

# Report on the Investigation into Breaches of the *Elections Act* in the Municipality of the County of Richmond

## Introduction

Audits and investigations conducted by the Ombudsman, Grant Thornton and the RCMP in the summer and fall of 2016 alerted Elections Nova Scotia to potential violations of the *Elections Act* (the "Act"). In October 2016 the Chief Electoral Officer (CEO) commenced an investigation. This is a report on the findings of that investigation and actions taken as a result of those findings.

## Acronyms

CAO	Chief Administrative Officer
CEO	Chief Electoral Officer
ENS	Elections Nova Scotia
EDA	Electoral District Association
The Act	The <a href="#">Elections Act</a>
The Municipality	The Municipality of the County of Richmond

## Background

ENS first became aware that the *Act* may have been breached through Nova Scotia Office of the Ombudsman's investigation of the expenditure of public funds in relation to travel and related activities by the elected officials and the staff of the Municipality of the County of Richmond (the Municipality).

ENS reviewed the Ombudsman's Consultative Report dated September 29, 2016, the report on the forensic audit conducted by Grant Thornton dated September 19, 2016, and a copy of an email sent by the Warden Steve Sampson in April, 2014 and forwarded to ENS on October 27, 2016. The contents of these led ENS to believe that funds of the Municipality were used to reimburse a number of the councillors and the Warden for political contributions made for a fundraising event held by the Cape Breton-Richmond Liberal Electoral District Association (EDA) on May 23, 2014.

The [Ombudsman's Final Report](#) dated November, 2016, on page 23 states:

### Political Contributions

During the course of this investigation, Ombudsman Representatives were informed that the Municipality reimbursed some Councillors for the cost of participating in a partisan political event.

A municipal re-imburement to any person for costs associated with a political party fundraising event may be a violation of the *Elections Act* (The Act).

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Section 236, sub-sections 5, 5A, and 9 of the *Act* read as follows:

- (5) No organization shall make a contribution to a registered party, electoral district association, candidate or registered third party.
- (5A) No organization shall purchase tickets to, or otherwise pay any amount to participate in, a fundraising event for a registered party, electoral district association, candidate or registered third party
- (9) No individual or organization shall reimburse, directly or indirectly, any other individual, including an employee, for a contribution made by the individual or employee.

Ombudsman Representatives were informed that the former Warden sought input from Councillors via e-mail as to their support for participation in a fundraising event, which was a recognition dinner for provincial politicians. While the Warden stated there was unanimous consent, several Councillors indicated during interviews that they did not in fact agree. Those Councillors stated that tickets were provided by the former Warden and they were informed that they could claim the cost of the \$50 ticket price from the Municipality.

ENS reviewed the Grant Thornton report titled "Municipality of the County of Richmond Travel and Expense Claims Investigation" dated September 19, 2016, available through the [Municipality's website](#). ENS found in the report:

From the Executive Summary on page 7, point 17b:

We identified 7 instances (in total \$300) where councilors claimed for reimbursement expenses perceived to be political donations or fees for attending political party event.

From page 18, point 59:

From our review of the Expense Claim forms and supporting documentation we were unable to determine whether or not some individual expenses should be classified as either personal or business related because either the supporting documentation provided was insufficient to make the determination or there was no supporting documentation provided at all. For example, a political party expense made by councilors relating to a Liberal party event was claimed. Fees for attending the political party event may be considered either a political donation and/or attendance to a political event.

From page 24, point 111:

Attendance of Political Party Event/ Political Party Donations- We identified 7 instances (in total \$300) where Councilors claimed for reimbursement expenses perceived to be political donations or fees for attending political party event.

On October 27, 2016 ENS received an email written by Victor David. This email was also sent to Jaimie Baillie, leader of the Progressive Conservative Association of Nova Scotia. The email contained a PDF copy of an email sent by Warden Steve Sampson on April 28, 2014 at 12:59 pm to the nine other sitting councillors for the Municipality. The content of

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the email was as follows:

Hi Everyone :

On Friday, May 23rd the Cape Breton-Richmond Liberal Association are recognizing the achievements of Premier Stephen McNeil and Honorable Michel Samson. The event being held at the Louisdale Parish Hall will be a combination of tribute and roast and extremely light on the "political" aspect as far as party politics is concerned. Aside from party faithful there have been requests from business and organisations to purchase tickets. I have been approached by three councillors asking if the Municipality would consider purchasing a table for the event, which is \$50.00 per ticket ( Includes buffet meal ). As a municipal unit we cannot contribute to a political party as election rules indicate however could reimburse individual councillors who submit proof of ticket purchase .I am prepared to support this initiative but at only "unanimous consent " of council .

Your constructive critique is appreciated !!!!!!!!

