mr. El-Chantiry's initial written submission to the ECAC indicated:

'The nomination fee has to be paid before a councilor can start collecting contributions. Therefore Eli paid the fee himself personally. When there were contribution funds in the bank account it was reimbursed...'

Based on the candidate's own admission, that was a conscious decision (not a clerical error).

Duties of candidate

69. (1) A candidate shall ensure that,

(a) one or more campaign accounts are opened at a financial institution, exclusively for the purposes of the election campaign and in the name of the candidate's election campaign;

(b) all contributions of money are deposited into the campaign accounts;

(c) all payments for expenses, except for a nomination filing fee, are made from the campaign accounts;

The campaign Nomination Filing Fee clearly should not have been reimbursed to Mr. El-Chantiry from the campaign account.

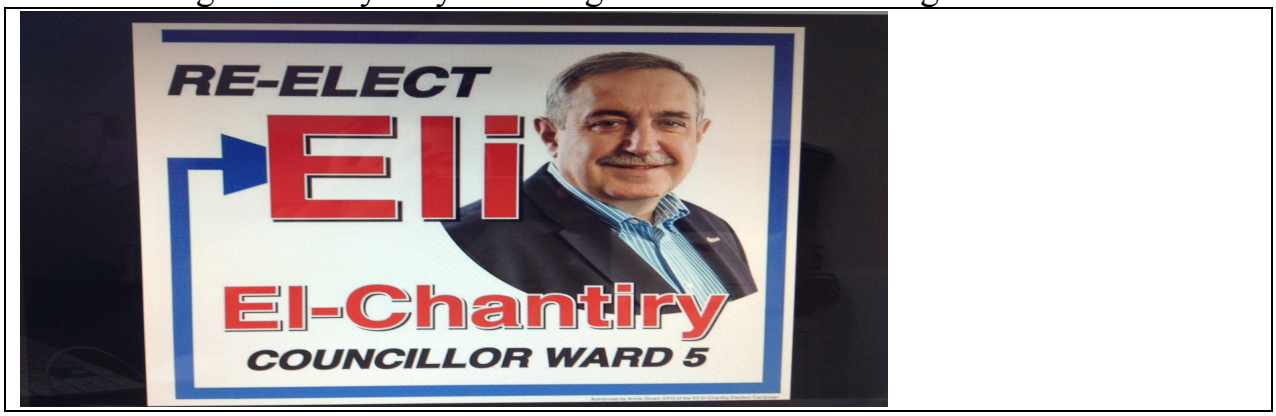
If the refund of the Nomination Filing Fee(s) were fully disclosed on the financial statement that would subsequently increase the campaign surplus. That would result in an underpayment of campaign surplus funds to the City Clerk.

ISSUE 3: Valuation and Undeclared Use of Inventory from Previous Campaign

Mr. El-Chantiry's 2014 financial statement doesn't report a single large sign as being used from previous elections. This photo from a posting on October 4, 2014 (which I believe the auditors also have), should put that claim to rest.

The current market value of this one large sign (including necessary hardware to post it) would be enough to put Mr. El-Chantiry over his legal campaign spending limit as in his 2010 financial statement, as he valued those signs at $51.34 each.

The 2006 signs are very easy to distinguish from the 2014 signs:



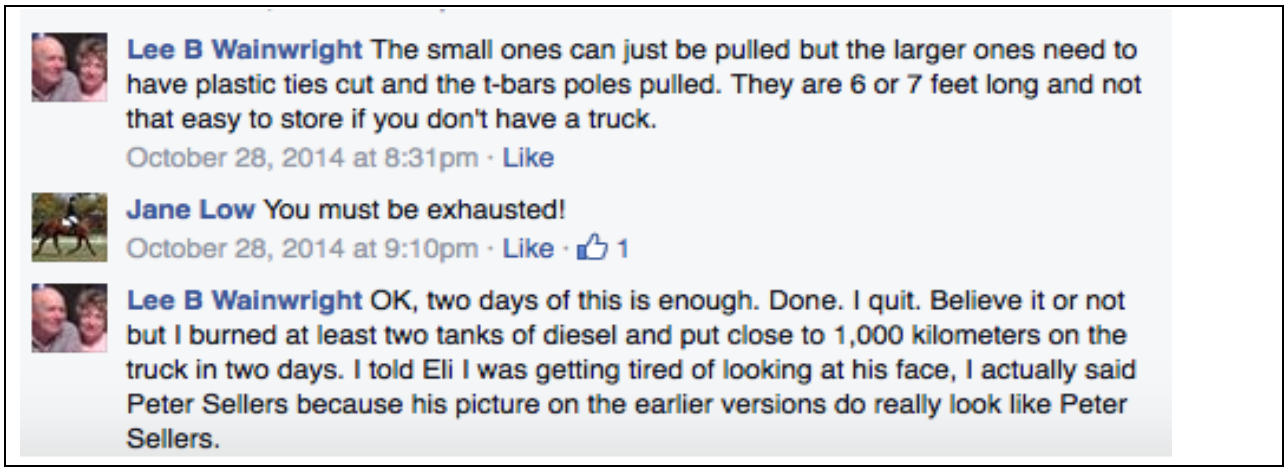
A screenshot of this posting was taken on August 24, 2015, but I am unable to provide the entire thread of comments, which may prove to be beneficial. The reason being that it has since been deleted, nearly a year after being posted, and only after a compliance audit was granted. Other postings before and after that date remain posted on the facebook page, but this one is now gone.

