



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

Report

of the Investigation

by

**Hon. Marguerite Trussler, Q.C.,
Ethics Commissioner**

into allegations involving

Ric McIver, Member of the Legislative Assembly, Calgary-Hays

JANUARY 4, 2017

Introduction

A letter was received on November 22, 2016 from Ms. Heather Sweet, Member of the Legislative Assembly for Edmonton-Manning, with a complaint against the Member of the Legislative Assembly for Calgary-Hays, Ric McIver. The complaint was made under section 2 (1) and section 3 of the Conflicts of Interest Act.

Ms. Sweet's concern was stated as follows:

I'm writing to you today seeking your determination of what I believe may be a real or perceived conflict of interest regarding the member for Calgary-Hays, Ric McIver, the direct financial interests of a directly associated person and Mr. McIver's recent comments and actions surrounding the issue of government policy on the retail electricity market.

As noted on the Office of the Ethics Commissioner Website, "using the Member's office or powers to influence or seek to influence a decision of the Crown to further a private interest of the Member, a person directly associated with the member, the Member's minor child or to improperly further another person's private interest." It is our interpretation that Mr. McIver's actions in question period on November 22, 2016, for example, may be reasonably perceived as seeking to influence government policy in a way that would benefit a business wholly owned and operated by the Member's spouse. Specifically, Mr. McIver asked:

Mr. McIver: thanks, Mr. Speaker. This NDP government's all-out war on Alberta business continues. Today the Premier declared "profit" a dirty word by limiting the price on electricity. The premier seems unaware that today's low prices are the result of competition and that an artificial price cap will limit investment and, by extension, limit that competition. Combined with the carbon tax costs, this will surely make Alberta the worst place in Canada to generate power. To the Premier: why are you doing everything in your power to run these companies, many of which are owned by taxpayers, out of business?

Mr. McIver also was quoted in a November 22, 2016 press release from the Progressive Conservative caucus (attached as an appendix to this letter) that also advanced a position he appears to believe is in the interest of current participants in residential electricity distribution. As Mr. McIver's spouse is a sole shareholder in a residential electricity firm and derives income therefrom, we believe that this use of his office and power places him in a conflict or a reasonable perception of conflict inasmuch as, from his own position, it appears he believes that the government's changes to the market would affect the profitability of what we

believe is a relatively small number of firms such as the one owned by his spouse which, it would follow, would affect his household income.

Scope and Authority Under the Act

It is useful to review the Conflicts of Interest Act and the powers of the Ethics Commissioner. The Act sets out the obligations of Members as well as the jurisdiction of the Ethics Commissioner. The Ethics Commissioner has no power beyond that given in the provisions of the Act. The scope of the Act is narrow in that it only deals with the private financial interests of Members. The object of the Act is to make sure no Member or his or her family obtains a personal financial benefit from being a Member. The Act does not deal with moral integrity or public perception of what is right or wrong.

Therefore, in considering the complaints I am restricted to considering whether Mr. McIver furthered a private interest of his own or of his wife, who is a direct associate of Mr. McIver, under the provisions of the Act.

Relevant Provisions of the Act

Section 2 (1) of the Conflicts of Interest Act provides:

A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor or adult child.

Section 3 of the Act reads as follows:

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 or to improperly further another person's private interest.

The definition of a private interest was canvassed in my December 2014 decision resulting from an investigation into the conduct of then Premier Prentice and then Minister Mandel. The definition, framed in the negative, is found in s. 1(1)(g) of the Act:

"private interest" does not include the following:

- (i) an interest in a matter
 - (A) that is of general application,
 - (B) that affects an individual as one of a broad class of the public, or

(C) that concerns the remuneration and benefits of an individual:

- (ii) an interest that is trivial;
- (iii) an interest of an individual relating to publicly-traded securities held in that individual's blind trust or in an investment arrangement;

Use of Preamble

While the preamble to the Act contains laudable ideals, it is general in nature and as a principle of statutory interpretation it can only be used to assist in interpreting the financial provisions of the Act. By itself, it has no legislative authority. The preamble to the Act reads:

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:

Therefore, in making a determination with respect to this complaint I am limited to deciding if it fits within sections 2 (1) and 3 of the Act.