Steve Sampson

The *Act* sets out the rules governing fundraising activities and contributions in Sections 234 to 258. The most common fundraising activity is a fundraising dinner. The purchase of tickets to attend these events is restricted to people whose primary residence is in Nova Scotia. A person can buy multiple tickets using their own funds. They can give the tickets away to anybody they wish, resident or not of Nova Scotia. It is important to note that an organization is not permitted to purchase tickets directly or indirectly. Fundraising events have costs associated with running the event and they must be accurately documented. These costs are divided by the number of participants to determine the cost per participant. The political contribution provided by the participant is the ticket price less the average cost of the event per participant. These political contributions are eligible for a tax receipt issued by the registered party to the purchaser (not the user) of the ticket upon approval by the CEO. There is one exception to this rule for the spouse of the purchaser who may claim the tax receipt for one ticket personally.

On December 17, 2014, Marney Bentley, Deputy Executive Director of the Nova Scotia Liberal Party, submitted a Statement of Fundraising Event Revenue and Expenses (Form 5) to request authorization to issue tax receipts for this event. This form, as prescribed under the *Act*, was signed in the place denoted for the Official Agent, by the Treasurer of the EDA, Jason Martell, on September 4, 2014.

Details of the form submitted to ENS indicated that there were 211 tickets sold at \$50 each to 154 individuals. Based on the costs of the event outlined in the Form 5, the amount of the political contribution eligible for a tax receipt was \$14.96 for each ticket purchased. The CEO authorized tax receipts for \$14.96 to be issued for each ticket purchased.

The form also listed the names, addresses, cost of the tickets purchased and the amount of the tax receipt to be issued to each purchaser of tickets. Each of the nine councillors and the Warden were listed as purchasers of tickets for the event.

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This following table indicates the number of tickets purchased by members of the Municipal council as listed on Form 5:

<b>District</b>	<b>Councillors in 2012</b>	<b>Number of Tickets Purchased</b>
District 1	Victor David	1
District 2	Rod Samson	1
District 3	Malcolm Beaton	1
District 4	Alvin Martell	1
District 5	Shirley MacNamara	1
District 6	Brian Marchand	3
District 7	Gilbert Boucher	1
District 8	Steve MacNeil	1
District 9	Steve Sampson (Warden)	2
District 10	Gail Johnson	1

### **Investigation**

Based on review of the Ombudsman's report, the Grant Thornton forensic audit, and the email received, the CEO believed that there may have been an offence under the *Act*. On October 26, 2016 he launched an investigation under the authority of sections 4(p) and 287 of the *Act* and sent notices of investigation to the nine councillors, the Warden, the Chief Administrative Officer of the Municipality, the Treasurer of the Liberal Electoral District Association and the Executive Director of the Nova Scotia Liberal Party (NSLP).

ENS investigators interviewed Jason Martell, (the Treasurer of the EDA and the acting Chief Administrative Officer for the Municipality), each of the councillors and the Warden in Port Hawkesbury on November 28<sup>th</sup> and 29<sup>th</sup>. Investigators interviewed Warren Olsen, the former CAO of the Municipality, on December 6, 2016 by phone.

ENS also received documentation of the reimbursement from the acting CAO of the Municipality, Jason Martell, on December 13, 2016.

Based on the interviews held, ENS found:

- each of the interviewees to be forthcoming with their responses and cooperative with the investigators;
- eight of the nine councillors confirmed their attendance at the fundraising event; and,
- two of the councillors denied they personally purchased tickets.

## **CEO Opinion**

Based on the investigation, the CEO has concluded:

Recordkeeping by the EDA did not meet the requirements of the *Act* in that the Official Agent did not accurately record the names and addresses of each of the purchasers of the tickets to this fundraising event.

With respect to the email sent by the Warden to the nine councillors about attending and being reimbursed by the Municipality for the cost of their tickets, each of the nine councillors consulted with the Warden or responded to his email.

All nine councillors and the Warden purchased at least one ticket for the fundraising dinner.<sup>1</sup>

All nine councillors, with the possible exception of Malcolm Beaton (there is conflicting evidence on his attendance) and the Warden attended the fundraising dinner.

At a meeting in or around June, 2014, all nine councillors and the Warden were presented expense claim forms to cover the cost of their personal ticket and the mileage for their travel to the fundraising event.

**Correction:** February 2017: Brian Marchand's expense claim did not include mileage expenses.

Subsequently, seven councillors (Malcolm Beaton, Gail Johnson, Steve MacNeil, Brian Marchand, Alvin Martell, Shirley McNamara, and Rod Samson) and the Warden, Steve Sampson, submitted their expense claim forms to the Municipality for reimbursement.

Two of the councillors, Victor David and Gilbert Boucher, did not submit their expense claims to the Municipality for reimbursement.

