



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

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

of the Investigation

**by
Neil Wilkinson,
Ethics Commissioner**

into allegations involving

**Member Parmjit (Peter) Sandhu
(Non-disclosure)**

October 16, 2013

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ALLEGATIONS

On May 13, 2013 Parmjit (Peter) Sandhu, Member for Edmonton–Manning, called me to request a meeting to seek my advice. We met later that same day, along with my Chief Administrative Officer, Glen Resler; my General Counsel, Bradley Odsen, QC; and Member Sandhu’s corporate counsel, Devinderjit (Dave) Purewal. Member Sandhu advised me it had come to his attention that he failed to disclose two court actions against his home-building company, NewView Homes Ltd., in his previous Annual Disclosure. He requested my advice on how he could rectify the situation. I advised him to request I conduct an investigation into this allegation pursuant to sections 24 and 25 of the *Conflicts of Interest Act* (the *Act*).

On May 14, 2013 I received a written request from Mr. Purewal on behalf of Member Sandhu requesting I open an investigation into this matter. I responded in writing, on the same day, confirming I was opening the requested investigation.

Also that same day, CBC News posted a story which included an allegation that Member Sandhu failed to disclose unpaid judgments against his company, NewView Homes Ltd., as required by sections 11, 12 and 18 of the *Act*.

I also received a letter on May 14, 2013 from Dr. Raj Sherman, Member for Edmonton-Meadowlark and Leader of the Alberta Liberal Party, requesting I open an investigation into the allegations against Member Sandhu contained in the CBC story. I responded to Member Sherman on the same day acknowledging I had already opened the investigation.

Sections 11, 12, 18, 24, and 25 of the *Conflicts of Interest Act* are attached to this Investigation Report as Appendix A.

PERSONS INTERVIEWED / EVIDENCE OBTAINED

My initial meeting with Member Sandhu and his corporate counsel, Mr. Purewal, occurred on May 13, 2013. Also present were Mr. Odsen and Mr. Resler. At that meeting, Mr. Purewal voluntarily provided legal documents relating to the specific judgments not previously disclosed. He and Member Sandhu also provided additional information relating to those documents. At the conclusion of that meeting, Mr. Odsen requested additional documents relating to these matters which were provided by Mr. Purewal within the next 24 hours.

Mr. Odsen then prepared written questions which were provided to Member Sandhu on May 30, 2013. A response in the form of a Statutory Declaration was required by June 30, 2013. My office received a letter from James Heelan, QC, from Bennett Jones LLP on June 30, 2013 advising he had been engaged by Member Sandhu on this matter. He requested and received an extension in responding to July 31, 2013.

Member Sandhu’s Statutory Declaration was received from Mr. Heelan on July 31, 2013. As part of the written questions, Member Sandhu was required to provide my office with NewView’s complete corporate records from 2008 to date, including all corporate financial statements. He was also required to provide a complete listing of all court actions against NewView since his election in 2008 and an indication of the disposition of those actions.

All requested materials were provided with Member Sandhu's response to the written questions.

Mr. Odsen then obtained copies of relevant court documents relating to these actions. Mr. Odsen and Mr. Resler conducted a thorough review of all documents.

On October 1, 2013 I received a letter from Mr. Heelan which included a letter to me from Member Sandhu, also dated October 1, 2013, in which Member Sandhu acknowledged non-compliance with the disclosure requirements of the *Act*. A copy of that letter is attached as Appendix B.

On October 3, 2013, Member Sandhu and Mr. Heelan attended at my office. Mr. Odsen questioned Member Sandhu in my presence regarding additional court actions initiated against NewView and Member Sandhu in his personal capacity which had not been reported as required in his Annual Disclosure Statement. Member Sandhu acknowledged failing to report these actions, for the reasons given in his October 1 letter. Mr. Odsen then invited Mr. Heelan for submissions, which were received and noted.

BACKGROUND

Member Sandhu was first elected as a Member of the Legislative Assembly in the 2008 General Election. At that time, for all intents, he was the owner and guiding mind of NewView. His evidence is that since becoming a Member, he divested control of the day-to-day operation of NewView to his spouse and his son. Whether he maintained control and was active in the day-to-day operation of the company is of no significance. Under the *Act*, only Ministers are required to divest themselves of business interests and certain investments in publicly-traded corporations.

