

July 5, 2023

PC Party of Manitoba
c/o MLT Aikins
30th Floor
360 Main Street
Winnipeg, MB R3C 4G1
Attn: Jonathan Kroft, K.C.

Tim Johnson
Provincial Secretary
Manitoba NDP
803-294 Portage Avenue
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Mr. Kroft and Mr. Johnson:

Re: Olivia Billson complaint

On March 14, 2022, Premier Stefanson delivered remarks at a media event. Olivia Billson, the Senior Press Secretary of the Executive Council advised three reporters that the Premier would be attending the media event. She later sent them an email which included a media advisory about the event. All of this took place during the election period for the Fort Whyte by-election. Tim Johnson, Provincial Secretary and CFO of the Manitoba NDP, sent me a complaint alleging that this was a breach of the advertising restrictions in s. 92 of *The Election Financing Act* (the “EFA”).

Background

I arranged to have this complaint investigated. Jonathan Kroft, KC, was retained by the Government of Manitoba, and provided a response to several inquiries made by our investigator. On the basis of the investigation and information provided by Mr. Kroft, I understand the basic facts to be these.

Part of Ms. Billson’s job as Senior Press Secretary is to speak to members of the media who have offices in the Legislative Buildings about what the Premier is doing, which facilitates their coverage of the Premier. In this case Ms. Billson spoke to three reporters, two from the *Winnipeg Free Press* and one from the Canadian Press, about a WestJet media event to which the Premier had been invited. Ms. Billson later sent an email appending a media advisory that had been prepared by West Jet providing the date, time and location of the media event and confirming that the Premier would be in attendance. One of the reporters, Carol Sanders at the Free Press, replied to confirm that the *Free Press*’s city desk had already received the advisory.

At the media event later that day, the Premier delivered remarks about, among other things, the challenge that the pandemic had caused to the tourism and air transportation industries and the

government's focus on both reopening the Province and protecting the health of Manitobans. She also referred to the Throne Speech.

Section 92

Section 92(1) of the EFA sets out the general restriction on government advertising in a by-election period as follows:

92 RESTRICTIONS ON GOVERNMENT ADVERTISING

(1) — Restrictions for general elections and by-elections

During the following periods, a government department or Crown agency must not advertise or publish any information about its programs or activities:

...

- (c) for a by-election, in the election period.

The purpose of this section cannot be to prohibit an MLA, during an election period, from talking about, or writing about, her party's accomplishments, as that is precisely the information the electorate needs in order to make an informed decision. My understanding is that the purpose of section 92 is to prevent the party in power, which has access to enormous government resources, from gaining an electoral advantage by using those resources to assist them in getting their message out.

I therefore understand the notion of publication by a government department to require more than simply an MLA speaking or writing about the government's programs and activities. There must, in my opinion, be some further use of a department's resources, as that is the potential unfairness that the section was intended to address. So, for example, a Minister's speech by itself, would not be a breach of section 92, but if she had a government employee, as opposed to someone paid by her party, write her speech, then when she gave the speech, it would be a publication by a government department, and a potential breach of the section.

This is not an easy interpretation of section 92, but I believe it is the only one consistent with what I understand the purpose of the section to be.

I have had an opportunity to review the Premier's speaking notes for this occasion. Based on those notes, it appears that her remarks were brief and very general in nature. Nonetheless, some of her remarks did, in my view, include information about the programs or activities or one or more government departments and her comments were made on behalf of the government and therefore on behalf of those departments. All of this is unobjectionable, however, provided no government resources were used to assist her.

This is where the concern about Ms Billson arises. She is a government employee and cannot assist the Premier with her speech by talking to or emailing the press to make sure they know about

it. That could certainly be done by campaign staff, of course, but not by a government employee as part of her employment. We know that Ms. Billson did email the press to make sure they knew about the Premier's upcoming speech and so, in my opinion, unless one of the exceptions to section 92 applies, there was a breach of the section.

The Statutory Exceptions

Subsection 92(2) lays out a number of exceptions to the rule in 92(1):

(2) — Exceptions

Subsection (1) does not apply to an advertisement or a publication

- (a) that is required by law,
- (b) that disseminates information about public health or safety matters,
- (c) that, in relation to the usual operations of a government department or Crown agency,
 - (i) is in continuation of earlier advertisements or publications concerning an ongoing or recurring program or activity,
 - (ii) solicits proposals or tenders for a contract, or
 - (iii) is a job advertisement or is information disseminated at or about a job fair or career fair, or
- (d) that deals with a matter before the Assembly, such as the throne speech, the budget, the introduction or passage of a bill or an order or resolution of the Assembly.

Although the Premier made a few remarks about the Throne Speech, the pandemic and safety considerations related to reopening after the pandemic, her speech focussed on celebrating the reopening of the air transportation and tourism industries and the Government's commitment to working with the business community to improve Manitoba's future and economy. That being so, I do not believe that either 92(2)(b) or 92(2)(d), or for that matter any other of these exceptions, applies in this case.

Were Ms. Billson's actions too trivial to breach section 92?

In previous investigations I have declined to find a breach of section 92 when the alleged offence is a trifling one. So, for example, when an MLA took a government car to Brandon on government business, but then used it to travel a few miles down the highway to make an election speech, it was my view that that extra few miles use of the car was not significant enough to count as a breach of the section.

It is extremely unlikely that Ms. Billson's actions had any substantive effect on the results of the election. Nonetheless, I don't believe they are so trivial that they should be ignored. Ms Billings only spoke to three people, but they were reporters and had the potential to reach thousands of readers if they chose to cover the event. Ms. Billings not only spoke to the three reporters but emailed them later, enclosing a copy of the media advisory that had been prepared by West Jet. It

turned out that one of the media outlets had already received a copy of that advisory, but Ms. Billings email might still have resulted in more media coverage of the event. Presumably, that was its purpose.

There is one other consideration that suggest to me that this is breach is not an insignificant one. Within the last two years, the government has added the following additional exception to section 92, as subsection 92(4):

(4) — Non-application to speaking by members of Executive Council

Nothing in this Act applies when a member of the Executive Council speaks on behalf of the government or about a matter concerning their ministerial responsibilities as long as government resources are not used

- (a) to advertise or publish the date or time when, or location where, the member will speak,
- (b) to invite a person to attend the location where the member will speak, or
- (c) to advertise or publish the contents of the member's speech after it is made.

The premier and all cabinet ministers are members of the Executive Council. On its face, this exception appears to exempt them, when making a speech, from any requirement to abide by section 92, provided only that they do not use government resources to advertise or promote the speech. This exception permits them, for example, to have government staff write the speech, or arrange the venue, or any of the myriad of things that other parties have to fund out of their campaign funds. I do not know if this exception was intended to be this broad. But it is striking that the only rule restricting ministers that the government appears to have left in place, is the one that Ms. Billson broke. I would be uncomfortable, in that circumstance, in finding that the breach was too trivial to consider.

My conclusion, therefore, is that Ms. Billson's interactions with the press relating to the Premiers speech assisted the publication of that speech and that the government therefore breached section 92. I should note, however, that I do not believe the breach was an intentional one. The nature of Ms. Billson's job must put her in contact with the press on a frequent basis and complying with section 92 during an election period would, I suspect, be particularly difficult for her. I will report my findings to the Chief Electoral Officer, as the EFA requires me to do, and she will make a note of the breach in her annual report.

Bill Bowles



Commissioner of Elections for Manitoba