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**INDEPENDENT REPORT FOR THE  
NEW ZEALAND LABOUR PARTY  
INTO THE CONDUCT OF A MEMBER OF  
THE NEW ZEALAND LABOUR PARTY.**

Executive Summary

Maria Dew QC  
17 December 2019

## 1. EXECUTIVE SUMMARY

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- 1.1. The New Zealand Labour Party has commissioned an independent investigation into the conduct of a member of the Party, to determine if allegations of sexual harassment, bullying and other inappropriate conduct are established. The scope of the investigation relates to events that occurred over the course of 2017 and 2018.
- 1.2. I wish to acknowledge the co-operation of all the parties, their legal representatives and witnesses in this process. It has been a difficult and stressful process for all participants. Their willingness to assist the investigation, despite these challenges and their privacy concerns, has been invaluable.
- 1.3. The allegations have been made by five complainants, four female and one male, who were all members of the New Zealand Labour Party during 2017 and 2018. The four female complainants were aged between 18 and 21 years of age at the time. They were each in their first or second year at university. The one male complainant was aged 24 years of age at the time, had completed his university degree and was working.
- 1.4. The respondent was aged between 23 and 25 years of age during 2017 and 2018. The respondent had joined the New Zealand Labour Party in 2014. He had finished his university degree in late 2015 and was working. He was regarded as a senior member of the relevant youth branch of the Party, having served on the executive of that branch for some years.
- 1.5. The complainants and respondent each contributed considerable time as volunteers with the Party during 2017, in the lead up to the election, and in 2018. They each held volunteer committee and executive leadership roles within the youth branch of the Party. As a result, they spent time together at branch meetings, election campaign and fundraising events and related Party social events. At times, they also attended other social events together, outside of any Party-related matters.
- 1.6. The complainant, Ms 1, has made a serious allegation of sexual harassment against the respondent, relating to an evening in February 2018, when Ms 1 states she was sexually assaulted by the respondent at his home. There are also other allegations of sexual harassment made by Ms 1 and two other female complainants, Ms 2 and Ms 3.

- 1.7. The complainants also make allegations against the respondent of overbearing and aggressive conduct in some youth branch meetings, using his position within the Party to control members, acting in an aggressive and dominating manner at other Party-related social events and pressuring young female members to drink alcohol at events.
- 1.8. The respondent has accepted from the outset of this investigation that, at times, his conduct has been too overbearing and aggressive at some meetings. He has also acknowledged that he made three separate comments of a sexual nature to three female complainants at different times. These occurred in social situations and offended the complainant in each case. He was admonished by the relevant complainant and apologised at the time. The respondent also accepts that he acted inappropriately by becoming aggressive and causing disruption at a youth branch Christmas party in December 2018.
- 1.9. The respondent has acknowledged that he does need to modify his behaviour to meet the expectations of courtesy and respect set under the New Zealand Labour Party Code of Conduct. The respondent otherwise denies the more serious allegations of sexual assault, sexual harassment and bullying conduct or any serious breach of Party policies.
- 1.10. This investigation has involved separate interviews with the five complainants, the respondent and sixteen other witnesses interviewed between October and December 2019.<sup>1</sup> The witness group has included:
- (a) Eight other youth members of the Party, who had attended various relevant meetings or events;
  - (b) Three senior Party members who knew the respondent and some of the complainants, and had relevant information;
  - (c) The three members of the NZLP investigation committee, who interviewed Ms 1 in relation to her allegations against the respondent in March 2019; and
  - (d) A family member of each of the respondent and Ms 1.
- 1.11. The complainants have each had an opportunity to review all the interview statements taken, so far as they relate to their allegations. The respondent provided his reply to all interview statements taken. The parties were also provided with all documents

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<sup>1</sup> One witness statement from the respondent's family member was received without an interview.

received by the investigation and had the opportunity to review and comment on those documents. Finally, they have each had the opportunity to review and comment on a draft of the full Report before it was finalised.

