



**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**Report to the Speaker
of the Legislative Assembly of Alberta**

of the Investigation

**by
Donald M. Hamilton,
Ethics Commissioner**

**into allegations involving
Hung Pham,
Member of the Legislative Assembly
for Calgary-Montrose**

January 23, 2007

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ALLEGATIONS

I received a letter dated May 18, 2006 from Bharat Agnihotri, Member of the Legislative Assembly for Edmonton-Ellerslie, requesting that I investigate a possible breach of the *Conflicts of Interest Act* (“the Act”) by Hung Pham, Member for Calgary-Montrose. The allegations related to Wild Rose Foundation grants to the Applewood Park Community Association (“Applewood Park”), one of the communities contained in Mr. Pham’s constituency in Calgary. The grants had been the subject of an audit by the Auditor General of Alberta, and the Auditor General reported that the Wild Rose Foundation needed “to examine whether action should be taken under its regulation to recover the grants provided to Applewood.” As a result, the Wild Rose Foundation sought recovery of the funds granted on the third application by Applewood Park (\$20,000).

I responded to Mr. Agnihotri on May 23, requesting that he provide clarification on what specific breaches of the Act may have occurred, noting that the Auditor General had said on page 139 of his 2004-2005 Annual Report, that there was no evidence that these applications received preferential treatment from the Wild Rose Foundation because of the MLA’s involvement. I also invited Mr. Agnihotri’s comments on the application of section 5 of the Act to situations where Members provide letters of support for constituents’ applications for government programs.

Mr. Agnihotri responded by letter dated July 24, 2006. In this letter, Mr. Agnihotri, requested an investigation to determine if there was any arrangement between Mr. Pham and individuals/organizations that were involved in the Wild Rose Foundation applications that resulted in a contribution of a portion of the Wild Rose Foundation grant monies to Mr. Pham’s 2004 election campaign or the use of certain individuals as volunteers during the election campaign. Further, Mr. Agnihotri’s letter:

- (1) requested an interpretation of “direct associate” as it applied to Mr. Frank Warkentin who was involved with both Applewood Park and Mr. Pham’s 2004 election campaign;
- (2) identified what he believed were Mr. Pham’s “private interests” in the matters contained in the allegations; that is, campaign contributions and volunteer labour for the 2004 campaign; and
- (3) commented on the application of section 5.

By letters dated July 31, 2006, I advised Mr. Pham and Mr. Agnihotri that I would commence an investigation as requested by Mr. Agnihotri.

Although no specific section of the Act was cited by Mr. Agnihotri as having been breached, this investigation focuses on an alleged breach of section 3 of the Act, which reads as follows.

- 3** A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

This report will also consider whether Mr. Warkentin is a direct associate of Mr. Pham’s as defined in the Act and whether section 5 applies in this situation.

Section 5 states:

- 5** A Member does not breach this Act if the activity is one in which a Member of the Legislative Assembly normally engages on behalf of constituents.

I will deal with the sections relating to “direct associates” in that section of this report.

PERSONS INTERVIEWED/EVIDENCE OBTAINED

To assist me in my consideration of “normal” constituency activities, I wrote to both the Speaker of the Legislative Assembly, the Hon. Kenneth R. Kowalski, and to the Hon. Denis Ducharme, the Minister of Community Development (responsible for the Wild Rose Foundation) at the time of these inquiries. I asked both gentlemen questions relating to Members providing letters of support for grant applications.

I also conducted interviews with and received evidence from the persons listed below.

Mr. Fred Dunn, Auditor General
Ms Ronda White, Office of the Auditor General
Mr. Ed Ryan, Office of the Auditor General
Mr. Lorne Gibson, Chief Electoral Officer
Mr. Bill Sage, Deputy Chief Electoral Officer
Mr. Hung Pham, Member for Calgary-Montrose
Mr. Frank Warkentin, Chief Financial Officer for Mr. Pham’s 2004 election campaign and Vice-President of Applewood Park Community Association
Ms Shirley Milnes, Constituency Assistant to Hung Pham, Calgary-Montrose
Ms Linda Phan, Calgary resident
Mr. Bharat Agnihotri, Member for Edmonton-Ellerslie
Ms Laurie Blakeman, Member for Edmonton-Centre

I obtained Statutory Declarations from:

Mr. Hung Pham, Member for Calgary-Montrose
Ms Pat Blakney, Manager, Wild Rose Foundation
Mr. Frank Warkentin

I requested Statutory Declarations from Ms Phan, a Calgary resident, and Ms Than, President of the Calgary Vietnamese Caodaist Cultural Society. I attempted to reach these individuals by telephone and sent them both regular mail and registered mail.

