

Members present

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

Dated: 28 May 2009

Decision Number: 2009-25

Initiated by

ELECTORAL COMMISSION

In relation to

**Registered party 2008 donation return
JIM ANDERTON'S PROGRESSIVE**

Findings and Determination

The Progressive 2008 donation return was filed after the due date. No offence committed because there was a reasonable excuse for the late filing.

Contravention of section 51 of the Electoral Finance Act 2007 by failure to donation return by 30 April 2009. No offence committed under section 56(1) as there was a reasonable excuse for the failure to comply.

This headnote does not form part of the decision.

Subject

The Progressive 2008 duly completed annual donation return was received by the Electoral Commission on 1 May 2009.

The return must be filed by 30 April 2009. This date was published on the Elections New Zealand website.

Issues raised

The Electoral Commission considered whether:

- the return was filed within the timeframe specified in section 51 of the Electoral Finance Act;
- any offence has been committed under section 56 of the Act and, if so, the offence should be reported to the Police.

Electoral Finance Act 2007

Section 51(1) of the Act requires financial agents to file with the Electoral Commission an annual return of party donations by 30 April each year.

Every financial agent who fails, without reasonable excuse, to comply with section 51 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 Jim Anderton's Progressive

The party advised that the return was couriered on 30 April and that staff had attempted several times to fax the return on 30 April however the Commission's line was busy and when the fax eventually went through the staff member assumed it had been faxed properly. Late on the afternoon of 30 April the Commission emailed the financial agent to advise that only five of the ten pages had been fully received and, on discovering this email that evening the financial agent forwarded it to the staff member for actioning. The return was faxed the next day. Reasonable efforts were made to file the return on 30 April, the failure to file the complete return on 30 April was not deliberate and was addressed as promptly as possible.

Electoral Commission's Determination

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

The Electoral Commission determined that, on the basis of the timeframe specified in section 51(1) of the Act, annual donation returns were due to be filed by 30 April 2009 and the Progressive return was not received within that timeframe.

Section 56 of the Act provides for offences relating to the return of party election expenses, and section 56(1) provides:

Every financial agent who fails, without reasonable excuse, to comply with section 51 is liable on summary conviction ...

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).

In the view of the Electoral Commission the matters outlined by the financial agent in his email of 15 May 2009 and summarised above constitute a reasonable excuse for the failure to comply with the statutory timeframe. Consequently, the Commission formed the view that the return was not filed in circumstances amounting to the commission of an offence under section 56(1) of the Electoral Finance Act.

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 2008 annual return of donations for Jim Anderton's Progressive was filed late in contravention of section 51 of the Electoral Finance Act 2007, however no offence was committed under section 56(1) as there was a reasonable excuse for the failure to comply

Signed for and on behalf of the Electoral Commission



David Henry
Chief Executive and Commission Member

17 June 2009

Exhibits

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

1. donation return for Jim Anderton's Progressive
2. email 15 May 2009 from financial agent for Jim Anderton's Progressive