

## **Doer sings different song**

By: Bryan Schwartz

"Consistency is all I ask."

-- Tom Stoppard, *Rosencrantz and Guildenstern are Dead*.

In 1998, Opposition Leader Gary Doer called for a full and independent public inquiry into allegations of a Conservative vote-splitting scheme in connection with the 1995 provincial election won by Gary Filmon.

In 2009, Premier Gary Doer is dead-set against a full and independent inquiry into allegations that senior NDP officials tried to obtain funding for work done by union officials on local campaigns in connection with the 1999 election won by Gary Doer.

In fact, Doer cites the same flawed argument that Gary Filmon tried and failed to sell to the public in 1998. Doer did not back down from his position. Rather it was Filmon who had to retreat and, to his credit, agreed to hold an independent inquiry. The 1998 allegations, the Monnin inquiry that was called to look into them, and the fallout from the Monnin inquiry arguably helped put Doer into the premier's office.

In 1998, then premier Gary Filmon initially took the position that no inquiry was needed. The public could rely on the fact that Chief Electoral Officer Richard Balasko had already looked at the matter. In 2009, Premier Gary Doer has taken the same position. "If you trust the integrity of [the lawyer advising Balasko] and if you trust the integrity of Mr. Balasko, then you trust the integrity of the conclusions".

In 1998 then Opposition leader Gary Doer retorted that there must be an "independent and credible review" with an "experienced judge." It should not be conducted by people, like Balasko, who had already dealt with the issue once. If Filmon "was afraid" of an inquiry, said Doer, what was he "hiding?" In 1998 Dave Chomiak supported Doer by praising those with the "courage" to demand a public review; proclaiming that justice must be "seen to be done." Doer is as wrong now as he was right in 1998.

You can believe in the integrity of Balasko and his lawyers and still ask whether they have all the relevant facts in the alleged NDP rebate scheme. The Monnin Inquiry into the Conservative vote-splitting scheme found that Balasko's office was hampered by the untruthful responses to his queries by some of the perpetrators. How can we be confident that NDP operatives involved in the rebate manipulations were forthright in their dealings with Balasko's investigation? These same people altered returns filed by local NDP campaigns, thereby jeopardizing the reputations of dozens of innocent people. How can we know that Balasko had all the crucial information he needed if it is true that he did not interview the local NDP campaign officials whose returns were altered by higher-ups in their own party? Was there any attempt by NDP officials to disrupt or obstruct the investigation? A letter from the forensic auditor to Elections Manitoba in 2003 raises concerns in this regard.

Did Balasko and his advisers make any good faith errors in their analysis, level of diligence or exercise of judgment in respect of the NDP rebate scheme? The NDP officials were allowed to pay back the money they obtained from their manipulations of the original returns. Balasko never required them to produce an independent audit of the final returns, as appears to be required by the Election Finances Act. He did not launch any prosecutions. He did not even reveal on his website, until after the 2003 election, that the NDP repaid the money, and the explanation was minimal. Did Balasko adopt a consistent and reasonable standard for enforcing the law? Why was the NDP given a chance to make amends, but Tory candidates prosecuted for unintentional errors? Should we be satisfied at this stage with Balasko's response that in choosing not to charge any NDP officials, he acted "consistently" with the legal advice provided by two lawyers? We do not have the text of the legal opinions provided to Balasko in relation to "rebategate". We do not know precisely what legal counsel were asked or what qualifications were contained in their response.

The Monnin Inquiry identified one more reason why an Elections Manitoba inquiry does not necessarily end a matter. A public inquiry can address breaches of ethical standards as well as the law. Former justice Monnin began his report by vigorously affirming that his mandate included breaches of ethical standards, and that he had found some Progressive Conservatives to be culpable.

Accountability is not being achieved in the legislative assembly. The minister of finance, who apparently was shocked by the manipulations when revealed to him in 2003, has apparently been confined to his seat. The premier and the minister of justice are the only ones allowed to stand up when questions are asked. Their answers have tended to be exercises in avoidance rather than edification.

Is democracy in Manitoba at the point where the civics lesson that Doer learned from Filmon's vote-splitting scandal is that if you are in government, calling for a full and independent public inquiry can be fatal to your political health? Perhaps the flip side could be an equally cynical lesson Doer learned from the Crocus scandal: tough it out, don't hold a public inquiry, let the tumult dissipate, and the hard questions will eventually be forgotten.

Maybe Doer's practical calculations will turn out to be correct. But maybe Manitobans will send the message that sometimes principles as well as facts can be stubborn things. They cannot always be spun away.

Precedent, established facts and fundamental respect for democratic process, require a full and genuinely independent public inquiry over the NDP rebate scheme. There should be serious consequences for any government that avoids an inquiry when there is a compelling need for one. Otherwise, the incentive will also be in favour of avoidance -- especially if there truly is, to draw on Doer's words of 1998, something to hide.

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