



**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
(Improper Use of Office)**

October 16, 2013

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ALLEGATIONS

On September 4, 2013, I received a letter dated September 3, 2013, from Brian Mason, Member for Edmonton–Highlands–Norwood, and Leader of Alberta’s New Democratic Party. It concerned actions taken by the Member for Edmonton–Manning, Parmjit (Peter) Sandhu, and it stated:

“It is my understanding that your office is currently conducting an investigation into the apparent inaccuracy of disclosure statements filed by the Member for Edmonton – Manning. Today, I am writing to formally request an expansion of your investigation to include consideration of a potential breach by the Member of section 3 of the *Conflicts of Interest Act*.

According to newly-released documents, the Member for Edmonton – Manning convinced senior officials in Service Alberta to conduct an investigation into one particular lien and lobbied for amendments to the Builders’ Lien Act that may have benefitted his private interests.”

Attached to Member Mason’s letter were copies of several departmental emails which were obtained by an Access to Information Request, apparently made by CBC. These documents supported a CBC News story of September 3, 2013: *Edmonton MLA lobbied to benefit own home-building company. Peter Sandhu acted unethically, but not illegally, critics say*.

On September 3, 2013, I received a letter dated the same day from Shane Saskiw, Member for Lac La Biche–St. Paul–Two Hills. It referenced materials mentioned in the CBC story, but did not include them, and it requested an investigation. Member Saskiw did not allege a breach of a specific section of the *Conflicts of Interest Act*, so I wrote him inviting him to provide additional information. No further response was received.

I reviewed the allegations, the supporting documentation and the *Conflicts of Interest Act* with my General Counsel, Bradley Odsen, QC, and my Chief Administrative Officer, Glen Resler. On September 17, 2013, I advised Member Sandhu I was opening an investigation into Member Mason’s allegations.

On September 18, 2013, I responded to Member Mason, stating:

“... The allegations and information you have provided do appear to fall within my jurisdiction under the *Conflicts of Interest Act* and I believe are sufficient to warrant opening a new investigation into the conduct of Mr. Sandhu.”

PROCESS/PERSONS INTERVIEWED/EVIDENCE OBTAINED

Kirk Lambrecht, QC, from Shores Jardine LLP was engaged to conduct witness interviews and collect additional documentation related to this matter.

Mr. Lambrecht interviewed:

INTERVIEWEE	POSITION
Mr. Curtis Woolard	Director, Land Titles North Service Alberta
Mr. Ward Mewhort	Manager, Trades and Occupations Industry Programs and Standards Enterprise and Advanced Education
Mr. Dennis Mudryk	Executive Director, Legacy Systems Service Alberta
Mr. Brent McEwan	Assistant Deputy Minister, Consumer Services, Service Alberta
Mr. Rob Phillips	Executive Director, Consumer Services Programs, Service Alberta
Mr. Lee Chantal	Investigator, Investigation Services - North Service Alberta
Mr. Martin Roy	Director, Investigation Services Service Alberta
Mr. James Stroeder	Acting Manager, Investigations (North) Investigation Services - North Service Alberta
Mr. Les Speakman	Executive Director Land Titles / Vital Statistics / Corporate Registry, Service Alberta
Ms. Maureen Towle	Director, Strategic Information Management Planning and Development Service Alberta

Mr. Lambrecht also requested and obtained un-redacted copies of all documents material to the investigation.

Mr. Odsen also interviewed Service Alberta Minister Manmeet Bhullar in my presence, and in the presence of Mr. Resler.

On October 1, 2013, I received a letter from Member Sandhu's legal counsel, James Heelan, QC, from Bennett Jones LLP. It included a letter from Member Sandhu, also dated October 1, 2013, in which Member Sandhu addressed the allegations which are the subject of this investigation. A copy of that letter is attached as Appendix A.

After all interviews were conducted, and documentary evidence reviewed, Member Sandhu and his counsel attended my office on October 10, 2013. Mr. Odsen conducted a final interview and invited submissions from Member Sandhu and his counsel.

BACKGROUND

This matter concerns Member Sandhu's admitted avid interest in the *Builders' Lien Act*. Both before and after his election in 2008, Member Sandhu was a shareholder, director, and officer of NewView Homes Ltd., a home-building company based in Edmonton.

The *Builders' Lien Act* provides a legislated mechanism whereby individuals and businesses can encumber the title to lands upon which they have provided services or materials if they are unpaid, in whole or in part, for services or materials they have supplied. The cost to file a lien is only \$10 but the filing must be accompanied by an affidavit attesting to the validity of the debt owed.

