RNZ

RNZ podcast The Detail explores the techniques used by political parties to maintain anonymity for people who donate large sums of money.

[***Max Rashbrooke***](https://www.wgtn.ac.nz/igps/about-us/staff/senior-associates/max-rashbrooke)***is a senior associate at the Institute for Governance and Policy Studies, and***[***Lisa Marriott***](https://people.wgtn.ac.nz/lisa.marriott)***is a professor of taxation at Te Herenga Waka – Victoria University of Wellington.***

**OPINION:**It looks awfully like one law for the rich and one for the poor. At one end of the justice system, people can be fined or jailed for relatively minor crimes such as the driving offence of “[wheel-spinning](https://communitylaw.org.nz/community-law-manual/chapter-32-driving-and-traffic-law/street-racing-and-cruising/)”, where no injury is caused. But there seem to be few legal consequences for breaking the laws around donations to political parties, something which typically involves the rich and powerful.

Because political donations can lead to influence and favours, big donors – [those giving over $15,000](https://www.stuff.co.nz/national/politics/129453287/the-fight-over-political-donations-and-what-the-government-plans-to-change) – are required to disclose their names. But New Zealand faces a growing number of scandals in which donors and parties seemingly go to great lengths to keep those names hidden.

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People connected to [both Labour and National](https://www.stuff.co.nz/national/politics/128962631/cash-for-access-the-price-tag-to-schmooze-new-zealands-political-leaders), including the [disgraced former MP Jami-Lee Ross](https://www.stuff.co.nz/national/crime/129557310/political-donations-trial-week-3-nationals-rift-laid-bare-in-court), are currently on trial in the High Court at Auckland, facing donations-related charges. [The New Zealand First Foundation](https://www.stuff.co.nz/national/crime/129142963/duo-found-not-guilty-in-new-zealand-first-foundation-political-donations-case) was in the same court a few weeks ago for similar reasons.



LAWRENCE SMITH/STUFF

Former National MP Jami-Lee Ross is one of those currently on trial in the High Court at Auckland, facing donations-related charges.

While it is unusual to have two high-profile cases at the same time, New Zealand’s history presents no shortage of such incidents, as the (non-exhaustive) list below demonstrates.

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* 1996: An ACT donor attempts to split a six-figure sum into small amounts to avoid disclosure.
* 2005: Labour ministers lobby for, and approve, citizenship for party donor [Bill Liu](https://www.stuff.co.nz/national/6950133/Case-of-a-well-connected-millionaire), against the advice of officials. The process for approving Liu’s citizenship was later [criticised by the auditor-general](http://www.stuff.co.nz/national/8306401/Shane-Jones-faces-queries-after-return).
* 2007: National uses [the Waitematā Trust](http://www.stuff.co.nz/national/250459/Nats-call-in-secret-donations) to channel millions of dollars of donations to the party anonymously; Labour responds by using law firms to achieve similar purposes, albeit with lesser sums.
* 2009: NZ First’s Winston Peters is [censured by Parliament’s privileges committee](https://www.stuff.co.nz/the-press/639753/Peters-found-guilty-of-deceit) for failing to declare a $100,000 donation from businessman Owen Glenn.
* 2010: ACT leader John Banks files [a false electoral return](https://www.stuff.co.nz/the-press/639753/Peters-found-guilty-of-deceit), with donations shown as anonymous when they were made by Kim Dotcom. Banks’ conviction was [overturned on appeal](https://www.stuff.co.nz/national/68668623/john-banks-acquitted-by-court-of-appeal-on-false-return-charge).
* 2014: National minister [Maurice Williamson loses his portfolios](https://www.stuff.co.nz/ipad-editors-picks/9999687/Maurice-Williamson-fallout-will-colour-perceptions) after intervening in a police investigation into party donor Donghua Liu​.
* 2016: A [complaint is made about Auckland mayor Phil Goff’s 2016 election expenses](https://www.stuff.co.nz/auckland/115795846/auckland-mayoral-election-complaint-lodged-over-phil-goffs-2016-election-expenses) and a $366,000​ auction, which included a book sold for $150,000​. The Serious Fraud Office (SFO) later investigates the use of auctions in Goff’s election campaigns. [The investigation closed with no charges laid](https://www.stuff.co.nz/national/crime/300561038/serious-fraud-office-closes-investigation-into-phil-goffs-election-expenses).
* Late 2010s: Controversy surrounds the Labour Party practice of [getting donors to bid large sums for artworks](https://www.stuff.co.nz/national/politics/95891686/artworks-used-to-funnel-secret-donors-contributions-to-the-labour-party) but registering the donation in the name of the artist, thus apparently obscuring the donor’s identity.
* 2019: Chinese citizen Lin Lang avoids curbs on donations from non-residents by (legally) routing [a $150,000 donation to National](https://www.stuff.co.nz/national/103655890/the-national-party-was-donated-three-times-more-money-than-labour-last-year--but-labour-won) through a New Zealand-based firm, the Inner Mongolia Rider Horse Industry (now in receivership).
* **2021:** [Conflict of interest questions are raised](https://www.newsroom.co.nz/donations-create-conflict-issue-for-nashs-forestry-portfolio) when Labour Party MP Stuart Nash receives nearly $25,000 in donations for the 2020 election from forestry and timber companies, shortly before being made minister of forestry. The funds are not repaid.
* **2022:** The [SFO prosecutes the New Zealand First Foundation](https://www.stuff.co.nz/national/crime/124134607/new-zealand-first-foundation-case-fraud-accused-duo-set-for-high-court-trial) for failing to declare donations. The defendants were found not guilty. The Government is now [urgently closing the “loophole”](https://www.stuff.co.nz/national/politics/129438428/government-to-close-nz-first-foundation-loophole-in-electoral-law) discovered in the case.
* **2022:** People associated with both Labour and National are on trial for allegedly concealing donations, through sham [art auctions](https://www.stuff.co.nz/national/crime/129470903/labour-mp-michael-wood-rang-political-donations-trial-defendants-over-paintings) and donation splitting.



