

## Members present

Hon Andrew McGechan (President)  
Ms Belinda Clark – *ex officio* (Secretary for Justice)  
Dr Helena Catt (Chief Executive)

Dated: 18 September 2008

Decision Number: 2008-31

Initiated by

**LESLEY SOPER MP ON 22 AUGUST 2008**

In relation to

**Election advertisement  
THE NEW ZEALAND NATIONAL PARTY**

### Findings and Determination

National MP Eric Roy's advertisements in the Southland Express do not contain party election advertisements within the meaning of sections 4 and 5 of the Electoral Finance Act 2007.

**This headnote does not form part of the decision.**

### Subject

Weekly advertisements run in the Southland Express in 2008 by Eric Roy MP do not contain promoter statements. They carry the Parliamentary crest indicating they have been funded through Vote: Parliamentary Service.

Ms Soper provided advertisements published on February 7 and 14, March 20, April 10, May 1, 15, 22 and 29, June 19, July 24, and August 7 and 14, and particularly drew the Electoral Commission's attention to the publication of 24 July which set out the National Party policy on ACC. The remainder of the advertisements on occasion criticise Labour Party activities and suggest what the National Party has done in the past or will do in the future. All contain Mr Roy's website address.

### Issues raised

The Electoral Commission has published guidance on its website in respect of activities carried out by MPs in their capacity as MPs and funded through Vote: Parliamentary Service:-

- "Electioneering" as defined in directions of the Speaker made under the Parliamentary Service Act 2000 has a narrower definition than "election advertisement" as defined in the Electoral Finance Act 2007. An expense which is lawfully funded through Vote: Parliamentary Service may nevertheless be an "election advertisement" under the Electoral Finance Act, and may also constitute an election expense.
- The question of whether a party advertisement is an activity that relates to a member of Parliament in his or her capacity as a member of Parliament must be determined on a case by case basis by looking at the advertisement as a whole. The question will look at whether the activity occurs within a member's capacity as a member of Parliament, or within some other capacity, like the member's capacity as a candidate or list candidate for election. At one end of the spectrum, the simple advertising of constituency services and comment on proceedings of Parliament are included within the exemption. At the other, advertising expressly seeking financial support or a vote for the party are outside the exemption.

The Electoral Commission considered whether the advertisements are party election advertisements within the meaning of the Electoral Finance Act 2007 and, if so, whether the provisions of the Act have been complied with.

The Chief Electoral Office is responsible for administering the candidate advertising provisions of the Act.

## **Electoral Finance Act 2007**

Section 5 of the Act defines an election advertisement to be, in summary, any form of words and/or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular fashion.

## **Comments from the Eric Roy MP**

Mr Roy and the financial agent of the National Party were invited to comment. Mr Roy responded that the advertisements are published in his capacity as an MP and therefore are not election advertisements, and that they outline National Party policies and do not require promoter statements.

## **Electoral Commission's Determination**

The Electoral Commission has considered the requirements of the Electoral Finance Act along with the items listed as exhibits (below).

Whether any particular item is an election advertisement within the meaning of section 5 of the Electoral Finance Act is a question of circumstances and degree. In the Electoral Commission's view the statutory test is not whether an item "can be regarded" as encouraging or persuading voting in a particular way – as a matter of logic, almost anything "can" be so regarded – the test is whether the item "can reasonably" be so regarded, allowing inclusion within the definition only when it is objectively reasonable to do so.

The Electoral Commission believes it is essential to democratic elections that parties can inform the public of the policies which will be implemented if elected and that, particularly in light of New Zealand Bill of Rights Act considerations, it would not be reasonable to regard mere statements of policy as election advertisements and subject to the restraints of the Electoral Finance Act. Therefore the Commission is of the view that items which are accounts or reasoned criticisms of policy, or accounts or reasoned criticisms of actions or inactions, generally are not "reasonably" regarded as election advertisements as they are essential to informed democratic elections.

The Electoral Commission considers that accompanying identification of the proponents of such items does not of itself convert the items into election advertisements, but disproportionate display of photographs, names or logos could do so. Other matters that might bring such items within the definition of an election advertisement include the addition of persuasive content which lack an information base such as party slogans, self promotion or unreasoned criticism of opponents, and exhortations to vote in a particular manner.

In this instance the Electoral Commission considers the advertisements amount to statements of policy and that the criticisms do not go beyond what might be considered robust debate. They do not contain any words or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote for a party. Therefore in the Commission's view the advertisements do not contain party advertising for the purposes of the Electoral Finance Act.

**For the above reasons it is the view of the Electoral Commission that the advertisements of Eric Roy MP published in the Southland Express on February 7 and 14, March 20, April 10, May 1, 15, 22 and 29, June 19, July 24, and August 7 and 14 do not contravene the party advertisement provisions of the Electoral Finance Act 2007 as they are not party election advertisements within the meaning of sections 4 and 5 of the Act**

Signed for and on behalf of the Electoral Commission

A handwritten signature in black ink that reads "Helena Catt". The signature is written in a cursive style with a large initial 'H'.

Dr Helena Catt  
Chief Executive and Commission Member  
New Zealand Electoral Commission

9 October 2008

**Exhibits**

The following items were received and considered by the Electoral Commission when it determined this matter:

1. letter 22 August 2008 from Leslie Soper MP, raising the issue
2. copies of advertisements
3. letter from Eric Roy, received via email 12 September 2008