



To: The Board, Progressive Conservative Association of Alberta
("PCAA")

From: Rob Dunseith, Q.C.
Chief Returning Officer

Copies: John Weissenberger, Manager
Jason Kenney Leadership Campaign
Jaswinder Dhillon, President, Edmonton Ellerslie PC
Association

Re: Delegate Selection Meeting
Edmonton Ellerslie PC Association
November 16, 2016
(the "DSM")

Date: November 20, 2016

The following is my ruling in relation to concerns which were raised by party members who attended the DSM, including formal complaints made by representatives of the Byron Nelson Campaign and the Richard Starke Campaign. The alleged conduct complained of allegedly took place on the night the DSM was held in the Hillview Room of the Woodvale Facility located at the Millwoods Golf Course in Edmonton.

The complaints relate to:

- The Kenney Campaign's rental and operation of a hospitality room (the "Hospitality Room") in the Woodvale Facility; and
- The entering into of the Woodvale Facility by Jason Kenney shortly before the commencement of the DSM.

In making this ruling, I have reviewed the following which I shared with the Kenney Campaign:

1. Complaint received November 17, 2016 from Parker Hogan, campaign manager for Byron Nelson, who was present at the DSM.
2. Complaint received November 18, 2016 from Darren Cunningham, representative of the Richard Starke Campaign, who was present at the DSM.

3. E-mail report received November 18, 2016 from Jaswinder Dhillon, the Deputy Returning Officer for the DSM.
4. E-mail message sent November 18, 2016 at 11:12 AM from Karam-Ali Talakshi, Candidate Liaison for the Leadership Election Committee to Mr. Weissenberger.
5. Witness Statement received November 18, 2016 from Katherine O'Neill, President of the PCAA, who was present at the DSM.

I have also reviewed the response to the foregoing provided by John Weissenberger on November 19, 2016, together with materials appended.

In order to properly understand the issues of the proximity of the Hospitality Room to the Hillview Room, and the proximity of Mr. Kenney to the Hillview Room when he entered the Woodvale Facility, I personally attended at the Woodvale Facility on November 19, 2016 and inspected the layout of the facility.

The Rules

The rules which apply to these complaints are as follows:

From the Procedure Guide for the election of delegates approved by the PCAA Board, page 8:

“For Leadership selection process meetings, one scrutineer for each nominated candidate can attend. However, at no time will campaigning be allowed before, during or after the meeting. No campaign materials, including buttons or signs, be allowed to be posted or displayed in or near a room where a DSM will be held. At no time is a nominated candidate allowed to be in or near a DSM room unless that person is running for a Delegate spot.”

The Facts

The facts occurring on the night of the DSM appear fairly clear. They are as related by Ms. O'Neill in her witness statement, which Mr. Weissenberger did not dispute:

1. The DSM was scheduled to begin at 7:30 PM.
2. Sometime in advance of the meeting being called to order, several volunteers who were there to assist with the DSM arrived at the Woodvale Facility. This included Ms O'Neill. Soon after her arrival, she had a conversation with Alan Hallman, the scrutineer for the Kenney Campaign which she summarizes as follows:

Between 7-7:15 p.m., I was asked several times by Alan Hallman, Jason Kenney's scrutineer, to clarify the DSM rule that a candidate could not be in or near a DSM room. I told Mr. Hallman that in the case of the Mill Wood Golf Club,

it meant his candidate shouldn't enter the building. The delegate selection meeting was the only event being held at the Golf Club that evening and many PC members were standing in the hallway before entering the room where the voting took place. He then asked what the possible sanctions would be for breaking the rule. I suggested there could be fines at the very least. He responded that fines wouldn't be a problem for the Kenney camp. He also said the party was "amateur" for not allowing candidates to campaign at the delegate selection meetings.

3. There was a Hospitality Room on the same level of the Woodvale Facility being operated by the Kenney Campaign, which must have been set up before the volunteers including Ms. O'Neill arrived. Ms. O'Neill relates how this came to her attention as follows :

After that conversation [with Mr. Hallman] concluded, while I was standing in the hallway, greeting PC members and directing them to the meeting room, I ran into a cook working at the Golf Club. I asked him if I could buy food. He told me to head to the "Kenney Room" and pointed me to a room that was only feet away from the delegate selection meeting room. He said there was free food and drinks inside the room for PC members. I immediately went to the room and saw close to two dozen people eating food while waiting for the meeting to start nearby.