The expense claims were approved by Warden Steve Sampson and CAO Warren Olsen.

Expense reimbursement cheques were issued to the seven councillors and the Warden on July 8, 2014.

All reimbursement cheques have been cashed.

After the release of the Ombudsman's Consultative Report, the issue of possible breach of the *Act* was first raised in Question Period on October 25, 2016 in the Legislative Assembly.

Subsequent to the discussion in the Legislative Assembly and before ENS launched its investigation, five of the seven councillors who received reimbursement cheques (Malcolm Beaton, Steve MacNeil, Brian Marchand, Alvin Martell, and Rod Samson) and Warden Steve Sampson returned the total costs of their expense claims to the Municipality.

The CEO believes, based on Warden Steve Sampson's email of April 28, 2014, he was aware that the Municipality was not allowed to purchase tickets for a political fundraiser and

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<sup>1</sup> *Two councillors denied purchasing tickets. The CEO arrived at this opinion based on the following facts. Both councillors were listed as purchasing tickets on the official list submitted. Both received tax receipts for the tickets they used. Both applied for and received reimbursement cheques from the Municipality for the cost of the tickets they used and the mileage they travelled.*

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further believes he was trying to build consensus to circumvent the rules governing political contributions.

The CEO believes that the nine councillors and Warden Steve Samson thought that attending the political fundraiser would be beneficial to the Municipality and that their attendance would be expected as part of their role as councillors of the municipality in which the event was held. Attendance at such events and interacting with provincial politicians is a standard practice as councillors for the Municipality.

The CEO believes that all nine councillors thought that seeking reimbursement was acceptable because they were normally reimbursed for other events and dinners where they were performing their role as councillors. Further the CEO believes they did not recognize that the rules governing a provincial political fundraising event were different than the rules about attending other dinners and fundraising events that they normally may attend.

Victor David and Gilbert Boucher, after attending the fundraising dinner, stated that they believed they should not be reimbursed. They said the event was a conflict with their role as municipal councillors; and therefore, did not submit expense claims for reimbursement of their ticket and travel. The CEO has concluded that Mr. David and Mr. Boucher did not breach the *Act*.

The CEO believes that the nine councillors (including Mr. David and Mr. Boucher) and the Warden were unaware at the time that being reimbursed for their ticket to the fundraising event would be a breach of the *Act*.

The CEO believes that Warden Steve Samson and CAO Warren Olsen knew that reimbursing the expenses for a political fundraising event was, at minimum, a breach of municipal policy.

The CEO believes that Warden Steve Samson and CAO Warren Olsen should have known that there was a potential conflict with the *Act* and had a duty to seek advice from the Department of Municipal Affairs, from the executive of the EDA, or from legal counsel to the Municipality.

The CEO understands that the all seven of the councillors and the Warden who were reimbursed for their attendance returned the full amount of their reimbursement to the Municipality because they now understand that it was a breach of the *Act* to accept money from another individual or organization to contribute to a political party, electoral district association or candidate.

### **Addressing the Breaches – Compliance Agreements & Notifications**

In accordance with Section 294 of the *Act*, the CEO may enter into a compliance agreement for the purpose of ensuring compliance with the *Act* with a person whom the CEO believes on reasonable grounds has committed an act that could constitute an offence under the *Act*. This section of the *Act* also contains the procedure for entering into a compliance agreement.

Section 299 of the *Act* states that the CEO shall publish as soon as practicable on a public website and by any other means a notice that sets out the contracting party's name, the act or omission in question and a summary of the agreement. What follows is a summary of the eight signed compliance agreements resulting from the CEO's investigation.

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Warren Olsen of Petit-de-Grat entered into a compliance agreement acknowledging that:

- He authorized the expense claims to the Warden and seven other councillors who attended a fundraising dinner in his role as Chief Administrative Officer for the Municipality.
- He was unaware that providing funds to reimburse contributions made to an electoral district association is a breach subsection 236(9) of the *Act*.

Steve Sampson of L'Ardoise entered into a compliance agreement acknowledging that:

- On May 23, 2014, he attended a fundraising dinner for the EDA.
- He sought and accepted reimbursement for travel expenses and the cost of one ticket to the dinner.
- He was unaware that accepting funds to reimburse a contribution made to an electoral district association is a breach of subsection 243(2) of the *Act*.
- He reimbursed the Municipality the moneys received before the investigation was initiated by ENS.
- He authorized the expense claims to himself and seven other councillors in his role as Warden for the Municipality.
- He was unaware that providing funds to reimburse contributions made to an electoral district association is a breach of subsection 236(9) of the *Act*.