Disputes frequently arise in the construction industry between financial institutions, developers, builders, general contractors, sub-contractors, suppliers and trades. Indeed, it is this characteristic of this industry which led to legislation such as the *Builders' Lien Act* and the creation of instruments such as the *certificate of lis pendens*. However, the vast majority of legal disputes in this industry are ultimately resolved between parties, either before or after judgment if an action was launched. More often than not, parties in dispute are able to negotiate resolution to their disputes.

All of the court actions reviewed by my office in this case were either settled or are in the process of being settled. Most of the court actions since Member Sandhu's election were disclosed as required. In fact, it appears the only disputes not disclosed were those which were very near resolution by settlement around the time of Annual Disclosure filing. Member Sandhu's evidence is that since these particular matters were, to his mind essentially "settled", disclosure was not required as they were no longer "liabilities". Evidence strongly suggests Member Sandhu was relying on Mr. Purewal's advice that these particular actions were settled.

In Member Sandhu's evidence and in Mr. Heelan's submissions, both indicated Member Sandhu had nothing to gain or lose by disclosing certain actions while not disclosing others. In other words, there was no underlying motive and, no deliberate effort to mislead. As Mr. Heelan said, "There was no malfeasance here."

Finally, Member Sandhu described the negative impact this matter had on him, his family and his business. I accept his evidence in this regard.

FINDINGS

In addition to the two court actions initially giving rise to this investigation, I find there were another four court actions not disclosed between Member Sandhu's election in 2008 and his most recent Annual Disclosure. I note court records indicate all of these matters settled shortly after Member Sandhu filed the required Annual Disclosures. This corroborates his evidence that he failed to disclose the actions because he considered them settled. Indeed, for the initial two actions prompting this investigation, evidence clearly shows settlement agreements had been reached but not yet finalized at the time of Annual Disclosure.

I find that in failing to disclose these six court actions Member Sandhu, relying at least in part on the advice of his corporate counsel, Mr. Purewal, that these matters were "settled", decided that disclosure was not required. I also find Member Sandhu did disclose outstanding actions which he considered not yet settled.

I find there was no malfeasance on the part of Member Sandhu in any of these instances; there was no deliberate attempt to conceal actions for some underlying reason. Mr. Heelan characterized Member Sandhu's behaviour as "an oversight", but I find it was a mistake.

CONCLUSIONS

Disclosure provisions of the *Act* serve two fundamental purposes: to address the public policy imperative of openness, transparency and accountability by making information on a Member's financial interests publicly available; they also require each Member meet annually to review in detail their disclosure to identify areas where conflicts of interest could arise. During those meetings, my office provides advice on how the Member can best manage or avoid conflicts of interest and subsequent investigations.

Failure to fully and frankly disclose information defeats these fundamental purposes.

Whether by oversight or mistake, I conclude Member Sandhu's six failures to disclose were each an individual breach of the *Act*.

Member Sandhu indicates he "has learned his lesson"; I have no doubt this is true. Every Member is responsible for the accuracy of the information contained in, or omitted from, his or her Annual Disclosure. Whenever there is uncertainty about disclosure, my office is the definitive source of advice. Section 43 of the *Act* states:

Binding advice and recommendations

43(1) A Member, former Minister or former political staff member may request the Ethics Commissioner to give advice and recommendations on any matter respecting obligations of the Member, former Minister or former political staff member under this Act.

....

(5) If a Member, former Minister or former political staff member has, with respect to advice and recommendations under this section,

- (a) communicated the material facts to the Ethics Commissioner, and***
- (b) complied with any recommendations contained in the advice and recommendations of the Ethics Commissioner,***

no proceeding or prosecution shall be taken against the Member, former Minister or former political staff member under this Act by reason only of the facts so communicated and the compliance of the Member, former Minister or former political staff member with the recommendations.

Formal advice given by my office protects a Member from prosecution under the *Act* if he or she has followed the advice given.

RECOMMENDATIONS / SANCTIONS

In an Investigation Report submitted November 21, 1996 concerning Member David Coutts, Ethics Commissioner Robert Clark said:

I am very much aware of the fact that in a case like this one where a Member initiates the investigation, a possibility exists that other Members may not wish to confide matters to me for fear that I will have to report to the Assembly. I have previously stated that Members who do bring these matters forward are doing the right and honourable thing. I believe that such actions should be taken into account in considering what action to recommend as a result of the breach.

