

## Members present

Hon Andrew McGechan (President)  
Acting Chief Judge Wilson Isaac – *ex officio* (Maori Land Court)  
Ms Belinda Clark – *ex officio* (Secretary for Justice)  
Dr Helena Catt (Chief Executive)

Dated: 12 February 2009

Decision Number: 2009-01

Initiated by

**ELECTORAL COMMISSION**

In relation to

**Returns of donations from same donor in excess of \$20,000  
THE FAMILY PARTY**

## Findings and Determination

The Family Party returns of donations received from same donor in excess of \$20,000 were filed after the due dates. There was not a reasonable excuse for the late filing. The offences will be reported to the Police.

Contraventions of section 54 of the Electoral Finance Act 2007 by failure to file returns within 10 working days of receipt of the relevant donations. No reasonable excuse for the failure to comply therefore offence committed under section 56(1). The facts will be reported to the Police in accordance with section 36.

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

## Subject

Two Family Party returns of party donations from the same donor exceeding \$20,000 were received by the Electoral Commission on 9 January 2009. They appear to have been received outside the statutory timeframe, triggered by accumulated donations from the same person exceeding \$20,000.

The information supplied on the returns indicated that the Family Party received a series of donations from each donor over the last year, with the triggering donations being received on 10 October 2008 and 20 November 2008 respectively.

The return must be filed within 10 working days of the relevant donation being received by the financial agent.

## Issues raised

The Electoral Commission considered whether:

- the returns were filed within the timeframe specified in section 54 of the Act;
- any offence has been committed under section 56 and, if so, the offence should be reported to the Police.

## Electoral Finance Act 2007

Section 54(2) of the Act requires financial agents to file with the Electoral Commission a return of party donation where the aggregate of donations from the same donor in the preceding 12 months exceeds \$20,000. The return must be filed with the Electoral Commission within 10 working days of

receiving the donation which, when aggregated with all other donations from that donor in the preceding 12 months, exceeds \$20,000 (section 54(6)).

Every financial agent who fails, without reasonable excuse, to comply with section 54 commits an offence (section 56(1)).

If the Electoral Commission believes an offence has been committed under section 56, section 36 requires the Commission to report to the Police the facts that belief is based on unless the Commission considers that the offence is so inconsequential there is no public interest in reporting those facts to the Police.

## **Comments from The Family Party**

The Family Party financial agent explained that the Party was registered on 17 December 2007, a month prior to the Electoral Finance Act coming into force. The financial agent and the party leader found the new law complex and its implications for the party challenging to understand.

As this was the first election the party contested they had tight timeframes to develop infrastructure and recruit and train the members of the management board, only some of whom have previous experience, and some miscommunication ensued.

The Family Party is committed to excellence and integrity, and at no time was it the financial agent's intention to distort or conceal facts in respect of the donation return.

## **Electoral Commission's Determination**

The Electoral Commission has considered the requirements to provide returns of party donations under the Electoral Finance Act along with the items listed as exhibits (below).

The Electoral Commission determined that, on the basis of the timeframes specified in section 54 of the Act, the returns were due to be filed by 24 October 2008 and 4 December 2008 respectively and neither of the returns was received within those timeframes.

Section 56(1) of the Act provides:

*Every financial agent who, without reasonable excuse, fails to comply with sections 51 or 54 commits an offence ...*

It is settled law that the reasonableness of an excuse must be considered in light of the particular circumstances (see, for example, the case of *R v Hyde* (1990) 7 CRNZ 366).

On 29 May 2008 the Electoral Commission sent a letter to all party secretaries and financial agents reminding them of the requirements to report within 10 working days donations exceeding \$20,000, including aggregations of donations received from the same donor during the previous twelve months.

In the view of the Electoral Commission the financial agent ought to have been aware of the donation reporting requirements. The Commission is not satisfied that the matters outlined by the financial agent in her letter of 16 January 2009 and summarised above constitute a reasonable excuse for either failure to comply with the statutory timeframe. Consequently, the Commission formed the view that the returns were filed in circumstances amounting to the commission of offences under section 56(1) of the Electoral Finance Act.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 4 of the Act, section 36 requires the Commission to report to the Police the facts that belief is based on unless the Commission:

*considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.*

The Electoral Commission is required to make a value judgement in relation to the nature and extent of the public interest and the level of seriousness involved in the concept of "inconsequential" (see the case of *Judith Kirk v The Electoral Commission* unreported, 9 June 2008, Mackenzie J, HC Wellington CIV 2008-485-805).

The Electoral Commission considered all the information available in respect of the failures to file the two returns within the statutory timeframe and is of the view that neither offence is so

inconsequential that there is no public interest in reporting the matter. Therefore the Commission will report to the New Zealand Police the facts upon which it bases its belief that offences have been committed.

The Electoral Commission has formed its view on the basis of the information available to it, and is not the final decision maker in respect of contraventions of electoral laws and any offences which may arise from such contraventions. Other agencies, including the Police, may reach a different conclusion as a result of their different investigative mandate and wider discretion. Therefore the Commission acknowledges that whether a prosecution should follow, and who should be the subject of any such prosecution, is a matter for the Police.

**For the above reasons it is the view of the Electoral Commission that:**

- **the returns of donations from same donors for The Family Party were, without reasonable excuse, filed late in contravention of section 54 of the Electoral Finance Act 2007**
- **the offences are not so inconsequential that there is no public interest in reporting the matters**

**and in accordance with section 36 of the Electoral Finance Act the Commission will report to the New Zealand Police the facts upon which it bases its belief that offences have been committed**

Signed for and on behalf of the Electoral Commission



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

24 February 2009

### **Exhibits**

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

- 1 letter 8 January 2009 from Chief Electoral Office
- 2 Family Party donation returns
- 3 letter 12 January 2009 to Family Party financial agent
- 4 letter 16 January 2009 from Family Party financial agent