

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: 2008-32

Initiated by

A NATIONAL PARTY MEMBER ON 30 JULY 2008

In relation to

**Election advertisement
THE LABOUR PARTY**

Findings and Determination

Labour MP Pete Hodgson's letter canvassing contributions to the Labour Century Fund did not display a promoter statement. No offence committed because the contravention was not wilful.

No offence committed under sections 63(4) or 65(4) of the Electoral Finance Act 2007 because Mr Hodgson did not wilfully publish, or cause or permit to be published, an election advertisement in contravention of sections 63 or 65.

This headnote does not form part of the decision.

Subject

A generic letter from Pete Hodgson MP in July 2008 seeks contributions to the Labour Century Fund (LCF) and suggests that to do so is a practical way to support the Labour Party and therefore its chances of winning the election again. The letter does not have a promoter statement.

Issues raised

The Electoral Commission considered whether:

- the letter is an election advertisement within the meaning of the Electoral Finance Act 2007 and, if so, it contains a promoter statement as required by the Act
- any offence has been committed.

The Electoral Commission sent a general advisory to party and third party financial agents, about ensuring that election advertisements contain visible promoter statements, and published it on the Elections New Zealand website on 30 June 2008.

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.

Section 63 of the Act requires any election advertisement published during the regulated period to contain a statement of the name and address of the promoter of the advertisement.

Section 65 applies both within the regulated period and at other times, but only to election advertisements that encourage voters to vote in favour of the subject of the advertisement. This

section also requires such election advertisements to contain a statement of the name and address of the promoter of the advertisement and, for advertisements in favour of a party, the financial agent of the party must authorise the promoter to promote the party.

Sections 63(4) and 65(4) provide that it is an offence to wilfully contravene either of the above requirements.

Comments from Pete Hodgson MP

Mr Hodgson and the financial agent of the Labour Party were invited to comment. Mr Hodgson responded that when he reviewed the letter at the beginning of the year he decided that it did not require authorisation by the financial agent because it was a regular fundraising letter to members and supporters. Mr Hodgson acknowledged that having re-read the letter a couple of phrases may bring it under the definition of an election advertisement, and indicated that a recent fundraiser launched did carry promoter statements. He asked that the letter be considered in light of his earlier judgement being honestly made and he had no intention of wilfully contravening the law.

Electoral Commission's Determination

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

Mr Hodgson essentially conceded that the letter is an election advertisement within the meaning of the Electoral Finance Act.

Sections 63 and 65 provide that a promoter must not *publish, or cause or permit to be published, an election advertisement* unless the requirements of those provisions are met, including that the promoter is authorised to promote a party and that advertisements contain promoter statements.

The letter does not contain a promoter statement, and does not appear to have been authorised by the financial agent for the Labour Party. Therefore the letter appears to have been published in circumstances that contravene sections 63(2) and 65(1).

Section 63(4) and section 65(4) provide that *every promoter is guilty of an illegal practice who wilfully contravenes* section 63(2) or section 65 respectively.

The Electoral Commission considers that the oversight in these particular circumstances was genuine and a relatively minor matter, and is gratified that the later version of the letter has been authorised in accordance with the requirements of sections 63 and 65. As a result, the Commission is of the view that the contravention was not wilful and that therefore no offence has been committed.

For the above reasons it is the view of the Electoral Commission that the July 2008 letter of Pete Hodgson MP canvassing contributions to the Labour Century Fund was not published in circumstances amounting to the commission of an offence for the purposes of section 63(4) or section 65(4) of the Electoral Finance Act 2007

Signed for and on behalf of the Electoral Commission



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. email 30 July 2008 raising the issue
2. letter 23 July 2008 from Pete Hodgson MP seeking contribution to the LCF
3. letter 1 September 2008 from Pete Hodgson MP to Electoral Commission