In an Investigation Report submitted January 25, 2000 concerning Member Janice Tarchuk, Ethics Commissioner Robert Clark said:

While all Members have ultimate responsibility for meeting their obligations under the Conflicts of Interest Act, when a Member seeks, receives, and relies on the advice and guidance of others, I believe that reliance should be a mitigating factor in assessing a sanction.

I do not speculate whether Member Sandhu would have requested I open this investigation had I not so advised him. He did request I conduct the investigation, knowing full well the outcome. In so doing, he did, in the words of Commissioner Clark, “the right and honourable thing”.

I also agree with Commissioner Clark that when a Member relies on the advice of others upon whom it would be reasonable to rely, it is “a mitigating factor in assessing a sanction”.

In consideration of the mitigating factors identified by Commissioner Clark, the damage to the person, family and business of Member Sandhu, coupled with the sentiments expressed in his letter to me attached as Appendix B, no sanction is required.

I recommend to the Legislative Assembly that no sanction is warranted.



Neil Wilkinson
Ethics Commissioner

Dated: October 16, 2013

Appendix A

CONFLICTS OF INTEREST ACT

Chapter C-23

Preamble

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

....

Part 3 Disclosure

Disclosure statements

11(1) Every Member shall file with the Ethics Commissioner a disclosure statement in the form provided by the Ethics Commissioner

- (a) within 60 days after becoming a Member of the Legislative Assembly,
- (b) within 60 days after being appointed to the Executive Council if the Member has not filed a current disclosure statement as a Member of the Legislative Assembly, and
- (c) in each subsequent year at the time specified by the Ethics Commissioner.

(2) A Member shall, within 30 days after the occurrence of any material changes to the information contained in a current disclosure statement, file with the Ethics Commissioner an amending disclosure statement in the form provided by the Ethics Commissioner setting out the changes.

Contents of disclosure statement

12 A disclosure statement

(a) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member, of any private corporation controlled by the Member and of any private corporation controlled by a combination of the Member and the Member's spouse or adult interdependent partner or minor children, but not including investments in a blind trust,

(b) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member's spouse or adult interdependent partner and minor children and of any private corporation controlled by the Member's spouse or adult interdependent partner, minor children or any combination of them, so far as known to the Member after the Member has requested information from the Member's spouse or adult interdependent partner,

(b.1) shall, as of a date determined by the Ethics Commissioner, identify any legal proceedings of which the Member is aware being brought against the Member,

(b.2) shall, as of a date determined by the Ethics Commissioner, identify whether the Member is in arrears of maintenance payable, including legal costs, interest and penalties, in respect of a maintenance order or agreement,

(c) need not include obligations being incurred for ordinary living expenses that will be discharged in the ordinary course of the Member's affairs,

(d) shall include a statement

(i) of the income that the Member and persons referred to in clause (a), and

(ii) of the income that, so far as known to the Member after the Member has requested information from the Member's spouse or adult interdependent partner, any other person mentioned in clause (b) have received in the preceding 12 months or expect to receive in the next 12 months and, to the extent required by the Ethics Commissioner, of the sources of the income, and

(e) shall include a list of all fees, gifts and benefits approved for retention under section 7(2)(b).

RSA 2000 cC-23 s12;2002 cA-4.5 s26;
2007 c28 s11

....

Failure to file

18 A Member breaches this Act if the Member does not file a disclosure statement, an amending disclosure statement or a return within the time provided by section 11 or 15, as the case may be, or if the Member knowingly gives false or misleading information in a statement or return.

1991 cC-22.1 s18

Part 5 **Investigations into Breaches**

Requests for investigation

24(1) Any person may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member, former Minister or former political staff member.

(2) A request under subsection (1) must be signed by the person making it and must identify the person to the satisfaction of the Ethics Commissioner.

(3) A Member may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by the Member.

(4) The Legislative Assembly may, by resolution, request that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member.

(5) The Executive Council may request that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Minister.

(6) Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.

RSA 2000 cC-23 s24;2007 c28 s15

Investigation and inquiry

25(1) On receiving a request under section 24 or where the Ethics Commissioner has reason to believe that a Member, former Minister or former political staff member has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval or exemption given by the Ethics Commissioner to the Member, former Minister or former political staff member under this Act, and on giving the Member, former Minister or former political staff member concerned reasonable notice, the Ethics Commissioner may conduct an investigation with or without conducting an inquiry.

(1.1) A Member, former Minister or former political staff member shall co-operate with an investigation under this section.

(2) When conducting an inquiry under this section, the Ethics Commissioner has the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

(3) If an inquiry is held, it shall be held in public unless the Ethics Commissioner, in the interests of justice, decides that it is to be held in private.

