

DISPUTE RESOLUTION PANEL

In the Matter of the General Dispute Resolution Process (“the GDRP”)

And in the Matter of a Notice of Dispute dated July 29, 2022

BETWEEN:

Ronald Kustra (“Claimant”)

- and -

Larry Spagnolo (“Individual Respondent”)

- and -

**The Board of Directors of the Morinville-St. Albert United Conservative Party Constituency Association
 (“Board Respondent”)**

BEFORE:

Richard Forbes Panel Chair

Gary Belecki Panel Member

Joanne Birce Panel Member

REASONS FOR DECISION

This dispute comes before the Panel pursuant to Section 6 of the United Conservative Party of Alberta (“UCPA” or the “Party”) Code of Conduct due to the current inability of the Executive Director to determine such matters. The Claimant raises two issues:

- 1) That the withdrawal of the policy resolution proposed by the Morinville St. Albert Constituency Association (the “CA”) and subsequent treatment of Mr. Kustra is a breach of the Code of Conduct.
- 2) That the Respondent’s employment creates a conflict of interest.

The Panel has also encountered another issue during its adjudication that is to be addressed:

- 3) That the Respondent's failure to engage in the dispute resolution process is a breach of the Code of Conduct.

The Facts

The following is a summary of the facts as alleged in the submissions of Mr. Kustra. The Panel finds these facts sufficient to properly adjudicate the dispute.

Mr. Kustra was a member of the CA board on November 17, 2021. At the CA AGM on the same date Mr. Spagnolo was elected CA president. The board was preparing to present resolution #23 at the UCPA AGM November 19-21, 2021. At the November 17, 2021 meeting the CA discussed the wording of the resolution's companion video and there was no discussion that the resolution would not proceed.

On November 18, 2021 Mr. Kustra tendered his resignation from the CA board by e-mail.

Mr. Kustra attended the UCPA AGM and was advised that resolution #23 had been withdrawn at the request of the president, the board and the MLA.

On November 30, 2021 the CA board met and Mr. Kustra was not invited to attend.

Mr. Spagnolo works for Emerson Automated Solutions. This company has a vice president of 'Diversity and Social Responsibility' with responsibilities including "diversity and inclusion initiatives" and "oversight of the company's social responsibility reporting." The company also has a Chief People officer responsible for "accountability for culture, employee experience, end-to-end talent management, diversity, equity and inclusion...."

This dispute came before the Panel August 18, 2022 and on the same date a copy of the dispute notice was provided to the Respondents with a suggested response date of September 9, 2022. On September 22, 2022 the Individual Respondent requested an extension of their response to facilitate their September 27, 2022 board meeting. There has been no response at the date of this decision.

Issue #1

That the withdrawal of the policy resolution proposed by the Morinville St. Albert Constituency Association (the "CA") and subsequent treatment of Mr. Kustra is a breach of the Code of Conduct.

Paragraph 2 of the Code of Conduct requires all members of the CA to:

- a. speak and act honestly, in good faith, with the best interests of the UCPA and the people of Alberta foremost in mind,
- b. in the performance of their UCPA duties, exercise the care, diligence, and skill that a reasonably prudent person would exercise in carrying out a public trust,
- c. comply with all applicable laws, UCA Bylaws, and any other UCPA governance rules, processes, policies or procedures,

- d. protect the confidentiality of internal UCPA information and UCPA party membership information,
- e. disclose any material conflict of interest and refrain from participating in any matter related to the conflict unless specifically permitted to participate,
- f. not cause harm or disrepute to the UCPA or its members, and
- g. treat each Member of the UCPA, including all volunteers, with courtesy, respect, civility, and tolerance.

This issue engages requirements c. and g.

c. Comply with all applicable laws, UCA Bylaws, and any other UCPA governance rules, processes, policies or procedures,

There is no evidence that there was a breach of this provision by the Respondents. With respect to withdrawing the resolution from the AGM Mr. Kustra acknowledges that the resolution did not follow the formal process to be presented at the AGM. That the withdrawal surprised Mr. Kustra does not mean there was a breach of the code. Further, there was no rule requiring Mr. Kustra be 'invited' to the November 30, 2021 CA meeting as he had resigned from the board.

g. Treat each Member of the UCPA, including all volunteers, with courtesy, respect, civility, and tolerance.

