



## ASC resignation sought

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The Alberta Securities Commission came under fire again Thursday, with an opposition leader calling on its top enforcement boss to resign so an investigation can be done into the latest controversy dogging the regulator.

NDP Leader Brian Mason told reporters that the government needs to order a thorough examination of a case involving the ASC's director of enforcement, John Petch, who bought and sold shares of a company being investigated.

He said Petch should move aside, while an academic with one of the country's top business schools wondered why the official was still in the post.

"How can they let this guy keep his job? It doesn't make any sense at all," said Richard Powers, assistant dean at the University of Toronto's Rotman School of Management.

"(Petch) had an obligation to distance himself from the company as soon as he found out it was under investigation. There's clearly a perception of conflict -- that's the issue here. In the court of public opinion, the ASC has blown it again."

The comments came as the government released a letter from the commission that provides new details on the matter, stating there was a "breach of ASC policy" when Petch bought and sold shares of an unnamed company at the same time it was being investigated by the commission.

According to the letter, Petch bought the stock March 10, 2004, on the advice of his broker before being made aware later in the day of the investigation. He subsequently discussed the matter verbally with ASC executive director David Linder -- who said he could not recall the specifics of the conversation -- and filled out the necessary forms outlining the details of the purchase.

According to provincial Auditor General Fred Dunn, who investigated the ASC's enforcement practices as part of an October report to the legislature, Petch realized a "significant gain" when he sold the stock more than three months later.

Finance Minister Shirley McClellan, who is responsible for the regulator, said while the incident indicates there was a policy breach, it wasn't any worse than that -- and it has been dealt with.

"There was no use of confidential information, no interference with the conduct of the ASC file and no breach of ethical standards," McClellan told the legislature.

"The breach . . . of the ASC policy has been dealt with internally by the ASC."

She added that what is important is the ASC has acknowledged to Dunn that great discipline should be introduced into the oversight of ASC trading-related policies in order to both prevent and detect breaches.

But Mason, who's recent questioning had helped yield the release of further details, challenged the explanation contained in the ASC's letter and later called for a thorough investigation of the matter.

"When there are serious breaches -- or minor breaches -- by the people that are responsible for enforcing the rules, it requires somebody else to investigate because obviously the system has broken down," Mason told reporters.

"The system of enforcement, because of this case, has broken down in the ASC."

Mason also questioned why someone in Petch's position was able to hold and trade shares regulated by the commission.

Other observers chimed in Thursday.

Shareholder advocate Diane Urquhart, who has closely followed the ASC debacle since it erupted almost a year ago, considers it a "fatal error" that Petch sold and profited from the shares while the ASC's investigation was ongoing.

"He might have known there was going to be negative news pending, he might have known the file was going to be closed -- it doesn't matter. The point is he had access to information other investors didn't have."

The ASC, however, says Petch purchased the shares before he was aware the company was being investigated.

The ASC has been embroiled in controversy ever since a group of staff whistle-blowers brought forward allegations that senior officials protected well-connected friends and condoned unprofessional behaviour.

McClellan told the legislature in April that top executives at the commission had been cleared of any wrongdoing by Perry Mack, a Calgary lawyer who conducted an independent investigation.

McClellan did not publicly release Mack's report, hoping instead a systems audit by the auditor general would remove lingering doubts about the ASC.

After examining 82 of the regulator's cases, Dunn concluded there was no need for files to be reopened. However, he found major investigations were at times dogged by poor record-keeping, particularly sensitive and high-profile cases.

ASC chairman Bill Rice, appointed to the regulator's top job July 18, has himself become the subject of controversy, first for staying on as chairman of Calgary-based Tesco Corp. for three months while running the ASC, and then for failing to meet an insider trading disclosure deadline, which resulted in a \$1,000 late filing penalty from the Ontario Securities Commission.

Alberta Liberal Leader Kevin Taft has since called for Rice's resignation, arguing the dual role -- normally prohibited at securities regulators -- undermined the credibility of the regulator.

Meanwhile, the RCMP is reviewing a request to launch an investigation into possible improprieties involving securities law enforcement at the ASC.

In a letter to Taft, who had requested the RCMP examine 11 ASC enforcement cases identified by Dunn to have been improperly and insufficiently documented, Insp. Bruce Fillier acknowledged that the force's Calgary Integrated Market Enforcement Team is reviewing the complaint and will respond "in due course."

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