Investigative Process

When I received the letter of complaint from Ms. Sweet, I acknowledged receipt of it. I also advised Mr. McIver by letter of the complaint and of my intention to conduct an investigation.

The Complainant, Ms. Sweet, was invited to attend my office to discuss the complaint and to add any detail that was not set out in the letter. She attended accompanied by Ms. Greta Levy, Director of Research, NDP caucus office.

Mr. McIver also attended at my office to answer the allegations.

All three were interviewed and their conversations were taped on a confidential basis.

Facts

Christine McIver is the wife of Member Ric McIver. She is the sole shareholder and director of Brighter Futures Energy Inc.. Brighter Futures Energy Inc. is a competitive retailer in the energy market.

It needs to be pointed out that Christine McIver has full time employment aside from her interest in Brighter Futures Energy Inc. The income that she receives from Brighter Futures Energy Inc. is secondary income and is minimal, being approximately \$10,000 per year.

Mr. McIver properly disclosed his wife's interest in Brighter Futures Energy Inc. when he made his annual financial disclosure.

Mr. McIver rose in question period and made the statement and asked the question set out above. The Progressive Conservative party also released the following statement on November 22, 2016 which is part of the complaint:

Today, the NDP government introduced a plan to cap the electricity regulated rate option at \$0.068/kWh, which will force Albertans to foot the bill.

"Make no mistake, this cap does not protect Alberta consumers," said Interim Leader and MLA for Calgary-Hays, Ric McIver. "Whether families pay through increases in their electricity bills or through increases in their taxes, Albertans will be left to cover the difference. The NDP government must take responsibility for the price volatility that they themselves have created."

Today's announcement also continues the NDP's concerning trend of failing to consult with stakeholders before implementing ideological policies. This is yet another example of an industry completely blindsided by a government policy announcement before consultations have taken place.

"We need to be perfectly clear, Alberta's electricity rates will skyrocket because of ideological NDP policies like the accelerated phase out of coal," said Rick Fraser, Progressive Conservative Energy critic and MLA for Calgary- Southeast. "The NDP is interfering with an electricity market that has provided a reliable source of electricity at an affordable price. It's clear that these policies will only serve to drive up cost while driving down business confidence."

The electrical utility industry in Alberta is complex. To explain the system briefly and in a simplistic manner, there are four distinct stages from the production of electricity to delivery to a consumer. There is the generation, the transmission, the distribution and the retailing of electricity. There are a number of generators in the province and they sell their product in a complicated bidding process. Many of them also have direct contracts with retailers. Electricity that is generated goes into a grid.

Transmission of electricity is regulated by the Alberta Utilities Commission which approves transmission rates. It involves the higher voltage lines and is defined as moving electricity from generating facilities through high voltage transmission lines to distribution utility substation transformers.

The distributors then provide the electricity to the consumer through retailers. They move electricity from transformers through local, lower voltage lines to the customers. Some distributors that actually own the wires used for distribution are also regulated by the Alberta Utilities Commission and include Enmax, Epcor, Fortis Alberta and ATCO. There are others approved by local municipal governments or rural electrification associations.

Retailers, who actually sell the power to consumers and pass along generation, transmission, distribution and their own costs, to consumers fall into 2 categories: regulated rate companies and competitive price companies. There are 34 competitive price companies. The complete list can be found at ucahelps.alberta.ca. Competitive retailers for the most part make their money by keeping their overhead low and making a profit on the spread between their purchase price for the electricity and what they sell it for to the consumer.

My understanding is that the carbon tax will apply directly to generators and the price cap directly to regulated rate companies.

Brighter Futures Energy Inc. is not a regulated rate company but a competitive rate company. In fact, it is a sub retailer of Utilitynet group of companies, so does not have any contract for purchase with generators: it buys electricity from Utilitynet and then adds a small profit margin before selling it to the consumer.

It needs to be stated that Mr. McIver has an exceptional knowledge of the electrical utility industry, and I thank him for sharing that knowledge with me and providing materials from ucahelps.alberta.ca and aeso.ca.

Findings

Christine McIver is the wife of Ric McIver and, therefore, a direct associate of Mr. McIver. Her interest in Brighter Futures Energy Inc. is a private interest.