4. Ms. O'Neill alerted the representatives of the other campaigns who were then present about the presence of the Hospitality Room, and describes the events that then occurred as follows:

I notified the scrutineers and campaign officials working for Bryon [sic] Nelson and Richard Starke that were waiting in the hallway waiting outside the delegate selection meeting room about the "Kenney room." They asked to speak to the DRO Jaswinder Dhillon and I went inside the delegate selection meeting and brought him out to the Nelson and Starke officials to discuss the situation. They protested that it constituted "campaigning" and asked for the hospitality room to be shutdown immediately. Naresh Bhardwaj, the former Edmonton-Ellerslie PC MLA, interrupted the conversation and said the room would be shut down immediately and that "there would be no problems here tonight." That room was cleared out and most people either then went into the delegate selection meeting room or left the Golf Club all together.

5. Shortly after this occurred, those present, including Ms. O'Neill, noticed Mr. Kenney entering the Woodvale Facility and walking amongst delegates waiting for the DSM to begin. Ms. O'Neill describes her interaction with Mr. Kenney as follows:

While that conversation was settling down, I noticed that PC Leadership Candidate Jason Kenney entered the building and was walking through a small group delegates waiting to head inside the delegate selection meeting room. I approached him and told him he wasn't allowed to be in the building. He said he wasn't aware of that rule and was simply there to meet PC members but agreed to leave without any further discussion.

Many people in the hallway witnessed Mr. Kenney enter the building, including the Edmonton Journal reporter who later wrote about the evening and members of the Starke and Nelson campaign teams.

6. From my inspection of the Woodvale Facility, I noted that:

- a. Both the Hillview Room and the Hospitality Room are located on the ground level of the Woodvale Facility.
 - b. The main entrance to the Woodvale Facility is located on the south side of the building, with easy access from and to a substantial surface parking lot located on the south side of the building.
 - c. Upon entering, the main entrance gives onto a hallway which is used to access, among other rooms, the Hillview Room and the Hospitality Room, as well as the stairs to the second level of the building.
 - d. The door to the Hillview Room is located about 35 paces in a northerly direction from the main entrance to the Woodvale Facility.
 - e. Having arrived at the Hillview Room, it is about another 15 paces to the door of the Hospitality Room. The hallway door to the Hospitality Room is only accessible by passing by the door to the Hillview Room.
7. The Hospitality Room was shut down upon the challenge being made and the intervention of Mr. Bhardwaj. It appears that it ceased to operate a few minutes before the DSM was called to order.
 8. At no time did Mr. Kenney enter the Hillview Room where the DSM was to be conducted. It appears that he left the building before the DSM was called to order.

Much of Mr. Weissenberger's submission is devoted to the question of lack of clarity in the rules, and his Campaign's alleged inability to obtain direction from the LEC. I will return to this issue after reviewing the rules in connection with the foregoing facts.

Application of the Rules Relative to the Events on the Evening of the DSM

The *Procedure Guide* states:

This Procedure guide must be applied in a fair and equitable manner and must be interpreted in a manner that is fair and reasonable, having regard to all circumstances, and in the best interests of the Progressive Conservative Association of Alberta.

In determining whether Mr. Kenney and his campaign breached the rules, it is necessary to determine whether the operation of the Hospitality Room constituted "campaigning ... before, during or after the meeting" and whether the presence of Mr. Kenney in the hallway outside the Hillview Room was a breach of the rule which states, "At no time is a nominated candidate allowed to be in or near a DSM room unless that person is running for a Delegate spot."

The Hospitality Room

In his submission, Mr. Weissenberger states under the heading "Kenney Campaign Location" that the provision relative to campaigning is vague and poorly-worded. He states:

For what duration of time is campaigning banned surrounding a DSM? One hour? Three hours? At any time on the day of the relevant DSM? Could our campaign have held a late lunch at the same clubhouse on November 16?

This phrase is equally unclear on where campaigning is disallowed. Subsequent sentences in the paragraph speak to issues of campaign materials and the candidate location, but not even the imprecise 'near' is applied to the sentence regarding campaigning writ large. That said, the preceding heading clearly reads "Eligible DSM Attendees."

The specific location of the Edmonton-Ellerslie DSM was the Hillview Room of the Mill Woods Golf Club clubhouse. To the best of our knowledge, the PCAA did not rent the entire clubhouse. The fact that our campaign rented another room – the 'Tournament Room' – for a small reception would confirm this. As such, without an operative word specifying something to the contrary, one can only reasonably assume that "at no time will campaigning be allowed before, during or after the meeting" applies to within the DSM room itself (i.e. the Hillview Room).

Mr. Weissenberger poses several rhetorical questions to illustrate what he says was his Campaign's difficulties in understanding the limits on campaigning in connection with the DSM. He correctly observes that the Board could have made the "no campaigning" rule more specific with respect to time and space.