Alvin Martell of West Arichat, Brian Marchand of Louisdale, Malcolm Beaton of South River, Rod Samson of Little Anse, Shirley McNamara of Cleveland, and, Steve MacNeil of St. Peter's have each entered into a compliance agreement acknowledging that:

- On May 23, 2014, each of the named councillors (Martell, Marchand, Beaton, Samson, McNamara and MacNeil) attended a fundraising dinner for the EDA.
- **Correction:** February 2017: This document released in January originally reported, "Each of the named councillors sought and accepted reimbursement for the cost of one ticket to the dinner". Martell, Beaton, Samson, McNamara and MacNeil accepted reimbursement for the cost of one ticket to the dinner and travel costs. Marchand accepted reimbursement for the cost of one ticket to the dinner, but not travel costs.
- Each of the named councillors were unaware that accepting funds to reimburse a contribution made to an electoral district association is a breach subsection 243(2) of the *Act*.
- Alvin Martell, Brian Marchand, Malcolm Beaton, Rod Samson, and, Steve MacNeil reimbursed the Municipality the moneys received before the investigation was initiated by Elections Nova Scotia.
- Shirley McNamara reimbursed the Municipality for the moneys received after meeting with Elections Nova Scotia investigators.

The CAO, the Warden and the six of the seven councillors have accepted responsibility for breaching the *Act*. The Chief Electoral Officer took into account a number of considerations before entering into these compliance agreements including the fact that each individual has admitted the facts and taken responsibility for the acts that led to their compliance agreement.

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ENS investigators interviewed Gail Johnson in November and sent a draft compliance agreement in December. Gail Johnson of St. Peter's has not entered into a compliance agreement at this time. Ms. Johnson reimbursed the Municipality of the County of Richmond for the moneys received after the investigation started.

ENS has not been able to contact Gail Johnson but will continue efforts to do so. If ENS is unable to reach Ms. Johnson in a timely manner, the CEO will ask that this matter be referred to the Director of Public Prosecutions with a request to commence prosecution in accordance with Section 292(2) of the *Act*.

**Update: February 2017:** Gail Johnson signed a Compliance Agreement a few days after this report was published. ENS now considers the file closed.

The CEO has published compliance notifications for each individual on the ENS website in the [compliance section](#).

With respect to the EDA, the CEO has determined that there was a breach of the *Act* by accepting illegal contributions from individuals who had been reimbursed for the ticket price. The CEO wrote to Brenda Martell, the Official Agent of the EDA on December 20, 2016 to inform the EDA of the breach and the requirement to return the contribution portions to Minister of Finance, of the Government of Nova Scotia. On January 3, 2017, the CEO received confirmation that reimbursement for the net amount of these illegal contributions (\$119.68) was returned to the Province of Nova Scotia Department of Finance. No further action will be taken by the CEO against the EDA.

### Chief Electoral Officer Offers Amnesty

Effective immediately, ENS is launching an amnesty period to individuals, corporations, unions and municipalities that come forward and report similar instances where breaches of the *Act* may have occurred in the past.

We understand that some organizations such as corporations, unions or municipalities reimburse the purchase price of ticket for employees or members attending corporate, service organization, and charity events on the grounds that their attendance often fosters mutually beneficial community and corporate stewardship.

Notwithstanding the foregoing, political fundraisers must be treated differently for the following reasons:

- Political financing rules ensure the public knows who, through their financial contributions, may have an influence on various political agendas.
- There are limits on who can contribute to a candidate or a party and how much they can contribute in any given year.
- Personal provincial income taxes are forgone in the form of tax receipts to those who either donate money or purchased tickets to political fund raising events.
- Because these are deemed to be personal donations, no individual or organization may reimburse directly or indirectly for a contribution made by an individual.

The rules governing political contributions are set out in Sections 234 to 258 of the *Act*. However, based on the evidence found in the investigation into officials with the Municipality



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of the County of Richmond, some individuals and organizations such as corporations, unions or municipalities are not fully aware of the particular rules governing political contributions and the limitations as set out in the *Act*.

It is unknown how widespread the practice of organizations reimbursing individuals who attend political fundraising events might be. What is known is that this investigation has led to wide-spread coverage and therefore, public interest in this topic in general. As such, it has presented ENS with an opportunity to educate and inform the public-at-large about the rules governing political financing in Nova Scotia. It also presents an opportunity for individuals, corporations, unions or municipalities who may have unwittingly been involved in a past event under similar circumstances. Effective immediately, ENS is launching an amnesty period. This is an opportunity for individuals, corporations, unions and municipalities to come forward to report similar breaches of the *Act*. The amnesty period will expire at the end of this fiscal year, March 31, 2017.

For more information about the amnesty period, visit [electionsnovascotia.ca](http://electionsnovascotia.ca) or contact Dorothy Rice at ENS at 902-424-8584.