I did interview Ms Phan at her worksite in Calgary. I did not receive a Statutory Declaration from her but did receive a written response to the letter sent as registered mail.

I did not receive a written response of any kind from Ms Than, nor did I meet with her. I did have access to a letter written by Ms Than to the Wild Rose Foundation, setting out the Society’s response to questions raised by the Foundation and the Office of the Auditor General regarding the third grant received from the Wild Rose Foundation.

PRIVATE INTEREST OF HUNG PHAM OR A DIRECT ASSOCIATE

Mr. Agnihotri alleges two private interests for Mr. Pham in this matter. He alleges that, in exchange for supporting the grant applications submitted by Applewood Park on behalf of the Calgary Vietnamese Caodaist Cultural Society (“the Caodaist Society”), Mr. Pham received campaign contributions or volunteer labour for the 2004 general election campaign. To support that allegation, Mr. Agnihotri notes the name of one campaign contributor (Linda Phan) whose home address on Elections Alberta documents is the same as the address provided by some of the founding members of the Caodaist Society on its registration documentation under the *Societies Act*.

Mr. Agnihotri also requested an interpretation of the Act in relation to Mr. Warkentin as a possible direct associate of Mr. Pham's. A review of the records in my office shows that Mr. Pham has never declared Mr. Warkentin as a direct associate.

A "direct associate" is defined in section 1(5) of the Act. The relevant portion of that section states:

- 1(5) For the purposes of this Act, a person is directly associated with a Member if that person is
- (e) a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member.

Mr. Agnihotri notes that Mr. Warkentin was the Chief Financial Officer for Mr. Pham's 2004 election campaign and that fact is confirmed by Elections Alberta. The *Election Finances and Contributions Disclosure Act* sets out the duties and responsibilities of a Chief Financial Officer ("CFO"). Those duties and responsibilities clearly establish an agency relationship between the Member and the Chief Financial Officer. As such, I find that the CFO is a "direct associate" of the Member when performing his duties and responsibilities under the *Elections Finances and Contributions Disclosure Act*.

As noted above, Mr. Pham has not declared Mr. Warkentin as a direct associate. With respect to "agents" as direct associates, section 15 of the *Conflicts of Interest Act* is relevant.

- 15(4) In a return under this section, a Member is not required to show the name and address of any person who is or was directly associated with the Member by reason of section 1(5)(e) unless that person, during the period of direct association and as the agent of the Member with actual authority from the Member,
- (a) became a party to a contract to which the Crown was also a party, or
 - (b) received a payment of public money from the Crown or from a person acting on behalf of the Crown, otherwise than pursuant to a contract.

According to both Mr. Pham and Mr. Warkentin, at no time during the period that Mr. Warkentin was Chief Financial Officer for Mr. Pham in the 2004 general election campaign, did Mr. Warkentin, acting as Mr. Pham's agent, become a party to a contract to which the Crown was also a party or receive a payment of public money from the Crown or from a person acting on behalf of the Crown. The 2004-2005 report to the Legislature on payments to Members and their Direct Associates shows no payments to Mr. Pham other than payments relating to his MLA duties and responsibilities.

