

**IN THE MATTER OF THE
COMPLAINT AGAINST PAUL MARCACCIO
IN RELATION TO \$25,000 CONTRIBUTED TO
THE PROGRESSIVE CONSERVATIVE ASSOCIATION OF ALBERTA
IN APRIL 2012**

**DECISION OF LORI MCKEE-JESKE
ACTING CHIEF ELECTORAL OFFICER OF ALBERTA**

Complaints were filed with the Office of the Chief Electoral Officer in relation to \$430,000 that was contributed to the Progressive Conservative Association of Alberta (PCAA) on April 16, 2012.

The Chief Electoral Officer appointed a team of investigators under Section 5(1) of the *Election Finances and Contributions Disclosure Act (the Act)*. The team was comprised of retired Justice Ernest A. Marshall, Don Vander Graaf and Dave Davies. Amongst the matters that they investigated was

Whether Paul Marcaccio made a contribution to the PCAA in April 2012 when he was not an ordinary resident of Alberta contrary to Section 16 of *the Act*.

The Chief Electoral Officer concluded that this allegation was well founded.

On April 22, 2013, the former Chief Electoral Officer, O. Brian Fjeldheim, advised Mr. Marcaccio of his intention to issue a letter of reprimand under Section 51 of *the Act*. He invited Mr. Marcaccio to provide any submissions that he might have.

Mr. Marcaccio provided his submissions on April 24, 2013. He indicated that he did not intend to challenge either the conclusion or the process.

This order relates to the penalty to be imposed on Mr. Marcaccio.

Circumstances in Relation to the Breach of Section 16 of *the Act*

Section 16 of *the Act* provides:

Prohibition

16 No prohibited corporation, person ordinarily resident outside Alberta or trade union or employee organization other than a trade union or employee organization as defined in this Act shall make any contributions to a registered party, registered constituency association or registered candidate.

There is no definition of ordinary residence in *the Act*.

The *Election Act*, Section 1(2) provides the following definition, which the Chief Electoral Officer used for determining ordinary residence under *the Act*: "the place where the person lives and sleeps and to which, when the person is absent from it, the person intends to return."

A person may have more than one residence. Indeed many individuals have more than one place where they reside from time to time. However, for the purposes of the *Election Act*, and by extension for *the Act*, a person can only have one ordinary residence.

There are two elements to ordinary residence: an objective one — where the person lives and sleeps; and a subjective one — when a person is away, where he intends to return.

On April 16, 2012, a bank draft for \$430,000 was sent through Katz Group Properties Inc. (KGPI) to the PCAA. Mr. Marcaccio was identified as a contributor of \$25,000 at the time the bank draft was sent to the PCAA. He requested that the receipt be forwarded to his Edmonton office address.

The investigation revealed the following about Mr. Marcaccio:

- He is the Chief Financial Officer of the Katz Group of corporations.
- The personal cheque he wrote to repay KGPI to cover his contribution shows his address is a Toronto residence.
- He is a director of several of the Katz corporations. The Katz corporations which name him as a director show his address to be in Toronto.
- His Professional Corporation maintains an office in Edmonton and one in Toronto.
- He spends approximately half of his working time in Edmonton and half in Toronto.
- He holds an Ontario Operator's Licence and Ontario Health Card.

Given the facts stated above, while Mr. Marcaccio has a significant presence in Alberta, the Chief Electoral Officer was satisfied that he was ordinarily resident outside Alberta. The Chief Electoral Officer determined that Mr. Marcaccio was ordinarily resident in Toronto, Ontario at the time the contribution was made.

Penalty under Section 51 of *the Act*

Having reviewed the submissions and having considered the circumstances surrounding the breach, I have determined that it is appropriate to issue a letter of reprimand under Section 51 of *the Act*.

Amongst other things, *the Act* is intended to control who can contribute to political parties. The Legislature has prohibited those individuals who are not ordinarily resident in Alberta from making contributions. The onus lies on individuals who wish to make political contributions to comply with Alberta law. Any breach of Section 16 is a serious matter.

Having said that, there are a number of mitigating factors that were viewed as important in assessing the appropriate penalty:

- This is the first time that this Office has investigated Mr. Marcaccio's conduct and there is no history of him having breached *the Act* before.
- He made an error, believing in good faith that he could contribute.
- He cooperated with the investigation and readily provided the information, which ultimately established that he was not ordinarily resident in Alberta.
- He acknowledged his error and has provided assurances that it will not occur again.
- The publication of the decision on the website will have a significant impact on Mr. Marcaccio personally and, given the likely profile of this case, will follow him for the balance of his career.

In my view, balancing the seriousness of the breach against the mitigating factors, I am satisfied that the issuance of a letter of reprimand is an appropriate penalty. In my view, this is not an appropriate case to refer to prosecution or to issue a monetary penalty. The public interest will be served by fulsome public disclosure of the circumstances of the matter and Mr. Marcaccio's commitment to future compliance. The letter of reprimand will have the required deterrent effect on him. Further, the publicity that will surround this decision will have a general deterrent effect.

This is the first case about a contribution from a person not ordinarily resident in Alberta being investigated and determined to be proven. Alberta has many individuals who work here and live here while they are ordinarily resident elsewhere. This case should be a caution to anyone in that position. If there are future cases, the Chief Electoral Officer may well consider imposing more severe sanctions or referring the matters to prosecution.

Decision made: April 29, 2013

A handwritten signature in blue ink, appearing to read 'Lori McKee-Jeske', is written over a horizontal line.

Lori McKee-Jeske
Acting Chief Electoral Officer of Alberta