- 1.12. The Terms of Reference dated 15 September 2019, required the investigation to be conducted in confidence to protect the privacy of the complainants and respondent. The complainants and respondent have each signed Confidentiality Agreements to preserve the confidentiality of the draft and full Report, given the sensitive personal information contained in Report.
- 1.13. The Report provides a detailed examination of all key allegations provided by the Terms of Reference and extracted from the complainants' interviews. The Report extends to some 80 pages. The investigation has also reviewed extensive documentation produced by the parties, including more than 28,000 Facebook messenger and text communications between the complainants, respondent and others during 2017 and 2018. The bulk of these communications were between Ms 1 and the respondent. They were in a personal relationship between mid-2017 and August 2018, which continued on a more intermittent basis until December 2018.
- 1.14. This Executive Summary is provided to permit the findings of the Report to be shared with the NZ Council of the Party, in an anonymised way. This Executive Summary seeks to ensure that the complainants' legitimate concerns can provide learnings for the Party and that serious allegations, previously made public, are reported on accurately and openly.

#### **Sexual assault allegation – not established**

- 1.15. The allegation of sexual assault made by Ms 1 against the respondent is not established. The assault is alleged to have occurred in February 2018 at the respondent's home. However, there is insufficient evidence that the events occurred as alleged by Ms 1, at any time during February 2018. Her evidence was incorrect in several critical respects in relation to the events of that evening.
- 1.16. The investigation also found that Ms 1 and the respondent had been in a consensual personal relationship for some eight months by February 2018. The time Ms 1 and the respondent spent together in his home or her flat, during the evenings in that month,

arose out of their personal relationship. In this event, the New Zealand Labour Party Code of Conduct and Harassment policies do not govern their personal relationship.

1.17. I do wish to acknowledge that Ms 1 will be distressed that this allegation is not established. She maintains that her personal relationship with the respondent was damaging for her. There is evidence that she reported her allegation of assault and other distress about the relationship, to those close to her, in March 2018. I am mindful of the general principle that sexual consent given in a relationship on past or subsequent occasions does not mean that consent is given on each occasion. However, Ms 1's recollection of material events about the evening in February 2018 was clearly incorrect. Her allegation was also inconsistent with her own numerous contemporaneous Facebook messages with the respondent during that month and in surrounding months.

1.18. During this investigation, Ms 1 accepted that she had provided misleading information to this investigation and the Party about her email dated 9 March 2019, to the Assistant General Secretary of the Party, Ms Dianna Lacy. This was an email which Ms 1 had previously alleged contained an attached document with her report of the February 2018 sexual assault.

1.19. The remainder of her evidence about reporting this allegation orally in her 9 March 2019 investigation committee interview, is rejected as improbable when assessed against the weight of other witness evidence to the contrary. On the balance of probabilities, the emails Ms 1 sent to the Party on 9 March 2019, to both Mr Simon Mitchell and Ms Lacy, did not contain any attached document detailing her allegation of sexual assault by the respondent.

### **Sexual harassment allegations – not established**

1.20. The other allegations of sexual harassment made by Ms 1, Ms 2 and Ms 3 against the respondent, have not been established.

1.21. There were three statements of a sexual nature made by the respondent, one to each of these complainants. However, this conduct did not meet the definition of sexual harassment. In the case of Ms 1, the sexual text message was received in the context of her personal relationship with the respondent. In the case of Ms 2, the comment was made in a social setting unrelated to the Party and was not repeated. In the case

of Ms 3, the comment was made at a social event connected to the Party, but an apology was given at the time and there was no repeat of this conduct towards Ms 3.

### Spinoff media article

- 1.22. The Spinoff article dated 9 September 2019, contained two allegations of sexual assault made by Ms 1. The February 2018 allegation of sexual assault at the respondent's home referred to in the Spinoff article has not been substantiated. The Spinoff article also referred to a 2017 incident at a marae. Ms 1 has confirmed in this investigation that this incident did not relate to the respondent.