I also requested assistance from Alberta Finance (by way of letter to Brian Manning, Deputy Minister) in verifying that Mr. Warkentin was not involved in any contract or payment of public funds in fiscal year 2004-05. In his response dated November 7, 2006, Mr. Manning said he could not confirm that Mr. Warkentin "has never been a party to a contract to which the Crown was also a party, for himself, or as agent for Mr. Hung Pham." Mr. Manning indicated that a search of the government payment system for the period from July 1, 2003 to October 31, 2006, showed no payment to Mr. Warkentin by various departments of the government. Mr. Manning cautioned that the payment system would not show payments from regulated funds, provincial agencies, educational institutions, regional health authorities or Health Boards. I accept Mr. Warkentin's Statutory Declaration that he has not received any payments from the Crown nor has he been a party to a contract as the agent for Hung Pham to which the Crown was also a party.

There is, therefore, no direct associate relationship between Mr. Pham and Mr. Warkentin that is required to be declared under the Act. However section 3 of the Act deals with direct associates as defined in section 1(5) **whether or not** the direct association must be declared under section 15(4). Mr. Warkentin was a direct associate of Mr. Pham during the time Mr. Warkentin was CFO of Mr. Pham's 2004 election campaign.

As referenced in my investigation report into allegations involving the Hon. Guy Boutilier, Member of the Legislative Assembly for Fort McMurray-Wood Buffalo, I will consider "private interests" that involve re-election efforts when there is a suggestion that there is a connection between a contribution and another action, such as the awarding of a contract to the contributor or, as in this case, the suggestion of a contribution in exchange for assistance provided. The allegation in this case goes even further in that it suggests a portion of the grant monies may have been contributed to the Member's campaign.

BACKGROUND OF WILD ROSE FOUNDATION GRANTS TO APPLEWOOD PARK COMMUNITY ASSOCIATION

Applewood Park made three applications to the Wild Rose Foundation for matching grants. All three grants were the subject of an audit conducted by the Auditor General of Alberta and were reported on in the Auditor General's 2004-2005 annual report (pages 136-147). At page 138, the Auditor General said that his office concluded that there is a reasonable likelihood but not an absolute certainty that the grant monies from the first two applications reached the intended charity in Vietnam.

Based on the Auditor General's audit findings, I indicated this investigation would focus on the third grant application. Nevertheless, I did ask questions of various participants about all three grants so that I could gain a better understanding of the distribution of the grant monies to and in Vietnam, and to assess the possibility that some of the grant monies may have remained in Calgary and if they may have been donated to the Member's campaign.

The 2003 Wild Rose Foundation Grant

Applewood Park submitted the third application on or about December 19, 2003, to the Wild Rose Foundation for a grant of \$20,000 for the purpose of international development projects in Vietnam. The application identifies the project title as "Water and Hope for those in Poverty" and sets the start date as January 1, 2004 and the completion date as December 31, 2004.

The project is described as follows:

Many villages in the Vietnam countryside are without a potable water source. Through partner organizations located in Vietnam we have determined where new wells are required and wish to provide financial assistance and manpower to build the wells. Providing funding for building wells represents approximately 90% of our project. We will also provide financial assistance to organizations that provide food and shelter to orphans and handicapped in Vietnam. As well we provide funds for the sick to travel to medical clinics and for medicine.

The specific activities identified to meet the project objectives were described as

Wells: Individuals within our community volunteer to travel to Vietnam and to help build the wells that we have previously determined are necessary. Our two partner organizations in Vietnam provide follow up after the completion of the wells in order to make sure that all is satisfactory and report back to us.

Medical clinics. Through our two partner organizations we will provide funding for transportation for the ill to attend medical clinics and to purchase medicine. The doctors and nurses at the 17 medical clinics are all volunteers.

Centres for orphans, handicapped and elderly. We have identified 7 different centres that provide food, shelter and medicine to the many orphans, handicapped, elderly and abandoned that have no one to care for them. These centres provide long term care for these people who have no where else to go. We provide financial assistance directly to these centres.

The application form notes the “Non-Governmental Organization Contribution to this Project (your organization)” was \$20,000 and a matching grant from the Wild Rose Foundation in the amount of \$20,000 was sought. The application indicates the \$20,000 contribution from the NGO was raised through fundraising events, “i.e. buffets and dinner galas. We also accept private donations from the general public.”

