



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

Report

of the Investigation

by

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

into allegations involving

Premier Rachel Notley, Member for Edmonton- Strathcona

March 14, 2016

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Introduction

A letter was received on February 23, 2016 from Mr. Jason Nixon, Member of the Legislative Assembly for Rimbey-Rocky Mountain House-Sundre with two complaints against Premier Rachel Notley. Mr. Nixon's first concern was stated as follows:

...I am on record having concerns that the Premier's party organized a secret, invitation only, \$1,000 a person fundraiser as an add-on to a publicly announced \$250 a person fundraiser. The Premier's office told members of the Alberta media that your office had cleared this event. If so, I would seek clarification. It seems to me that a \$1,000 a person invitation-only event is exactly the type of access selling event that the former Commissioner Don Hamilton took a dim view of in his report of May 11th 2007. In particular, the fact that this event was unadvertised and only available to potential contributors by special invitation makes it more unseemly, in that it appears that special non-public access to the Premier can be purchased for \$1,000. Such an activity damages the integrity and impartiality of the Premier's office.

The second issue was also set out in his letter:

Last week the Premier made a private trip to Toronto. I say private in the sense that it was not on the government itinerary and was not made public to Albertans. While she was in Toronto, the Ontario NDP party organized an exclusive fundraising dinner with Leader Andrea Horwath and Premier Notley. The dinner was marketed to Ontario companies with significant commercial interests in Alberta. The cost of a seat at this exclusive dinner was \$9,975 a person. An order form for a ticket is attached.

...

Our concern is that it is inappropriate for the Premier of Alberta to leave the province and solicit donations from corporations that are prohibited from making political contributions in Alberta. It creates very serious issues of partiality, and seems to undermine the legislation that was passed last year banning the solicitation of corporate funds.

The Office of the Ethics Commissioner also received e-mails on the Ontario issue from several members of the public.

Scope and Authority Under the Act

It is necessary 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.

Use of Preamble

Parts of the preamble to the Conflicts of Interest Act were cited in Mr. Nixon's complaint. The entire preamble reads as follows:

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;

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

WHEREAS Ministers and their staff must avoid conduct that violates the public trust or creates an appearance of impropriety; and

WHEREAS the adoption of clear and consistent conflict of interest rules, post-employment restrictions and reporting duties will promote these aims;

While the preamble 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.

Therefore, in considering the complaint against the Premier I am restricted to determining whether she furthered a private interest pursuant to sections 2 and 3 of the Act. The definition of a private interest was canvassed in my December 14, 2014 decision resulting from an investigation into the conduct of then Premier Prentice and then Minister Mandel.

Investigative Process

When I received the letter of complaint from Mr. Nixon, I acknowledged receipt of it. I also advised the Premier by letter of the complaint. It is not necessary for an investigation to take place into every complaint but given the public interest and given it was not the first time issues of this sort have been raised, I felt it was appropriate to conduct an investigation.

The Complainant, Mr. Nixon, was invited to attend my office to discuss the complaint and to add any detail that was not set out in his letter. Likewise, the Premier was asked to attend at my office to answer the allegations. It was also necessary to interview some others involved in each event.

The following people were interviewed in person and under oath, and their conversations were taped on a confidential basis:

1. Mr. Jason Nixon, MLA, Wildrose Caucus
2. Mr. Vitor Marciano, Press Secretary and Senior Advisor to the Leader, Wildrose Caucus
3. Hon. Rachel Notley, Premier of Alberta
4. Ms. Jennifer Anthony, Director, Issues Management, Executive Branch
5. Ms. Marla DiCandia, Director, Tour and Scheduling, Office of the Premier

Two people were interviewed under oath by telephone and their conversations were also taped on a confidential basis:

1. Karla Webber-Gallagher, Provincial Secretary, Ontario New Democratic Party
2. Mr. Christopher O'Halloran, Provincial Secretary , Alberta New Democratic party

Findings

1. New Democratic Party Edmonton Fundraising Event

It is, first of all, useful to clarify what was approved by me. I was called by Jennifer Anthony and asked my advice on a reception for \$250 a ticket and a pre-event reception of a more intimate nature for \$500. I understood that the two events were going to be advertised together. I had no problem with either event.