The Audit indicates that they did not interview Julie Maheral to confirm where/when this photo was taken and read the thread of 34 comments, which may have provided useful information in making a determination in the audit findings. Why not?

As this photo is relevant to the auditor's investigation in determining if signs were used from previous elections and not declared (putting the candidate over his legal campaign limit), did the Auditor look into the possibility that this relevant information was removed to obstruct the Auditor's investigation contrary to Paragraph 93 of the MEA. This is certainly something that a prosecution could properly investigate.

I understand the ECAC Audit team was also provided with a written statement from members of the community confirming they had seen large signs (showing a photo resembling "Peter Sellers") from previous elections in use for the 2014 campaign, even specifying the locations.

The Audit team was also provided with internal campaign correspondence (reference to “Peter Sellers”) showing references to the large campaign signs from previous elections being used in 2014.



Lee B Wainwright The small ones can just be pulled but the larger ones need to have plastic ties cut and the t-bars poles pulled. They are 6 or 7 feet long and not that easy to store if you don't have a truck.
October 28, 2014 at 8:31pm · Like

Jane Low You must be exhausted!
October 28, 2014 at 9:10pm · Like · 1

Lee B Wainwright OK, two days of this is enough. Done. I quit. Believe it or not but I burned at least two tanks of diesel and put close to 1,000 kilometers on the truck in two days. I told Eli I was getting tired of looking at his face, I actually said Peter Sellers because his picture on the earlier versions do really look like Peter Sellers.

The ECAC Audit neglected to put a market value on the inventory of signs declared from previous elections. This is puzzling, and a serious concern as that valuation is instrumental in making a determination if Mr. El-Chantiry has violated his legal campaign spending limit.

The Auditors conceded that they “determined through a third party, the replacement cost of acquiring equivalent signs in 2014 as being higher than the $1.565 assigned.”, yet just left it at that.

A current market valuation on those signs would clearly put Mr. El-Chantiry significantly over his legal 2014 election campaign spending limit.

Even using the valuation Mr. El-Chantiry himself placed on those signs ($2.79 per sign following the 2010 municipal election) would put him significantly over the limit.

Since the initial ECAC Meeting, I’ve been made aware that this isn’t a new issue for Mr. El-Chantiry.

Please consider internal campaign correspondence that clearly shows this issue has come up before. I think it gives pause for thought when considering the issues before the ECAC.

The internal campaign correspondence is dated 10/4/06 from Dave Baxter to the campaign team. I only have the text of that correspondence, but I understand the Audit team was provided with a copy of the actual document.

> "We have had a nasty surprise in the valuation of the signs from the last campaign, we had them undervalued. This has been corrected, the good news is we caught it before the end of the campaign and WE caught it not the bad guys, the bad news is on forecast budget we are down to $300 in head room.
>
> This is not too bad because it is the forecasted budget and I think we have already provided for almost everything and we still have the reserve."

In 2010, it appears as though the inventory of small signs from 2006 were valued at a fair market value of $2.79 by Mr. El-Chantiry.

I would remind the committee that there has never been a reasonable explanation provided as to why not a single sign was re-used from the 2010 campaign in 2014 ($2,781 worth of signs), but 300 signs from as far back as 2006 were used.

When considering the accuracy of what is being reported in 2014, please consider that in the 2010 (Page 2) financial statement, Mr. El-Chantiry reported $2,781 as expenses for Signs. Yet at the ECAC Meeting of July 10, 2015 his campaign's CFO admitted that: 'In regards to the signs, the total cost for the signs in 2010 was $936'.

The ECAC Auditors were made aware of electronic correspondence that could provide useful information in determining if signs from previous campaigns were used and not declared. Did they access electronic accounts to view campaign correspondence before reaching a conclusion, or simply rely on verbal assurances from the candidate and his campaign team, despite the information they were given.

The ECAC Audit reports that it was unable to trace to any supporting documentation to support the 300 signs reportedly used from previous elections. It was Mr. El-Chantiry's responsibility to determine what was used, and accurately report that information on his financial statement.