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Max Rashbrooke believes the Electoral Commission needs greater powers, and that the penalties for breaking electoral law should be made stronger.

From this grim catalogue we can draw several conclusions. First, the pace of such incidents seems to be accelerating. This may be because [dwindling memberships leave parties increasingly reliant on large donors](https://www.stuff.co.nz/national/politics/300633508/new-research-sheds-light-on-what-motivates-political-party-donors-in-new-zealand) and increasingly willing to bend or break the rules.

Second, we generally have the media or whistleblowers to thank for bringing these cases into the public domain, not our regulatory agencies. Presumably, countless more scandals are going undiscovered for lack of a whistleblower.

Third, despite no shortage of evidence of wrongdoing, there has yet to be a successful prosecution for political donation transgressions. On occasion, a minister loses a portfolio, but other serious sanctions are absent.

What does this mean? Either the law is insufficient, or our public agencies are incapable of enforcing it.



SUPPLIED

Tax expert Dr Lisa Marriott says penalties in the Electoral Act are often relatively minor.

The [current regulatory framework](https://www.stuff.co.nz/national/politics/300091062/election-2020-richlisters-spreading-cash-across-nzs-political-spectrum?rm=a) is probably not fit for purpose. The agency tasked with ensuring compliance with [the Electoral Act](https://www.legislation.govt.nz/act/public/1993/0087/latest/DLM307519.html), the Electoral Commission, has insufficient powers. It does not have a prosecutorial role; instead, it can only refer breaches to the police for investigation, if it believes an offence has been committed. It does not even have the power to compel parties to provide documents or answer questions.

Meanwhile, the penalties in the act are often relatively minor, at least from the point of view of wealthy individuals. Admittedly, a party secretary convicted of any corrupt practice faces a prison term of up to two years, or a fine of up to $100,000.

But wilfully misleading the Electoral Commission attracts a maximum fine of just $2000 – and many other offences similarly have maximum fines of $1000 to $2000. This is roughly the same maximum penalty that applies for [tagging a tree](https://communitylaw.org.nz/community-law-manual/chapter-34-common-crimes/tagging-and-graffiti/).

And although it is hard to prove this claim, it is widely believed in politics that the commission, and indeed other bodies, such as the police and the SFO, are reluctant to pursue donations-related cases because of their highly sensitive political nature.

An [independent panel is currently reviewing New Zealand’s electoral law](https://www.beehive.govt.nz/release/independent-panel-appointed-review-electoral-law), and has been tasked with building public trust and confidence in the system. We hope one of its recommendations is that the Electoral Commission needs greater powers, and that the penalties for breaking electoral law should be made stronger.

What can be done about the legal system’s general tendency to punish the powerless more than the powerful, however, is not clear.

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