The application form does not identify the “two partners” referred to in the description above and does not note that the fundraising events were not events organized or carried out by Applewood Park. In fact, the fundraising events were carried out by the Caodaist Society¹. The second organization identified by persons interviewed during this investigation is the Friends of Hue. Attached as part of the application form is a Declaration “In support of funds raised in Alberta by a Non-Governmental Organization.” The form is signed by Frank Warkentin as Vice President of the Applewood Park Community Association. In it, he declares that during the period from May 1, 2003 to December 31, 2003, the said NGO did raise the sum of \$20,000 in the Province of Alberta for international development and assistance.

A letter dated February 25, 2004, from then-Minister of Community Development, the Hon. Gene Zwozdesky, to the President of the Applewood Park Community Association, advised that the application had been approved and the cheque for \$20,000 was enclosed with the letter.

The failure to identify either the Caodaist Society or the Friends of Hue and their fundraising efforts is a significant part of the allegations that the application contains false or misleading information. At issue as well is the intended recipient(s) of the funds (i.e., the application’s identification of water wells as its primary activity).

In the list of “Project Funding Guidelines” on the application form, number 8 states that

No portion of the Wild Rose Foundation grant can be rebated, paid or contributed to another Canadian NGO as a donation, payment or fee for services rendered.

The failure to disclose the partners and the disagreement on whether or not guideline 8 has been breached are not matters for me to decide. The Auditor General has conducted an audit regarding this grant and, in response to his recommendations, the Wild Rose Foundation referred the matter to Crown Debt Collection. It is my understanding that this matter is also currently before the Ombudsman for his review. I include these issues in this report as a part of the background but also to note that the ongoing reviews are a reason why this matter has been a matter of public interest for so long.

The Accountability Report

In the Accountability Report submitted to the Wild Rose Foundation – as required by the Foundation – and dated February 17, 2005, the following outcomes are noted:

¹ Information on the Caodai faith may be found at www.caodai.org.

8 wells were built in Ho Dao Hoa Tien, Chua Phap Thanh, Ho Dao An Duc, Ho Dao Phuong 6 Tinh Tra Vinh, Chua Buu Tu, Ho Dao Dai An Tra Vihh, Ho Dao Long Phu and Ho Dao Hung My

17 medical clinics were provided with funds to purchase medicine and transportation for the ill.

7 centres for orphans and handicapped were provided with funds for food, shelter, and medicine.

Receipts totaling \$40,610 were attached to the report (the additional \$610 is explained in the following section). Receipts identified as relating to the water wells total \$5,700. As indicated above, the application said that 90% of the funds would be spent on water wells. It was explained to me that the calculation for the cost of drilling a water well at the time of the submission of the application was based on Canadian costs. Actual costs in Vietnam were, I was told by Mr. Pham, considerably lower. Individual receipts for donations for water wells -- as identified in the Accountability Report -- range from \$500 to \$1,000.

Applewood Park maintains that although only approximately 14% of the funds were spent on water wells, many other worthwhile charities received needed donations. The application form did identify that funds would also go to orphanages, seniors care facilities and medical clinics. According to the receipts, funds did go to such projects. It should be noted that the receipts are in Vietnamese and no translations are attached to the Accountability Report.

According to the Auditor General's report, at page 141, the Auditor General found:

The accountability report includes receipts for medical care, shelter for the homeless, Caodaist temples, charity work and water wells amounting to \$34,110 of the \$40,000 in total project funds. However there is no way to verify that the receipts are valid and the recipients received the funds. There are no receipts supporting the use of the remaining \$5,890 of the funds. Also, the receipts indicate that the funds were used for purposes that were not included in the project budget.²

Persons involved in this application from the Caodaist Society and Applewood Park, as well as Mr. Pham, stress that worthwhile agencies received the funding. At issue (as noted above) is the matter that the application said the majority of funds would go to water wells and that was not the case.

Mr. Warkentin said that he satisfied himself that the receipts reflected the amount of the funds and projects identified by adding the receipts, having a Vietnamese friend (who was not affiliated with the Caodaist Society or the application) review the receipts, and by observing the receipts and photographs posted on the walls at the next fundraising buffet dinner. He believes the accountability report accurately and completely reflects the expenditures of the grant monies and matching amounts raised by the Caodaist Society.