There is no evidence that there was a breach of this provision by the Respondents. Mr. Kustra provided copies of his e-mails between himself and the Individual Respondent from November 18 and 19, 2022. The Individual Respondent is respectful and conciliatory in his messages.

Issue #2

That the Individual Respondent's employment creates a conflict of interest and breaches the Code of Conduct.

The Code of Conduct requires board members to disclose 'material conflicts of interest'. That the Individual Respondent works for a large corporation which describes the roles of certain vice presidents with terms disagreeable to Mr. Kustra does not create a conflict. There is no evidence that the job descriptions of these vice presidents or the ethos they represent conflicted with the duties of the Individual Respondent. To find such a conflict would create disclosure obligations for many privately employed individuals as well as employees in the province's education and healthcare systems.

Issue #3

That the Respondents' failure to engage in the dispute resolution process is a breach of the Code of Conduct.

The Respondents received ample opportunity to provide a response to the dispute. They were provided with a copy of the dispute note along with the UCPA Governance Manual and the UCPA Arbitration Rules and Procedure. The September 22, 2022 e-mail by the Individual Respondent indicates he was aware of the dispute and would be discussing it at an upcoming CA board meeting. The most reasonable inference is that he and the Board Respondent specifically chose not to engage in the dispute resolution process. This is a clear violation of the UCPA's Arbitration Rules and Procedure which requires at paragraph 3:

The Respondent(s) named in the Notice of Dispute shall communicate to the Claimant(s) a Response to the Notice of Dispute, which shall include:

- a. the name and contact details of the Respondent(s) and any representatives appointed to assist any Respondent;
- b. a response to the information set forth in the Notice of Dispute with necessary particulars to make a full and proper response;
- c. jurisdictional issue(s) being raised, if any;
- d. a description of any Counterclaim(s), Third-Party Claim(s), Claim(s) for Set-Off and any remedies sought; and
- e. an issue(s) as to the constitution of the DRP appointed, if any.
(underline added)

The Code of Conduct at paragraph 2 c) requires CA board members to "comply with all applicable laws, UCA Bylaws, and any other UCPA governance rules, processes, policies or procedures". By failing to respond to the complaint in accordance with the Arbitration Rules and Procedures both the Individual Respondent and Board Respondent have violated the Code of Conduct.

Remedy

Paragraph 9 of the Code of Conduct limits this Panel's remedies and states:

The Arbitration Committee shall determine if a breach of the code has occurred, and if so:

- a. provide advice and direction to the person in breach,
- b. reprimand the person in breach,
- c. censure the person in breach,
- d. suspend the membership of the person in breach for up to 1 year, or
- e. revoke the membership of the person in breach.

Mr. Kustra requested remedies including a written apology, the opportunity to speak at a CA meeting and CA AGM, as well as a note in the Board of Directors report at the UCPA AGM. None of these remedies are

within the power of this Panel when addressing a breach of the Code of Conduct. Even if the Panel did find the breaches as alleged by the Claimant, it would be unable to order the remedies requested by Mr. Kustra. However, the Panel notes that paragraph 6. c) of the UCPA's Rules Governing Constituency Associations provides all members the right to speak at a CA General Meeting.

This an appropriate opportunity for the Panel to provide direction to the Respondents having found them in breach of the Code of Conduct. All involved in this dispute have chosen to volunteer their time with the UCPA and share the Party's commitment to unity and transparency. The dispute resolution process plays an important role in maintaining these values. This process, and the values it protects, are undermined when parties refuse to participate. We encourage the Respondents to familiarize themselves with the dispute resolution process and their obligations as Members of the UCP.

DATED the 25th day of October, 2022

DISPUTE RESOLUTION PANEL

Per:

A handwritten signature in blue ink, appearing to read 'Richard Forbes', is written over a horizontal line.

Richard Forbes – Panel Chair

- signed -

Gary Belecki - Panel Member

A handwritten signature in black ink, appearing to read 'Joanne Birce', is written over a horizontal line.

Joanne Birce Panel Member