However, the Board chose to leave the rule general, perhaps relying on the good faith of the campaigns to give it the "fair and reasonable" interpretation which was required. The intent of the rule is clear to me: that there would be no campaigning in or about the DSM "before, during or after the meeting". I reject the interpretation that the "no campaigning" rule related only to the room in which the DSM was conducted, which makes no sense in the context of the broader rule.

This case is not subject to the difficult questions of delineation which Mr. Mr. Weissenberger poses. In this case, a Hospitality Room was located a few steps from the door of the DSM venue. It was set up and was not shut down until a few minutes before the DSM was called to order. Food was being served to PCAA members who had come to participate in the meeting – I note that several of the people in the Hospitality Room entered the Hillview Room to take part in the DSM after they were asked to leave the Hospitality Room. We do not know what was being discussed in the room, but the evidence suggests that it was generally known to be a room sponsored by the Kenney Campaign. It was obviously meant to sway voters, or reinforce their resolve to support Kenney delegates. It is precisely the type and locality of campaigning the rule was meant to prohibit.

Mr. Hallman evidently expressed his disagreement with the rule to Ms. O'Neill, saying Party "was 'amateur' for not allowing candidates to campaign at the delegate selection meetings." Perhaps this explains the campaign's decision to disregard a rule which might have been difficult to apply in some of the speculative situations Mr. Weissenberger postulates. It is not, however, difficult to interpret the rule on the facts before me.

I find that the rental and operation of the Hospitality Room constituted a breach of the DSM Rules by the Kenney Campaign.

Mr. Kenney's Entry Into the Woodvale Facility

It is established that Mr. Kenney entered the main level of the Woodvale Facility. It is also established that he did not enter the Hillview Room, where the DSM was to be called to order shortly thereafter.

Mr. Weissenberger states that "Mr. Kenney was briefly in the hallway at the opposite end of the building to where the Hillview Room was located."

From my viewing of the Woodvale Facility, entering the main entrance of the Woodvale Facility would of necessity have brought Mr. Kenney within a few steps of the entrance of the Hillview Room. Ms. O'Neill states that when she saw Mr. Kenney, he was "walking through a small group of delegates waiting to head inside the delegate selection meeting room."

In his submission, Mr. Weissenberger states the Kenney Campaign's had difficulty interpreting the rule we are concerned with here, as set out above. He states:

"The paragraph twice uses the term 'near':

'At no time is a nominated candidate allowed to be in or near a DSM room.'

'No campaign materials... be allowed to be posted or displayed in or near a room where a DSM will be held...'

What constitutes 'near'? This is clearly up for debate. Does 'near' mean 5 meters? 10 metres? 100 metres? The Guide is anything but clear.

In her statement (Schedule 9), Ms. O'Neill states that our candidate was not allowed in the building:

'I told Mr. Hallman that in the case of the Mill Wood (sic) Golf Club, it meant his candidate shouldn't enter the building.'

With all due respect to Ms. O'Neill and her position, the President does not have the authority to unilaterally declare that candidates

are banned from a building. The rules, as approved by the LEC and distributed to our campaign, most definitely do not state that a candidate is barred from an entire building in which a DSM is taking place. If this was the LEC's intent, they could have clearly stated so in the approved Guide. While it's within the right of the LEC to add such a requirement to the Guide, it would need to be approved by the LEC. Ms. O'Neill is but one member of the LEC."

The Oxford English Dictionary defines near as meaning "to, within, or at a short distance; to, or in, close proximity" I accept Mr. Weissenberger's argument that what constitutes "near" is open for debate. It is a term to be interpreted in a context. 10 miles away may be too "near" if one is speaking of proximity to an atomic explosion. 10 feet is not "near" enough if one's goal is to catch a baby being dropped from the balcony of a burning building to safety.

However, that context is not difficult here. Mr. Kenney was seen walking among delegates who were waiting to attend the DSM. That is obviously the point of the rule. The candidates were not to be seen in the area of the DSM so as to avoid having them influence the members who were there to choose delegates. The delegates were to be given the opportunity to choose their representatives at the Leadership Election without being subject to last-minute campaigning or pressure.

None of the other candidates were anywhere near this DSM, presumably because they understood the plain meaning of the words, "At no time is a nominated candidate allowed to be in or near a DSM room..."

I find that the entry of Mr. Kenney into the hallway outside the Hillview Room, where the DSM was to be convened shortly thereafter, constituted a breach of the DSM Rules by the Mr. Kenney. I note Mr. Kenney's statement to Ms. O'Neill that he was not aware of the rule. I will give Mr. Kenney the benefit of the doubt and accept his statement at face value. However, this lack of knowledge does not excuse Mr. Kenney from complying with the rule. It is the responsibility of the candidate and his campaign to be aware of the rules and comply with them.