Explanation provided by the Caodaist Society

In a letter dated November 18, 2005, addressed to the Wild Rose Foundation, the President of the Caodaist Society, Ms Loan Kim Than, explains how the monies were transmitted to Vietnam and provides a different accounting of the projects on which the monies were expended. [Many of the dates

² Subsequent to the public release of the Auditor General's report, receipts representing total project funds of \$40,000 were reviewed. However, the Office of the Auditor General advises there remains no way to authenticate the receipts.

contained in the letter refer to 2005. I assume that references to 2005 are meant to be “2004” as the documents attached to her letter indicate.]

According to Ms Than, the monies were transmitted to Vietnam in three transfers:

Funds	Explanation
\$ 2,130	These funds represent a donation by a Caodaist Society member who asked a relative to bring the money directly to 4 named charities in Vietnam and those funds were distributed on April 15, 2004. These funds are part of the \$20,000 raised by the Caodaist Society.
\$30,000	A cheque for \$30,000 was made out from the Caodaist Society to two named individuals on April 17, 2004. These funds were transmitted by Phuong Uyen Services of Vancouver to Vietnam on May 26, 2004.
\$ 8,480	A cheque for \$8,400 was made out from the Caodaist Society to a named individual (who also made an \$80 donation) who directed the money to Vietnam.
\$40,610	TOTAL

A letter is attached to Ms Than’s letter from an individual in Vietnam, acknowledging receipt of the \$30,000 and the \$8,480. Included in the receipts in the Accountability Report submitted by Applewood Park are receipts dated April 15, 2004, to the four named charities that received the \$2,130.

Ms Than explains that some of the receipts are dated according to the lunar calendar (year of the monkey) and not according to the solar calendar used in Canada. This explanation is provided, I assume, to explain why some receipts appear to predate the arrival of funds in Vietnam.

According to Wild Rose Foundation meeting notes, in the Calgary meeting with the Wild Rose Foundation, Ms Than explained that the funds were handled in the fashion described above because there were so many organizations involved and a bank would have charged too many fees. I find some difficulty with this claim since the funds were apparently distributed throughout Vietnam to the 35 projects in Canadian dollars. According to travel websites -- including information for Canadians traveling abroad on a federal Government of Canada website³ -- Canadian dollars are not readily accepted in Vietnam. Travelers are encouraged to convert their money to the Vietnamese dong or the American dollar. It is, to the say the least, odd that the funds were distributed in Canadian dollars, which would presumably have to be converted by each of the charities into usable currency – at a cost to the charity receiving the donation. It would have made more sense, in my opinion, to convert the full amount once and distribute donations in Vietnamese dong to each of the 35 projects.

Of the 35 projects that received the \$40,610, the list attached to Ms Than’s letter shows:

Projects	Amounts
Wells (6 projects)	\$ 3,700
Temples that provide medical care	\$28,750
Orphanages and seniors care	\$ 5,160
Other (funeral aid, food bank, aid to tornado victims, family facing hardship)	\$ 3,000
TOTAL	\$40,610

Ms Than refers in her letter to a reimbursement to Phuong Uyen Services. Since the wire transfer is dated May 26 and projects received monies commencing May 10 (the date on which the recipient in Vietnam acknowledges receiving the \$30,000), I assume that she means that Phuong Uyen Services sent \$30,000 prior to May 26 and was then paid on May 26. If my assumption in this case is correct, it is not clear from any documentation I have seen, who provided the original \$30,000 to Phuong Uyen Services.

³ See <http://www.voyage.gc.ca/dest/report-en.asp?country=316000>

The Role of Mr. Pham in the Wild Rose Foundation Grants

Mr. Pham said he was approached in 1999 by individuals who wished to know whether there was any program within the Government of Alberta that dealt with international assistance. He told them about the Wild Rose Foundation's International Development Program. Mr. Pham said he was aware that these individuals were either members of the Friends of Hue (people who had lived in or had relatives in Hue, Vietnam) or members of the Caodaist Society. He says in his Statutory Declaration that the members of the Caodaist Society were not a registered society. He further notes, on page 4 of his Statutory Declaration, that the Caodaist Society had registered under the *Societies Act* but was struck from the registry solely because they did not file annual returns as required. (Documentation provided to me by the Liberal Opposition Caucus shows the Societies registration application was faxed to Corporate Registry through Mr. Pham's constituency office. This would support Mr. Pham's knowledge of the status of the Caodaist Society and why they approached him for further assistance regarding grants.)