I want to deal first with the complaint as it relates to s.2 (1). By rising in the Legislative Assembly to ask a question, Mr. McIver was not taking part in a decision. In addition, he was not taking part in a decision when the Progressive Conservative caucus issued the press release which forms part of the complaint. Therefore, I find that Mr. McIver has not contravened s. 2(1) of the Conflicts of Interest Act.

It remains to be determined if Mr. McIver used his office, namely being a Member of the Legislative Assembly, to influence or seek to influence a decision made by or on behalf of the Crown to further a private interest of a direct associate.

The complaint about the press release issued by the Progressive Conservative party can be dealt with summarily. It appears to me that the press release was issued to influence the Alberta voter and not the Crown. Therefore, there is no breach of the Act.

There is left remaining the issue of whether the question put forward by Mr. McIver in the Legislative Assembly was an attempt to influence the Crown for the benefit of a direct associate. Questions in the Legislative Assembly are not straightforward questions but frequently contain editorial comment or urge the Government of Alberta (which is defined in s.28(1)(r) and (w) of the Interpretation Act, R.S.A 2000,c.1-8 as the Crown) to do something. That was the case in this instance. If it were a straightforward question it would be difficult to find an attempt to influence. However, when questions contain comment or clearly or impliedly urge the Government of Alberta to do something, they can fall within s. 3 of the Act.

Mr. McIver submitted that this matter was not a private interest as it fell within the definition of what was not a private interest set out in s. 1(1)(g). He maintained that it affected a broad class of the public, namely the 34 competitive retailers of electricity. I am not satisfied that the 34 competitive retailers constitute a broad class.

He also argued that as 100% of Albertans purchase electricity from either competitive or regulated retailers this constitutes a broad class and therefore speaking about electricity rates is excluded. However, his wife has a narrow interest that does not make her position one of a broad class of the public.

Most people do not understand the complexities of the electrical utility industry in Alberta. For many Albertans, there would be a perception that Mr. McIver had a conflict of interest. It could also reasonably be argued that there is an apparent conflict of interest, but the Alberta legislation does not sanction an apparent conflict unlike the legislation in British Columbia. As a result I need to ascertain if there was an actual conflict of interest under s. 3.

The carbon tax will be placed on generation. Generators will add it to their costs. It will be passed along by retailers to customers. The way that it could affect retailers is that the price of electricity will increase and consumers on tight budgets may do more price comparison amongst all the competitive and regulated retailers. Competitive retailers, including Brighter Futures Energy Inc., will need to be even more competitive than they are now.

The cost of transmission and distribution for the most part is regulated and any changes are passed along to the consumer.

The more interesting area is the cap on price to be imposed on regulated retailers. I am satisfied that the cap on regulated retailers will impact competitive retailers. Competitive retailers have to remain competitive not only with each other but also regulated retailers.

Mr. McIver contravened s. 3 of the Conflicts of Interest Act when he asked the following question, about which the complaint was made, during question period:

Mr. McIver: thanks, Mr. Speaker. This NDP government's all-out war on Alberta business continues. Today the Premier declared "profit" a dirty word by limiting the price on electricity. The premier seems unaware that today's low prices are the result of competition and that an artificial price cap will limit investment and, by extension, limit that competition. Combined with the carbon tax costs, this will surely make Alberta the worst place in Canada to generate power. To the Premier: why are you doing everything in your power to run these companies, many of which are owned by taxpayers, out of business?

Mr. McIver was trying to influence the Crown to drop both of these policies. If he succeeded, it would protect his wife's company and if he failed there could be detrimental effect on her business.

I do not believe that Mr. McIver was intending to protect his wife's business in asking the question. I believe that he was doing it for political gain. However, there could be unintended consequences that could benefit his wife.

Therefore, as a result of asking the question, in a manner which tried to influence Crown, Mr. McIver was in breach of s. 3 of the Conflicts of Interest Act as he sought to influence the Crown's decision to implement (or prevent) certain policies, the unintended result of which, had he succeeded, would further the private interest of his direct associate.

Penalty

Given the small size of the interest and the probability Mr. McIver was more interested in scoring political points than worried about his wife's business, it is my recommendation that an apology to the Legislative Assembly by Mr. McIver and a fine of \$500 is the appropriate penalty for this breach of the Act.

In the future, Mr. McIver should recuse himself from any question period activity, debate or vote in relation to the electrical utility industry in Alberta for as long as his wife continues to have her business.