Since his election, Member Sandhu wrote to (then) Premier Ed Stelmach, Premier Alison Redford, Minister Heather Klimchuk (former Minister of Service Alberta), Minister Manmeet Bhullar (current Minister of Service Alberta) and Minister Verlyn Olson (former Minister of Justice and Attorney General) asking the *Builders' Lien Act* be opened for review. Member Sandhu has raised this issue in Committee and has had Members ask questions of the Minister in question period about the *Builders' Lien Act*. He has met with Minister Bhullar and Service Alberta staff to discuss his concerns with the *Builders' Lien Act* and his desire to see it reviewed.

Evidence shows staff in Minister Bhullar's office expressed concern that some of Member Sandhu's activities could give rise to a perception of a conflict of interest. For example, Member Sandhu intended to raise the issue with the Minister during question period; it was felt it would be more appropriate for Member Sandhu to have another Member ask the questions.

At a meeting with senior Service Alberta staff on February 17, 2012, Member Sandhu referred to a lien filed against title to a NewView property as an example of "vexatious" liens. Member Sandhu was advised Government officials investigate complaints of vexatious liens and could do so in this case. No investigation was initiated by Government officials in this matter. Member Sandhu explained the lien he referred to was dealt with by NewView and he was only providing this instance as an example.

Emails provided in the initial Access to Information Request indicated Member Sandhu had communication with an investigator in the Consumer Affairs Branch of Service Alberta. In fact, documentary evidence and the investigator's evidence confirm there was an investigation underway under the *Fair Trading Act*. This investigation was initiated by the investigator, who initiated contact with NewView to follow up on information provided by parties unrelated to Member Sandhu or NewView. When Member Sandhu responded to the investigator, he identified himself as an MLA and answered all inquiries.

Over the period of his activities, Member Sandhu was advised by both Ministers and civil servants that if genuine issues existed with the *Builders' Lien Act*, the appropriate way to begin a review process was for significant stakeholders in the construction industry, such as the Edmonton Region Branch of the Canadian Home Builders Association, to come forward with evidence, proposals and a request to initiate a review. Member Sandhu was also repeatedly advised there was a second perspective to any review, the perspective of those who regularly

used builders' liens to enforce their rights, and that perspective would be equally weighted in any review. There is no evidence indicating there was any effort during this time by a significant element of any stakeholder group to initiate a review of the *Builders' Lien Act*.

Several Service Alberta senior civil servants with whom Member Sandhu met felt Member Sandhu was inappropriately trying to use his office as a Member to further the interest of his business venture, NewView.

At issue in this investigation is whether, in his zeal to see changes made to the *Builders' Lien Act*, Member Sandhu crossed the line from using his office as a Member to advance public policy to improperly using his office as a Member to further his private interest or the private interest of NewView, a "direct associate" within the meaning of the *Act*.

FINDINGS

I find Member Sandhu may have distinguished in his mind when he was dealing with elected officials or civil servants, as a Member and when he was dealing with them as a private citizen. The distinction was not readily apparent to some of those with whom he was dealing: to them, he was a Member seeking to use his office to effect legislative change. Member Sandhu himself says in his October 1 letter:

"All of these efforts were undertaken with the interests of all Albertans at heart and I saw all of these efforts as being related to my duties as an MLA."

I find Member Sandhu genuinely believes his efforts are intended to benefit all Albertans and his efforts fall within the category of a Member's responsibilities. While Member Sandhu's belief may be genuine, it is also mistaken:

1. Not all Albertans will benefit from changes he wants to see made to the *Builders' Lien Act* and those who use liens will find these changes detrimental. As one witness said, "It's a zero-sum game. One side gains only at the expense of the other side."
2. While all Members have a clear duty to advance public policy in the public interest, they also have a duty to do so in a manner that is evidence-based and takes into account as many differing perspectives as possible.

Member Sandhu was repeatedly advised that if there was a genuine need for change to the *Builder's Lien Act*, the way to demonstrate it was to galvanize industry support for his proposed changes. Once such support was clearly demonstrated, a review taking into account the views of all stakeholders could be undertaken. Whether Member Sandhu tried to galvanize that support and was unsuccessful or not, I find that no broad support was forthcoming.

I find Member Sandhu's persistence was primarily motivated by his experience with NewView, although he certainly provided uncontradicted evidence indicating he had support from some other builders and title-holders. While this persistence may well have given the appearance to some that his actions went beyond his duty and amounted to an improper use of his office as a

Member of the Legislative Assembly, that is not the case. His actions may have been ill-advised, but they were not improper.

However, even if his actions were an improper use of his office, in order to find that Member Sandhu breached section 3 of the *Conflicts of Interest Act*, I must find not only that he improperly used his office, I must also find he did so to further his private interest or the private interest of another person.