Mr. Pham recommended Applewood Park as an entity that might be approached to make the application. Mr. Pham said he thought of Applewood Park since a number of residents of that community are of Vietnamese descent.

Mr. Warkentin said that when he was approached with this idea, he reacted favourably as Applewood Park at the time was considering seeking charitable status from the Government of Canada. Support for these types of international assistance activities could assist in their efforts to be granted charitable status. Mr. Warkentin took the idea of the Wild Rose grant to the Applewood Park Board and it was approved.

Mr. Warkentin said he approached Mr. Pham's constituency office for assistance in completing the forms since he had no experience with the Program. Ms Milnes in Mr. Pham's Calgary-Montrose Constituency Office said, according to their files, assistance was provided. Although Mr. Warkentin believes it was Ms Milnes who provided the assistance, Ms Milnes said she did not start working with Mr. Pham until later in the year that the first application was submitted. Ms Milnes said she did assist on the other applications.

Mr. Pham said he did provide a letter of support, and Ms Milnes confirms that he did. Mr. Pham said it is not unusual for constituents to seek a letter of support, although Wild Rose Foundation applications are not common. He said he believes other programs such as the Community Facility Enhancement Program (CFEP) and the Community Initiatives Program (CIP) require a letter of support from an elected official. If he supports the initiative, as he did with the proposed projects in Vietnam, he does provide a letter of support.

Ms Blakney's Statutory Declaration confirms that Mr. Pham did contact the Wild Rose Foundation for information on its available grant program for disaster assistance in 1999. She also confirms that he did provide letters of support for the first two applications. According to her Statutory Declaration, Mr. Pham did not provide a letter of support for the third application.

In his Statutory Declaration, Mr. Pham states

An important part of any MLAs [sic] function is to liaise between the government and his constituents. Assisting constituents understand [sic] government programs, how they work, and how to access them is a well known and universally accepted part of a MLAs [sic] responsibility. MLAs play only a facilitating role in the process; we are not the final decisions makers.

According to Mr. Pham and Ms Milnes, neither of them participated in any follow-up activity to verify that funds were actually transmitted to Vietnam or to appropriate charities.

As a “thank you” for their support and assistance in completing the applications, the constituency office received a small gift (a small potted plant and a small wooden Buddha) from members of the Caodaist Society. Mr. Warkentin also said he received a small plant as a “thank you” for assisting with the applications.

Ms Blakney does state two concerns in her Statutory Declaration regarding Mr. Pham’s involvement in the third grant. She states that the Foundation had concerns about Mr. Pham’s participation at a meeting scheduled to bring together the Foundation, the Auditor General’s staff, the Caodaist Society members and representatives from Applewood Park. Mr. Pham apparently played a significant role in the discussions that evening. The second concern expressed in the Statutory Declaration relates to the apparent decision of Applewood Park to defer to Mr. Pham on whether or not to return to the grant monies to the Foundation.

Mr. Pham, in a second Statutory Declaration obtained by my office, responded to these concerns. He said he was invited to attend by Applewood Park, and that he attended in his capacity as MLA for that constituency. Mr. Pham said he participated in the discussions with the Auditor General and the Wild Rose Foundation in an attempt “to identify their issues of concern.” He further said that he did advise Applewood Park that he believed they had done nothing wrong and that, in his opinion, they should fight the demand for restitution of the \$20,000. He states that he does not know if Applewood Park adopted his advice before making a decision on this matter.

THE 2004 GENERAL ELECTION CAMPAIGN

Mr. Pham said he is not aware of who contributes to his campaigns or to the Calgary-Montrose Progressive Conservative Constituency Association (“the Constituency Association”). He does not himself actively solicit contributions. He said he is not aware of who volunteers during a campaign but expressed gratitude for the many volunteers who do support him. He said he would never question a volunteer as to which societies they might belong.