Other Matters

In his submission, Mr. Weissenberger details the efforts of his campaign to seek clarification of the rules. He states that these efforts were significantly unsuccessful, for which he appears to blame the Party.

Among his requests most notably was the question he posed in his letter dated November 13, 2016:

"2/ As per our conversation last Sunday, what are the detailed restrictions regarding partisan activities around DSMs?"

In response the LEC released an “LEC Update” dated November 15, 2016, which Mr. Weissenberger says he did not received until the day of the DSM we are concerned with here.

The LEC Update included the following section:

“1. What are the restrictions respecting partisan activities around DSMs”?

- *One scrutineer for each nominated candidate is permitted to attend a DSM. However, at no time will campaigning be allowed before, during or after the meeting. No campaign materials, including buttons or signs, be allowed to be posted or displayed in or near a room where a DSM will be held. At no time is a nominated candidate allowed to be in or near a DSM room unless that person is running for a delegate spot.”*

As Mr. Weissenberger correctly observes in his submission, this wording is identical to the wording contained in the DSM Guide, quoted above.

It is established that the Kenney Campaign asked for more detailed rules around partisan activity in connection with a DSM several times. Nowhere in Mr. Weissenberger’s submission does it appear that his campaign asked LEC whether renting and organizing a hospitality room in the same building, on the same floor as the DSM, in close proximity to, and with a view to carrying it on until minutes before the DSM was called to order, would constitute prohibited partisan activity under the existing rule prohibiting campaigning. I am reasonably confident that a clear answer would have been given to that question. Further, if the Kenney Campaign had asked if it would be permissible for its candidate to enter the hallway outside the DSM to be seen by and presumably speak with the delegates waiting for the meeting, again the answer would have been clear. The rules specifically prohibit these activities. This is so whether the Kenney Campaign agrees with the rules or not.

It will be up to the LEC to consider now whether more detailed campaigning guidelines should be published for the remaining DSMs. Given the unfortunate series of events described here, this may be unavoidable. The hope that all campaigns would interpret the rules, stated as principles, in a “fair and reasonable” manner may have been too much to expect.

However, this does not change the conclusion stated above. The conduct of the Kenney Campaign breached the rules governing the Leadership Election in relation to the Edmonton Ellerslie PC Association DSM.

I also have taken note of Mr. Weissberger's submissions in relation to press and social media comments made by Ms. O'Neill relative to these events following the DSM. I do not consider these comments to be relevant to the matters I am reviewing here. If the Board considers Ms. O'Neill's comments to have been inappropriate as a prejudgment of the matters reviewed here, it can so advise Ms. O'Neill. I would observe, however, that Ms. O'Neill's comments, as an eye witness to these events, were a statement of her opinion, and have not influenced my conclusions.

Sanction

Having found two breaches of the DSM Procedure Guide, I consider it my duty to order a new Delegate Selection Meeting be held for the Edmonton Ellerslie PC Association. I so order. I cannot be satisfied that the results of the DSM were not tainted or influenced by these breaches. Moreover, I consider this result is necessary to protect the integrity of the Leadership Selection Process.

As one of the conditions of entry to the Leadership Selection Process, the candidates are required to provide the Party with a deposit of \$20,000.00 to guarantee their good conduct and compliance with the Rules, refundable to the candidate if these conditions are met. I do not consider the breaches found here to be serious enough to warrant the full forfeiture of Mr. Kenney's deposit, given that the Hospitality Room was shut down and the candidate left the hallway outside the DSM when challenges were made.

However, I note two aggravating factors:

1. The comments of Kenney organizer Alan Hallman when warned that his campaign would risk a fine if the candidate came into proximity of the DSM. As reported by Ms. O'Neill, he said that the Kenney Campaign could afford a fine. This might explain the decision to have Mr Kenney enter the building despite this warning.
2. The inescapable appearance that the Kenney Campaign decided to test the boundaries of the campaign rules, instead of asking for a ruling on their specific campaign plan, which would have been provided to them on a confidential basis.

In light of these factors, I would recommend forfeiture in the sum of \$5,000. I acknowledge that this decision is for the Board to make.

While it may not be my place to make a further recommendation, I would do so. The Constituency Association appears to be without fault in this affair. They will be put to considerable trouble and expense re-mounting

their DSM. I would recommend that the Party use a a portion of the forfeited funds to help defray the additional expenses of the Edmonton Ellerslie Constituency Association.

All of which is respectfully submitted.