I want to state that at all times I believe that Ms. Anthony was forthright and truthful in her dealings with me. She explained to me that when she heard that the pre-reception event had been changed to a dinner for \$1,000 she did not feel that the change was significant enough to warrant calling my office. She did not know that the two events would not be advertised publicly together. What, in fact, happened was that the provincial party and, in particular, Mr. O'Halloran decided not to advertise the dinner but to upsell it to those who bought tickets to the reception. When issues were raised by the Wildrose party and the media, the dinner was cancelled.

Political fundraising is a legal activity. In Alberta it is more restricted than in many other provinces as neither unions nor corporations are allowed to donate to a political party. As a result, fundraisers where tickets are sold to individuals have become an important source of revenue to political parties. There is little in Alberta legislation to restrict these events. Most reasonable residents of Alberta, including the complainant Mr. Nixon, have no problem with these events. The issue is whether there are any or should be any rules relating to how these events are held and how much can be charged for them.

As I indicated, most people have some tolerance for these events. I suspect no one would have any problem with an event that cost \$250 a ticket where 400 people attended. Likewise an event that cost \$500 for 250 people would not cause any problem. But what about an event for 100 people that cost \$1,000 or an event for 50 people that cost \$5,000? Is there a limit to what can be charged? There are people in this province that cannot afford even \$250 for a ticket let alone \$1,000. Does that make the event exclusive?

I expect that everyone has a view as to what should be allowed. Who is to draw the line? Should it be at the point where the media's sensibilities are offended or those of other political parties? Should it be the general view of the electorate? And how is that to be ascertained? I certainly have not been given the legislative authority to do so.

At the moment, the only restriction on the cost of fundraising tickets is found in the Election Finances and Contributions Disclosure Act, R.S.A 2000, as amended, c.E-2. That legislation limits yearly contributions by a person ordinarily resident in Alberta to a political party at \$15,000 a year outside of campaign periods. As a result there is no restriction in having a fundraiser with a ticket price as high as \$15,000 a person. Political parties must make sure that purchasers do not exceed the limit in any one year and often have a purchaser make a declaration that the purchaser has not exceeded the limit in that year. In fact, the ticket purchase order form for the \$250 reception required a purchaser to declare that the purchaser had not gone over the limit in purchasing the ticket.

If there is to be any change to this limit or how a fundraising event is conducted it must be made by the elected representatives of the Alberta Legislature.

The second aspect of the first complaint is more fraught with difficulty. Much is said about small intimate fundraisers where the Premier and Cabinet Ministers are present. The usual complaint is that access to the Premier or Ministers is being sold. The issue of selling access to the Premier and other ranking politicians has been the subject of considerable discussion both academically and in the media. Clearly if a fee is charged that goes personally to a premier or a cabinet minister for access then the Conflicts of Interest Act has been breached. It would also be offensive to require a donation to the party of the Premier from those who want to schedule a meeting with the Premier or a Cabinet Minister at the Legislature.

However, when it comes to general fundraising events by a political party, the complaint of selling access is not appropriate. Commissioner Hamilton investigated then Premier Stelmach in 2007 with regard to allegations of breach of s.7 of the Conflicts of Interest Act in relation to a planned fundraising event that did not proceed. The allegation was that the funds received would contravene the gifts section of the Act. However, the decision of Commissioner Hamilton is not instructive as in that case the tickets were being sold to raise funds to pay off the leadership debts of the then Premier (and two other contenders). While he would not have personally received the money, his reputation would be at stake if the debts were not paid. In any event, in that case the event was cancelled and the Commissioner found that there was no breach of the Conflicts of Interest Act.

There is also nothing that states that a party's function cannot be advertised as an evening with the Premier or the Leader of the Opposition or the leader of a named political party.

This complaint raises the spectre that opposition parties are allowed to have fundraisers with their leaders and portfolio critics in attendance but the party in power is not allowed to hold such events. Clearly, such an unlevel playing field is neither fair nor appropriate. If the party in power is not allowed to have a fundraiser with the Premier in attendance then all other political parties should face the same restrictions with their leaders.

In summary, the only restriction in the Election Finances and Contributions Disclosure Act on political fundraising events is that no person resident in Alberta may contribute more than \$15,000 per year. There is no limitation on the number of people that can attend. It can be few or it can be many.

In general, as a matter of transparency these fundraising events should be open to all. It is not necessary to advertise them widely but, at least, they should be posted on political party websites. The issue in this case is that the \$1,000 dinner was not advertised and only some were offered a ticket to the event if they had purchased a ticket to the reception. There is nothing that contravenes any provincial legislation in conducting the event in this manner but the perception that only a chosen few are being invited is best avoided.