Mr. Warkentin said he is not comfortable soliciting contributions and generally just keeps track of the contributions made. He said he does not question volunteers on their affiliations with any societies or other organizations and does not believe that would be appropriate. He could not recall Ms Phan’s contribution but suggested that the amount might include an “in-kind” contribution of some sort, such as a gas receipt.

In both her interview with me and in her written response to my questions, Ms Phan said she donated \$600 of her own money to Mr. Pham’s 2004 election campaign. She said she had planned to contribute \$1,000 but chose to direct \$400 to tsunami relief in 2004. She was uncertain about the additional \$36 declared on documents provided to Elections Alberta but at our meeting, she said she believes it reflects an in-kind contribution relating to coffee and donuts she provided to the campaign office. Ms Phan said she chose to support Mr. Pham because she had gone to his office for assistance on a labour relations matter and, although the matter was not resolved in her favour, she appreciated his support on her behalf. Ms Phan also acknowledged that she made a contribution to the Constituency Association in 2005; again, she says, from her own monies.

The letter requesting this investigation noted the one contribution for \$636 from Ms Phan to the election campaign and linked her name to founding members of the Caodaist Society based on Ms Phan’s home address. I did not interview the other donors to Mr. Pham’s campaign or to his Constituency Association. Based on names and addresses, I believe most contributors were family, friends, or persons affiliated with organizations such as Applewood Park or the Constituency Association. I accept Mr. Pham and Mr. Warkentin’s word that they did not solicit contributions from members of the Caodaist Society and are

unaware of any such affiliation on the part of any campaign volunteers. I also accept Mr. Warkentin's statement that the \$20,000 grant from the Wild Rose Foundation was turned over, in total, to the Caodaist Society. I accept, therefore, that no contribution from anyone affiliated with Applewood Park came from the Wild Rose Foundation grant.

FINDINGS

Section 3: "Influence"

There are some discrepancies in testimony. I accept that a large part of that results from the amount of time that has passed since the first application was submitted and the fact that there were three separate applications and grants made.

Mr. Pham did receive a campaign contribution from Ms Phan, whose home address was the same as some of the founding members of the Caodaist Society. Ms Phan did appear at meetings involving questions or concerns regarding the third grant application received from the Wild Rose Foundation. It is possible that members of the Caodaist Society were volunteers on Mr. Pham's 2004 election campaign but, based on their testimony to me, neither Mr. Pham nor Mr. Warkentin asked volunteers whether they belonged to the Society.

Mr. Pham did, in fact, advocate on behalf of his constituents in this case. As noted early, documents provided by the Liberal Caucus and obtained from Corporate Registry show that Mr. Pham's constituency office was involved in assisting the Caodaist Society in its application for registration as a Society. Mr. Pham, his constituency assistant Ms Milnes, and Mr. Warkentin provided evidence that the Member and his constituency office were involved in supporting the applications and in assisting in their completion and submission.

Section 5: "Normal" Constituency Activity⁴

As noted above, I wrote to the Hon. Denis Ducharme, Minister of Community Development during this investigation, and to Speaker Ken Kowalski, to seek commentary from them on the "normal" role of a Member in relation to support for constituents seeking grants from the Government of Alberta. In

⁴ While there is no "official" job description for the position of MLA, the roles and duties of Members have been described or discussed on parliamentary websites or in publications. Examples include

- The Alberta Legislative Assembly's publication, "The Citizen's Guide to the Legislature, Part II, Representing the People" (<http://www.assembly.ab.ca/pub/gdbook/Part2/page5.htm>)
- "The Role of the Member" from the Saskatchewan Legislative Assembly website (<http://www.legassembly.sk.ca/legassembly/Docs/membepam.htm>)
- Commission on Legislative Democracy, "Final Report and Recommendations," Recommendation Appendix: C, Policy Framework: The Roles and Duties of an MLA and a Code of Conduct for Members of the Legislative Assembly of New Brunswick (<http://www.gnb.ca/0100/index-e.asp>)
- "Round Table: The Changing Role of Legislators," published in the *Canadian Parliamentary Review*, Issue No. 4, Winter 2005-06 (<http://www.parl.gc.ca/InfoParl/english/archives.htm>)

addition to being Speaker, Hon. Mr. Kowalski is a former Minister who had responsibility for the Wild Rose Foundation.