Based on the considerable information that was provided to the Audit team, in addition to the unfettered access that the Auditors were afforded under the Act, how is it possible to reach the definitive conclusion that there is no apparent contravention of the MEA relating to the valuation and undeclared use of signs from previous campaigns?

ISSUE 4: Campaign Sign Posts/Hardware

In correspondence at the initial meeting of the ECAC, Mr. El-Chantiry advised: *'All of the signs we purchased in this election are at market value. Here is the costing:*

300 small signs cost $4.95 each
60 4 x 4 signs cost $53.11 each
600 small signs cost $4.76 each
60 large signs costs $30.51 each'

This accounts for the money that was reported on the 2014 financial statement for signs.

Do the reported expenses include all the supplies required to post those signs, ie. wooden stakes, plastic ties, and 6 or 7 feet long t-bars (as mentioned in previous correspondence) for both the small and large signs? Under the MEA, they are clearly campaign expenses.

For the 2014 campaign, Mr. El-Chantiry declared that he used an inventory of 300 campaign signs from the previous election. The signs were declared as being used in the current campaign, why isn't the current market value of the posts declared for those signs? If the posts were still attached from the previous campaign, it would make their declared value even more unrealistic as wooden stakes alone can run up to $1 each.

Some candidates recorded the costs of posts, some didn't (note that Mr. Taylor recorded the value of some posts used from the previous election in his financial statement). All that matters though is what is the reporting requirement under the MEA, and what was reported in this candidate's financial statement. Was there an apparent violation of the Act?

Is it reasonable to believe that out of the $2,348 worth of signs purchased in 2006, and $2,781 worth of signs purchased on 2010, not a single post was re-used from

any of those signs in the 2014 campaign? The MEA is clear these posts should be valued and reflected in the financial statement.

I would once again ask the ECAC to refer back to the Lancaster v. Compliance Audit Committee et al., 2013 mentioned at the start of this submission and not dismiss this issue simply as *bureaucratic fodder*.

Remember that the candidate was within $44 of his legal campaign spending limit. A proper valuation on sign posts/hardware alone would be enough to put Mr. El-Chantiry significantly over his legal campaign spending limit.

Did the ECAC Audit verify through invoices that the cost of all posts and hardware (including plastic ties and metal t-bars) for all 1,320 campaign signs (1,020 from 2014 campaign and 300 from previous campaign) were accurately reported in the Financial Statement as required under the MEA?

ISSUE 5: Bank Charges Outside the Campaign Period

There were bank charges incurred after the campaign period that were not recorded.

Other Findings #2

Bank Charges incurred after campaign period

Observations:

- There were bank charges of $29.20 that were not recorded in the 2014 Financial Statements as expenses not subject to the limit.

Relevant guidance used:

- There is no clear guidance in the MEA or 2014 Candidate's Guide and open to interpretation as to how to record these expenses.

Conclusion:

- Since there is no clear guidance we have not made an adjustment.

7

Section 76.(2) of the Act is clear and unambiguous that an expense shall not be incurred outside the election campaign period.

Expenses

76.(1)An expense shall not be incurred by or on behalf of a person unless he or she is a candidate. 1996, c. 32, Sched., s. 76 (1).

Only during election campaign period

(2)An expense shall not be incurred by or on behalf of a candidate outside his or her election campaign period. 1996, c. 32, Sched., s. 76 (2).

I would suggest there may be no clear guidance on how to report such an expense, as it's simply not permitted under the MEA.

The ECAC Audit focuses on the secondary issue of how an ineligible expense should be recorded, and completely ignores the main issue that an expense was incurred outside the campaign period, which is a clear violation of Section 76.(2) the MEA.

Why was this glaring issue not identified in the ECAC Audit as an apparent violation of the MEA?

Concluding Remarks.

The ECAC Audit plays a significant role in the process of determining apparent campaign violations.

I hope that the ECAC shares my concerns that the ECAC Audit failed to identify numerous apparent violations of the MEA, and downplayed the significance of others.

Full disclosure, and accuracy are two of the cornerstones of the financial reporting requirements in our electoral system. I believe that Mr. El-Chantiry has not complied with the requirements placed equally on all candidates under the MEA.

Is it fair to the candidates who painstakingly complied with the letter and spirit of the MEA to permit these apparent violations without consequence?

There are numerous candidates who have already been deemed in violation of the MEA relating to their financial statements, and have been automatically disqualified from running in the next election by the City of Ottawa.

For the integrity of our electoral process, I believe that Mr. El-Chantiry should be held to the same standard, and be held to account for the multiple apparent violations of the MEA.

Submitted by:
Mr Patrick Ready
9 December 2015