

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: 2009-28

Initiated by

ELECTORAL COMMISSION

In relation to

**Returns of donations from same donor in excess of \$20,000
NEW ZEALAND LABOUR PARTY**

Findings and Determination

A Labour Party return of donations received from same donor in excess of \$20,000 was filed after the due date. There was not a reasonable excuse for the late filing. However as the time limit for any prosecution has expired, the offence will not be reported to the Police.

Contravention of section 54 of the Electoral Finance Act 2007 by failure to file return within 10 working days of receipt of the relevant donation. No reasonable excuse for the failure to comply therefore offence committed under section 56(1). The facts will not be reported to the Police as the time limit for commencing prosecution under section 140 has expired.

This headnote does not form part of the decision.

Subject

A Labour Party return of party donations from the same donor exceeding \$20,000 was received by the Electoral Commission on 30 April 2009. The return appears to have been received outside the statutory timeframe, triggered by accumulated donations from the same person exceeding \$20,000.

The information supplied on the return indicates that the Labour Party received a series of donations from the donor over the last year, with the triggering donation being received on 28 October 2008.

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 return was 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.

Under section 140 of the Act, prosecutions for breaching section 56(1) must be commenced within six months of the date on which the return was required to be filed.

Comments from The Labour Party

The Labour Party financial agent acknowledged the error and accepts responsibility for it. He explained that in finalising the 2008 donation return he found there were four separate donations from the NZ Meat Workers and Related Trades Union, including one made directly to the Otago Labour Regional Council. The party's ledger record did not identify the linkage between the donations because of the different letterhead identification and the history of the Aotearoa Meatworkers being a separate union.

The financial agent provided an overview of the systems in place to identify donations over \$20,000, and improvements that will need to be made to those systems, which he has forwarded to the auditor.

The financial agent acknowledged that he has full legal responsibility for the errors which were accidental and were voluntarily disclosed once detected. He advised that he has taken initial steps to initiate the changes required to the systems, and the errors were contrary to his intentions and efforts. He submits that there is no public interest in reporting the facts to the Police.

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 return was due to be filed by 11 November 2008 and the return was not received within that timeframe.

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 his letters of 30 April and 15 May 2009 and summarised above constitute a reasonable excuse for either failure to comply with the statutory timeframe, as the financial agent is required to keep proper records of donations. Consequently, the Commission formed the view that the return was filed in circumstances amounting to the commission of an offence 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 failure to file the return within the statutory timeframe and is of the view that the offence is not so inconsequential that there is no public interest in reporting the matter. However, the Commission notes that the time limit specified in section 140 of the Act for commencing any potential prosecution is six months from the date the return ought to have been filed and that time has expired. The Commission is satisfied that the public record has been corrected and is pleased that the party is taking remedial action, and under such circumstances considers that there is no benefit to be achieved by referring the matter to the New Zealand Police when the statutory time limit for commencing prosecution has expired.

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 return of donations from same donor for The Labour Party was, without reasonable excuse, filed late in contravention of section 54 of the Electoral Finance Act 2007**
- **the offence is not so inconsequential that there is no public interest in reporting the matters**

however the facts will not be reported to the New Zealand Police as the time limit for commencing prosecution under section 140 of the Electoral Finance Act has expired

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 the Labour Party
2. letter 30 April 2009 from financial agent for the Labour Party
3. letter 15 May 2009 from financial agent for the Labour Party