### Overbearing and aggressive conduct – established, but not bullying

- 1.23. This investigation has found that the complainants and other witnesses did have genuine concerns about the respondent's conduct, when he displayed overbearing and aggressive conduct in some meetings.
- 1.24. The complainants each had concerns that the respondent dominated meetings in a way that shut down discussion and their ideas. As younger members, with less knowledge of NZLP, its procedures and key personnel, they felt the respondent was able to control them and the youth branch in a way they were uncomfortable with. They did not see any avenue for raising concerns and had no knowledge of any Code of Conduct, Harassment policies or any complaint procedures available to them.
- 1.25. They did not feel able to raise their concerns directly with the respondent. They were concerned that if they did raise any complaint with others that they would not be listened to and that they may risk the progress of their own ambitions within the Party or their own developing relationships with senior Party figures. These are understandable concerns given the difference in age and experience between the respondent and the female complainants. I accept they were genuine in this concern.
- 1.26. There are five separate allegations of conduct between October 2017 and December 2018 that are established as being unreasonable and offensive.
- 1.27. The first four established events involved verbally aggressive conduct by the respondent towards members in two meetings, that was unreasonable and caused distress for the members involved. It also involved one teleconference meeting and

another incident of verbally aggressive conduct regarding an online post made by some of the complainants on the youth branch Facebook page.

- 1.28. The fifth allegation established related to the youth branch Christmas party in December 2018, when the respondent acted aggressively outside the party late at night and caused unreasonable disruption for other members.
- 1.29. This investigation finds this conduct, separately and cumulatively, does not meet the expectations of the NZLP Code of Conduct that requires members to treat each other with courtesy and respect.
- 1.30. However, there were also other allegations of dominating or aggressive behaviour, that were not established as unreasonable conduct by the respondent. The conduct when examined in this investigation was either too generalised to make a finding or where it was sufficiently detailed, the events outlined did not appear objectively unreasonable.
- 1.31. Overall, the conduct established as unreasonable is not sufficient to meet the threshold for unlawful bullying. In order to reach this threshold, the conduct must be “repeated” towards a Party member or group of members, such that it may cause physical or psychological harm. The five incidents established took place over a 13-month period. This unreasonable conduct took place sporadically at Party meetings and events that were generally some months apart and not always directed at the same parties.

#### **Other inappropriate conduct - not established**

- 1.32. The other allegations of inappropriate conduct set out in the Terms of Reference are not established. I have found:
  - (a) The respondent did not use his position within the Party to control other members;
  - (b) The respondent did not pressure members to drink alcohol at events;
  - (c) There was no evidence that the respondent sent sexualised photos of new members to existing members; and
  - (d) The respondent did not block Ms 1 from exiting a meeting on 6 August 2018.

### Has misconduct or serious misconduct occurred?

- 1.33. The allegations of sexual assault and sexual harassment have not been established.
- 1.34. There are five allegations of overbearing and aggressive conduct established but they do not amount to material breaches of the Constitution, Code of Conduct or the NZLP Bullying and Harassment Policy, and therefore do not warrant a finding of misconduct or serious misconduct. The other allegations of inappropriate conduct towards members are not established. This investigation did not find any misconduct or serious misconduct that would warrant disciplinary action under the New Zealand Labour Party Constitution.

### Recommendations

- 1.35. The respondent's established conduct does warrant a non-disciplinary caution and remedial action. It is my recommendation that the following steps be taken to address the conduct:
- (a) A counselling letter be given to the respondent by the Party, cautioning the respondent that his conduct at New Zealand Labour Party events during 2017 and 2018 has caused distress for other members. The counselling letter should note that his established conduct does not meet the expectations of courtesy and respect towards members required under the Code of Conduct and that if there was any repeat of similar conduct, a disciplinary misconduct process may be initiated.
  - (b) The respondent provide a written apology to those complainants and witnesses impacted by his overbearing and aggressive conduct; and
  - (c) The Party make an offer to the complainants and respondent to engage in a restorative meeting process.
- 1.36. During the investigation, I noted that there was no induction process for new members of Young Labour or youth branches. The youth branch members also lacked any senior contact person responsible for overseeing the operation of the youth branch. Given that the young people joining as members and volunteers are generally aged between 18 and 21 years of age, it is important that they are provided with effective support and reporting structures, if they have any concerns about conduct at meetings or events.



1.37. I make the following additional recommendations:

- (a) Young Labour members are provided with an annual induction process, that covers training on the new Code of Conduct and harassment policies; and
- (b) A designated senior Party official be assigned as a contact person for each youth branch and that they attend those meetings or events from time to time to be available to young members.

**Maria Dew QC**

**17 December 2019**