

Tory Fundraiser Prompts Fears of Interference with Separation of Powers

On March 9th in the Alberta legislature, liberal MLA Kent Hehr accused deputy premier Ron Stevens of using the opening of the new Calgary courthouse for his own political gain. [1] It was alleged that Stevens arranged for a 100 dollar per ticket fundraiser at the new downtown Calgary Courts Centre the same day the government officially opened the \$300 million facility.[2] While the fundraiser was cancelled, Hehr suggested that such a fundraiser would have violated the principle of separation of powers, which is, according to the Supreme Court of Canada, “a defining feature of our constitutional order.”[3]

The Constitution does not explicitly provide for the separation of powers, but “the functional separation among the executive, legislative, and judicial branches of governance has frequently been noted.”[4]The Supreme Court has recognized the separation of powers as follows:

Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.[5]

When the issue of the fundraiser was brought up in the legislature for a second time, on March 11th, the honourable speaker, Ken Kowalski, interrupted Hehr.[6]The constitutional convention of individual ministerial responsibility provides that the current minister of each department answer to the legislature, in the form of explanation or defence, for all the actions of his or her department. When public servants make an error, the minister is expected to explain to the legislature what went wrong; to promise that the error will be remedied, and that measures will be taken to prevent its repetition. Despite this, Stevens agreed to respond to the Hehr’s question, because he was involved in the matter.[7] The speaker believed Hehr was violating the constitutional convention of individual ministerial responsibility by questioning Stevens, the former minister of justice, about the affairs of the department.

[1] Alberta Hansard (9 March 2009) at 276 online: Legislative Assembly of Alberta.

<http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/hansards/han/legislature_27/session_2/20090309_1330_01_han.pdf>.

[2] Jason Fekete, "Grits question Tory fundraising tactics" (10 March 2009).

[3] *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66 at para. 104 (CanLII).

[4] *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at para. 33 (CanLII).

[5] *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, 1993 SCC 153 at 469 (CanLII).

[6] Alberta Hansard (11 March 2009) at 340 online: Legislative Assembly of Alberta.

<http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/hansards/han/legislature_27/session_2/20090311_1330_01_han.pdf>.

[7] *Ibid.*