

Members present

Ms Belinda Clark – *ex officio* (Secretary for Justice)
David Henry (Chief Executive)

Dated: 30 July 2009

Decision Number: 2009-34

Initiated by

ELECTORAL COMMISSION

In relation to

Registered party overseas donation exceeding \$1,000

Registered party annual return of donations for 2007

MAORI PARTY

Findings and Determination

The Maori Party received a donation from an overseas person exceeding \$1,000 and relinquished the excess after the due date. However the offence is so inconsequential to the public interest that the matter will not be reported to the Police.

A donation made to the Maori Party in the 2007 year was not included in the Maori Party's annual return of donations for 2007. No offence committed as the Party Secretary had no intention to file a false return and took all reasonable steps to ensure it was accurate.

Contravention of section 32(2) of the Electoral Finance Act 2007 by failure to pay the excess to the donor or to the Electoral Commission within 20 working days, therefore offence committed under section 33(2). For the purpose of section 36, the offence is so inconsequential there is no public interest in reporting the facts to the Police.

Although the 2007 return was materially false, no offence committed under section 214G(4) of the Electoral Act 1993 as the Party Secretary did not fail to keep proper records, had no intention to mis-state or conceal the facts, and took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

This headnote does not form part of the decision.

Subject

The Maori Party was given the use of a house by an overseas person under an informal arrangement at no cost. The party commenced renting the house out in 2007 but did not include the value of the benefit of the house in its 2007 annual return of donations.

In 2008 the party returned all the rent to the owner, in three lump sums, as the owner was an overseas person.

Issues raised

The Electoral Commission considered whether:

- In respect of the 2008 year:

- the excess of the 2008 donation was returned to the overseas donor within the timeframe specified in section 32 of the Electoral Finance Act;
- any offence has been committed under section 33 of the Electoral Finance Act and, if so, whether the offence should be reported to the Police;
- in respect of the 2007 year:
 - whether a return was filed that was false in any material particular and, if so:
 - whether the Party Secretary filed a return that is false in a material manner and, if so, whether the Party Secretary filed the return knowing it was false, or whether the Party Secretary had no intention to mis-state or conceal the facts and took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

Electoral Finance Act 2007 (2008 year)

Section 32(2) of the Act requires financial agents to return to the donor, or pay to the Electoral Commission, the excess of any overseas donation exceeding \$1,000. The excess must be relinquished within 20 days.

Every financial agent who contravenes section 32(2) is guilty of an illegal practice (section 33(2)).

If the Electoral Commission believes an offence has been committed under section 33, 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.

Electoral Act 1993 (2007 year)

Section 214G(1) of the Act requires party secretaries to file a return of donations each year, on a form provided by the Electoral Commission, which sets out the name and address of each person who made a donation and the amount of the donation as well as the details of anonymous donations.

Section 214G(4) provides that it is a corrupt practice for a party secretary to file a return knowing it to be false in any material particular, and in any other case it is an illegal practice unless the party secretary proves that he or she had no intention to mis-state or conceal the facts and took all reasonable steps to ensure the return was accurate.

Comments from the Maori Party

The party's financial agent / secretary and its president provided information and explanations about the house and the terms of its use.

The party explained that the house was provided to the party for its use as a venue for meetings and administrative purposes, at no cost apart from utilities and upkeep of the grounds. The party had little use for the house as it was not suitable for meetings or office space and in April 2007, after obtaining the consent of the owner, commenced renting it out at \$400 per week. The net income from the house in 2007 was \$13,852.

The party declared all the rent received in its 2008 annual donation return and returned all the rent to the owner of the house. The decision about what to do with the rental payments was complicated by the ambiguity of the legislation and also by a delay in being able to contact the owner to determine arrangements for returning the funds to her solicitor.

The party accumulated the rental payments into amounts of less than \$10,000 and returned them to the owner via her lawyer at three intervals. The party returned all the rental income to the owner, and did not deduct any of the maintenance costs which were approximately \$2,000 for the 2008 year.

Electoral Commission's Determination

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

A Excess of overseas donation – 2008 year

Section 32 of the Electoral Finance Act requires parties to return to an overseas donor, or relinquish to the Electoral Commission, the excess of an overseas donation which exceeds \$1,000. The Electoral Commission determined that the party did not return the excess within the 20 working day timeframe specified in section 32(2).

Section 33(2) of the Act provides:

A financial agent who contravenes section 32(2) or (3) is guilty of an illegal practice.

The Electoral Commission therefore formed the view that the excess was relinquished in circumstances amounting to the commission of an illegal practice under section 33(2) of the Electoral Finance Act.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 1 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 comply with the statutory requirements, including that initially the party had difficulty establishing a means of returning the funds. The Commission also took account of the fact that the party returned all of the rental income without making any deductions for maintenance and other expenses or the \$1,000 it was permitted to retain under section 32, and is of the view that on this occasion the offence is so inconsequential that there is no public interest in reporting the facts to the Police. However the Commission expects the party to improve its processes to ensure compliance with the statutory requirements in future.

B Annual return of donations – 2007 year

The party provided a schedule of income and expenditure in respect of renting the house out during the 2007 year, which showed a net income of \$13,852. The Electoral Commission formed the view that the rent from the house provided to the party free ought to have been included in the party donation return for 2007.

Section 214G(4)(a) provides that it is a corrupt practice for a party secretary to file a return knowing it to be false in any material particular, and section 214G(4)(b) provides that in any other case it is an illegal practice unless the party secretary proves that he or she had no intention to mis-state or conceal the facts and took all reasonable steps to ensure the return was accurate. The Electoral Commission accepts that the party secretary had no intention to mis-state the facts in respect of the return of party donations, and that she took all reasonable steps to ensure the 2007 return was accurate.

As a result, it is the view of the Electoral Commission that in respect of the 2007 return the party secretary did not commit an offence for the purposes of section 214G. The schedule of income and expenditure will be attached to the 2007 donation return as part of the public record.

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

- **the excess of the Maori Party donation from an overseas donor was relinquished late in contravention of section 32(2) of the Electoral Finance Act 2007 amounting to the commission of an illegal practice under section 33(2)**
- **for the purpose of section 36 of the Electoral Finance Act, the offence is so inconsequential that there is no public interest in reporting the facts to the Police**

- **the Maori Party 2007 annual return of donations was not filed in a manner amounting to the commission of an offence for the purposes of section 214G of the Electoral Act 1993**

Signed for and on behalf of the Electoral Commission

A handwritten signature in black ink that reads "David Henry". The signature is written in a cursive, flowing style.

David Henry
Chief Executive and Commission Member

4 August 2009

Exhibits

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

1. Maori Party annual donation returns
2. letter 9 July 2009 from financial agent / party secretary for the Maori Party
3. letter 28 July 2009 from President of the Maori Party