(4) The Ethics Commissioner may refuse to investigate or may cease to investigate an alleged breach under this Act if the Ethics Commissioner is of the opinion that

(a) the request is frivolous or vexatious or was not made in good faith, or

(b) there are no or insufficient grounds to warrant an investigation or the continuation of an investigation.

(4.1) The Ethics Commissioner shall immediately suspend an investigation or inquiry under this section if the Ethics Commissioner discovers that the subject-matter of the investigation or inquiry is also the subject-matter of an investigation by a law enforcement agency to determine whether an offence under this Act or any other enactment of Alberta or under an Act of the Parliament of Canada has been committed or that a charge has been laid with respect to that subject-matter.

(4.2) The Ethics Commissioner may not continue an investigation or inquiry under this section until any investigation or charge referred to in subsection (4.1) has been finally disposed of.

(5) The Ethics Commissioner may re-investigate an alleged breach in respect of which the Ethics Commissioner's findings have already been reported under this section only if, in the Ethics Commissioner's opinion, there are new facts that on their face might change the original findings.

(6) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach, suspends an investigation of an alleged breach or refuses to re-investigate an alleged breach, the Ethics Commissioner shall so inform

(a) the Member, former Minister or former political staff member against whom the allegation was made, and

(b) the Speaker of the Legislative Assembly, the President of the Executive Council or the person who made the request under section 24, as the case may be.

(7) Where the request is made under section 24(1), (3) or (4), the Ethics Commissioner shall report the Ethics Commissioner's findings to the Speaker of the Legislative Assembly.

(8) The Ethics Commissioner may, before reporting the Ethics Commissioner's findings to the Speaker of the Legislative Assembly under subsection (7), provide a copy of the report

(a) to the Member, former Minister or former political staff member against whom the allegation was made, and

(b) in the case of an allegation made against a Member or former Minister, to the leader in the Legislative Assembly of the political party to which the Member or former Minister belongs.

(9) Where the request is made under section 24(5), the Ethics Commissioner shall report the Ethics Commissioner's findings to the President of the Executive Council.

(10) If the Ethics Commissioner is of the opinion

(a) that a request made by a Member under section 24(1) was frivolous or vexatious or was not made in good faith, or

(b) that a request was made under section 24(1) by a person at the request of a Member and that the request was frivolous or vexatious or was not made in good faith,

the Ethics Commissioner may state that in a report to the Speaker of the Legislative Assembly.

(11) The Speaker of the Legislative Assembly shall lay the report referred to in subsection (10) before the Legislative Assembly and the Legislative Assembly, after considering the report, may

(a) find the Member referred to in subsection (10) in contempt of the Legislative Assembly pursuant to section 10 of the *Legislative Assembly Act*, or

(b) order the Member referred to in subsection (10) to pay to the Member, former Minister or former political staff member against whom the allegation was made the costs of the proceeding incurred by the Member, former Minister or former political staff member against whom the allegation was made,

or both.

(12) An investigation or inquiry under this section shall not be commenced more than 2 years after the date on which the alleged breach occurred.

RSA 2000 cC-23 s25;2007 c28 s16

Appendix B

Peter Sandhu, MLA
625 Legislative Annex 9718 – 107 Street
Edmonton, AB T5K 1E4

FILE COPY

October 1, 2013

Mr. Neil Wilkinson
Office of the Ethics Commissioner
Suite 1250, 9925 109 Street NW
Edmonton, Alberta, T5K 2J8

Dear Sir:

Re: OFFICE OF THE ETHICS COMMISSIONER - ALBERTA

I am writing in follow-up to your review of the questions surrounding my compliance with disclosure obligations as an MLA. As you know I recently provided you with a detailed answer to your enquiries. I look forward to discussing this with you during our scheduled meeting of October 3, 2013.

I acknowledge that I did not comply with my disclosure obligations. However, I would in my defense, like to point out that such non-disclosure was not a deliberate effort by me. Such non-disclosure occurred as a result of an oversight by me and while I know that it is ultimately my responsibility to make such a disclosure, I should indicate further that in making such a disclosure I did rely upon my Counsel to provide me with insight into ongoing litigation. It is now clear to me that I did not have the complete picture from my Counsel. What is clear to me now, more than ever, is that I need to be more diligent in completing my disclosure obligation as an MLA.

Yours truly,



Peter Sandhu, MLA