Hon. Mr. Kowalski commented on his personal handling of requests to his office and, more generally, as follows:

Constituents almost always ask their MLA for support when they apply for programs created by the Government of Alberta. My constituents invariably provide me with a copy of their application and ask me to endorse or support the application. The Wild Rose Foundation is treated no differently than any other program. . . .

He further commented:

As Speaker, it is my observation that MLAs, especially Opposition MLAs, are constantly petitioning or lobbying the Government to support numerous applications made by their constituents.

Hon. Mr. Ducharme advised

Typically there is a very limited M.L.A. role in assisting a constituent or constituency organization in applying for a Wild Rose Foundation grant. However, M.L.A. involvement may include:

- providing constituent/organization with up to date information about the grant program. This may involve contacting the Foundation for a better understanding;
- providing a letter of support to the Foundation giving reference and/or endorsement to the Foundation on behalf of constituent/organization; and,
- in rare cases, following up with the Foundation on behalf of constituent/organization on the status of the grant.

As noted in the section regarding “use of influence,” Mr. Pham did advocate on behalf of his constituents with respect to their application for a Wild Rose Foundation grant and he has continued to advocate on their behalf with respect to ongoing reviews.

CONCLUSIONS

I am asked in this investigation to decide whether the Member for Calgary-Montrose used his position as Member of the Legislative Assembly to influence a decision of the Crown to further his private interests. The alleged private interests are the campaign donation and possible volunteer support from members of the Caodaist Society during the 2004 general election campaign.

I will first deal with the matter of the alleged private interest. Ms Phan told me she made the campaign contribution from her own money. I have not received any evidence to the contrary. I accept her statement. Based on the testimony of Mr. Pham and Mr. Warkentin as contained in their Statutory Declarations, no effort was made to recruit any members of the Caodaist Society as volunteers in the election campaign and no volunteers were asked if they had any affiliation with the Caodaist Society. There is no evidence of any private interest in this case for Mr. Pham. I also do not find that any “private interest” of Mr. Warkentin was furthered as a result of the campaign contribution to Mr. Pham.

On the question of a possible breach of section 3 (use of influence to further a private interest), I conclude that the Member’s actions fall within the range of activities a Member normally engages in on behalf of

constituents (section 5). I do not find that the Member influenced or attempted to influence a decision to further the private interests of the Member or his direct associate (Mr. Warkentin).

My powers under an investigation are more limited than if I were to choose to proceed by way of public inquiry (as is permitted in the *Conflicts of Interest Act*, section 25).

I chose not to proceed by way of a public inquiry for the following reasons:

- the amount of money involved in the campaign contribution is \$636;
- the person who made the contribution is not a member of the Caodaist Society but lived, at the time of the contribution, at the same residence as some members of the Caodaist Society;
- production of a bank account record would not necessarily prove any inappropriate or inexplicable sources of monies to the account holder;
- the matter of the grant monies associated with the third application has been assigned to Crown Debt Collection for recovery; and
- most significantly, the prohibitive costs of public inquiries.

I acknowledge that resolving the question of whether or not grant monies were contributed to a Member's election campaign fund is an important matter. However, I accept that the \$636 at issue in this inquiry that was contributed to Mr. Pham's campaign came from Ms Phan from her own financial resources. I am not convinced that a public inquiry would provide further evidence in this regard.

The matters relating to the collection of the grant monies from Applewood Park are ongoing and outside my jurisdiction.

I conclude that the Member for Calgary-Montrose is not in breach of the *Conflicts of Interest Act*.

SANCTIONS

I recommend no sanction as I have found no breach of the Act.

Donald M. Hamilton
Ethics Commissioner

Dated: January 23, 2007