Section 1(1)(g) of the *Conflicts of Interest Act* deals with “private interest”, and says:

Interpretation

1(1) In this Act,

.....

g) “private interest” does not include the following:

(i) an interest in a matter

(A) that is of general application,

(B) that affects a person as one of a broad class of the public, or

(C) that concerns the remuneration and benefits of a Member;

(ii) an interest that is trivial;

(iii) an interest of a Member relating to publicly-traded securities in the Member’s blind trust;

The changes proposed by Member Sandhu to the *Builders’ Lien Act* would, if enacted, affect all aspects of the construction industry, whether positively or negatively, as well as every Albertan holding title to real property. This is a very broad class.

I find Member Sandhu’s efforts to effect changes to the *Builders’ Lien Act* were not in furtherance of his private interest or the private interest of any other person, within the meaning of the *Conflicts of Interest Act*.

Therefore, I find Member Sandhu did not breach section 3 of the *Conflicts of Interest Act*.

CONCLUSIONS

The Preamble to the *Conflicts of Interest Act* includes this statement:

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;

This statement was added to the Preamble following the 2007 Review of the *Act*. It was added specifically to address the issue of Members participating in the formulation of legislation and the debate, consideration and adoption of legislation where they were active in the legislated area, and perhaps best-suited to understand and explain the full implications of such legislation.

Members come from a broad spectrum of occupations and experiences. The full value brought by their individual backgrounds, which can add to furthering the public interest, ought not to be restrained unless it is clear the participation of any individual Member would be a conflict of interest.

Additionally, section 5 of the *Act* states:

Constituency matters

5 A Member does not breach this Act if the activity is one in which Members of the Legislative Assembly normally engage.

Members of all political persuasion are constantly pressing for legislative change: it's their job. That a Member may be particularly enthusiastic about a particular public policy issue does not take that Member's actions out of section 5 and into section 3 of the *Act*.

Member Sandhu's persistence in this matter created an appearance of a conflict of interest but did not amount to an improper use of his office. Had his persistence been directed at encouraging government officials to take action which only affected NewView Homes, there would be no doubt that he would be in breach of section 3 of the *Act*. But that is not the case and there is therefore no actual breach.

RECOMMENDATIONS/SANCTIONS

Because Member Sandhu did not breach section 3 of the *Conflicts of Interest Act*, I recommend that no sanction is warranted.



Neil Wilkinson
Ethics Commissioner

Dated: October 16, 2013

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

Thank you for your letter of September 17, 2013 with respect to the allegations that have arisen suggesting that I have engaged in activities with respect to the *Builders Lien Act* which constitute a breach of section 3 of the *Conflicts of Interest Act*.

At no time did I engage in any activities which were a breach of section 3 of the *Conflicts of Interest Act*.

Efforts with respect to Review of the Builders Lien Act.

I have, as an MLA, over the last number of years engaged in efforts to see that the *Builders Lien Act* is reviewed. Based on my own personal experience and based on the experience of a number of my constituents and representatives of the construction industry I am of the view that the *Builders Lien Act* is an antiquated piece of legislation that needs to be updated. I hold the strong view that the *Builders Lien Act* allows for frivolous liens to be filed which create hardship for general contractors and homeowners. Thus, I have, on a number of occasions, engaged in discussions with members of cabinet, fellow MLAs and members of the civil service in order to bring about change in the builders lien regime in Alberta. In these circumstances, I did raise the example of a property where I was of the view that a frivolous lien was placed. I was using this as an example during my dealings with the civil service and they indicated that they would investigate the matter. In no way during these discussions did I use my office or powers to influence the civil servants with respect to these steps rather, I was simply exercising my rights as a private citizen.

All of these efforts were undertaken with the best interests of all Albertans at heart and I saw all of these efforts as being related to my duties as an MLA. Further, any legislative change that might come of my efforts would clearly be non-retroactive and therefore of no personal benefit to me.

Complaint with respect to lien by Marcie Horyn against NewView Homes.

I believe that there may be some confusion as to the circumstances surrounding Marcie Horyn. It is correct that Ms. Horyn did some landscaping on properties that NewView Homes built. However, to my memory at no time did Ms. Horyn lien any NewView Homes properties. With respect to my dealings with Service Alberta surrounding Ms. Horyn it is my memory that Service Alberta were conducting an investigation into Ms. Horyn and I was contacted with respect to that investigation. During those conversations I did relay my concerns surrounding the inadequates of the Builders' Lien regime.

Conclusion

In short, I adamantly believe that I have not in any way breached the *Conflicts of Interest Act*. However, I recognized that an unfortunate perception has been created here and I will be mindful of that in the future.

Yours truly,



Peter Sandhu, MLA