The prohibition in the Conflicts of Interest Act with respect to the Premier is that she cannot receive anything that furthers her private interests. In this case, the Premier would not have personally financially benefited from the fundraiser so she is not in any way in breach of the Conflicts of Interest Act.

The event did not proceed so the complaint is moot in any event.

2. Toronto New Democratic Party Fundraising Dinner

The second complaint is that Premier Notley attended an Ontario New Democratic Party fundraising dinner in Ontario. The tickets were \$9,975 and were sold to corporations. The suggestion is that the Premier was soliciting donations from corporations that are prohibited from making donations in Alberta.

I was approached by the Premier's office about her attending the dinner in Ontario. I knew that it was a fundraising dinner for the Ontario New Democratic Party and that she was to be a special guest. I was not provided with details concerning the number of people attending nor the ticket price. The reason for seeking advice from my office was to find out if the Premier and her husband could accept a gift of airfare from Edmonton to Toronto and a hotel room while in Toronto from the Ontario New Democratic party.

I have been advised that while both the Alberta and Ontario New Democratic parties have links to the federal party (a membership in a provincial party gives automatic membership in the federal party) there was no link between the Ontario and Alberta party. As a result, the gift was not exempt under section 7 (2) of the Conflicts of Interest Act as I determined that the gift was not from the 'Member's political party'. I advised that the Premier and her husband could accept the gift, but given the value of the gift, it would appear on the Premier's public disclosure.

When I spoke with the Premier, she indicated that she knew the tickets being sold to the event were expensive but not the amount and that she knew there would be a limited number of people at the event. She ascertained who would be present while in transit to Ontario. She had asked if the event conformed to Ontario fundraising laws and had been told "yes". All proceeds from the event were to go to the Ontario New Democratic party and none would find its way into the Alberta New Democratic coffers. She was not paid a fee for attending and received no benefit except to have her travel and hotel expenses paid.

Marla DiCandia did know the details of the evening. Jennifer Anthony who called our office along with Parm Kahlon knew it was a fundraising dinner but not the structure of the dinner or the ticket price.

Karla Webber-Gallagher the provincial secretary of the Ontario ND party confirmed that the event fit within the Ontario framework for raising funds. Two people, Bruce Logan and Romiro Mora, contacted prospective attendees first by telephone and then, if there was interest, an email and ticket order form was sent. I do not know what was said on the telephone to prospective ticket purchasers although it is inconceivable that they did not mention that Premier Notley would be in attendance. I have seen two of the emails that were sent out. One did not mention Premier Notley would be in attendance. The other referred to her as special guest Rachel Notley. All organizations approached were based or did business in Ontario. However, many of them also had business interests in Alberta.

Ms. Webber-Gallagher also confirmed that none of the funds raised would be given to the Alberta New Democratic party. If funds were transferred it would not only be offensive but also an egregious breach of the Elections Finances and Contributions Disclosure Act.

As an interesting aside, political parties from outside of Alberta are allowed to fundraise in Alberta. However, the Alberta legislation restricts fundraising to individuals who are resident in Alberta and Alberta parties cannot fundraise outside of the Province.

Given the Premier received no private financial benefit by travelling to Ontario for the event she is not in breach of the Conflicts of Interest Act. As the Alberta New Democratic Party did not receive any of the proceeds of the evening it would not be in breach of the Election Finances and Contributions Disclosure Act although that point is better determined by the Chief Electoral Officer.

The Premier's office was warned by our office that there might be public perception issues if she attended the event. There appears to have been some confusion with what the Premier's media staff unofficially said about the reason that Premier Notley was in Ontario. It would have been better for the Premier and her staff to have been open and proactively let it be known why she was in Ontario.

Conclusion

In conclusion, Premier Rachel Notley was not in breach of the Conflicts of Interest Act with respect to either complaint. As this is not the first time that a fundraising issue has arisen within the last year, it might be appropriate for an all-party committee to set out guidelines that are fair and apply equally to all parties. The members of the Legislative Assembly are in the best position to determine what are acceptable guidelines for fundraising in Alberta. The committee could ascertain if there should be informal published guidelines or if changes should be made to the Election Finances and Contributions Disclosure Act.



Hon. Marguerite Trussler, Q.C.
Ethics Commissioner