



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Kristmanson Report

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Mario Dion

Conflict of Interest and
Ethics Commissioner

Kristmanson Report

made under the *CONFLICT OF INTEREST ACT*

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PREFACE

This report is submitted pursuant to the *Conflict of Interest Act* (Act) S.C. 2006, c.9, s.2.

The Conflict of Interest and Ethics Commissioner may conduct an examination under the Act at the request of a member of the Senate or House of Commons or, as is the case with this examination, on his own initiative.

When an examination is conducted on the Commissioner's own initiative, unless the examination is discontinued, the Commissioner is required to provide a report to the Prime Minister setting out the relevant facts of the case as well as the Commissioner's analysis and conclusions in relation to the examination. At the same time that the report is provided to the Prime Minister, a copy of the report is also provided to the public office holder or former public office holder who is the subject of the report and the report is made available to the public.

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EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) of the conduct of Dr. Mark Kristmanson, Chief Executive Officer (CEO) of the National Capital Commission (NCC). I sought to determine whether Dr. Kristmanson contravened subsection 11(1) of the Act by accepting invitations to events extended by several organizations.

Invitations to events are considered gifts or other advantages under the Act and are subject to the acceptability test set out in subsection 11(1): public office holders are prohibited from accepting gifts or other advantages that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function.

The evidence showed that Dr. Kristmanson accepted, on behalf of himself and his spouse, invitations to events extended by Place des Festivals, the National Arts Centre, the Canadian Museum of Nature, VIA Rail and the Royal Canadian Geographical Society. All of these organizations are stakeholders of the NCC and each had ongoing or foreseeable official business with the NCC when Dr. Kristmanson accepted the invitations.

Dr. Kristmanson, in his capacity as CEO, was personally involved in ongoing dealings with Place des Festivals on the management of the north shore of the Ottawa River in Gatineau; the approval of the National Arts Centre's Architectural Rejuvenation Project and the digital lantern project; and supporting the Canadian Museum of Nature's temporary parking lot project and approving its landscape redevelopment project. He was also personally involved in the approval of VIA Rail's proposed design concept for the Ottawa Train Station's elevated passenger platforms and the approval of the renovation allowances and the lease of 50 Sussex Drive by the Royal Canadian Geographical Society, including the execution of lease extensions.

Based on these dealings and the importance of the relationship between the NCC and each stakeholder, I determined that each of the 12 invitations that Dr. Kristmanson accepted was a gift that could reasonably be seen to have been given to influence him in the exercise of his official powers, duties and functions.

The Act provides, under paragraph 11(2)(c), an exception to the prohibition if the gifts are considered normal expressions of courtesy or protocol or that are within the customary standards that normally accompany a public office holder's position. This exception includes gifts given to a public office holder performing an official function at an event.

Since there was no evidence to suggest that Dr. Kristmanson was asked to perform an official function at any of the events when he accepted the invitations, I determined that this exception did not apply to any of the events examined in this report.

I therefore found that Dr. Kristmanson contravened subsection 11(1) of the Act when he accepted invitations from Place des Festivals, the National Arts Centre, the Canadian Museum of Nature, VIA Rail and the Royal Canadian Geographical Society.

CONCERNS

On October 30, 2017, the Office received an anonymous letter regarding Dr. Mark Kristmanson, Chief Executive Officer (CEO) of the National Capital Commission (NCC).

In the letter, it was alleged that Dr. Kristmanson used his position as CEO of the NCC to obtain gifts or other advantages in the form of hospitality and entertainment for his spouse. The complainant asked the Office to examine whether Dr. Kristmanson had contravened any of his obligations under the *Conflict of Interest Act* (Act).

On December 12, 2017, Ms. Mary Dawson, former Conflict of Interest and Ethics Commissioner, wrote to Dr. Kristmanson indicating that she had concerns that he may have contravened section 23 of the Act. This provision requires a reporting public office holder to disclose and declare to the Office any gifts or other advantages accepted by the reporting public office holder or a member of his or her family from any one source, other than relatives or friends, with a cumulative value exceeding \$200 in a 12-month period. At that time, Dr. Kristmanson had yet to disclose or declare any gifts or other advantages accepted by him or a member of his family to the Office.

Dr. Kristmanson was asked to submit a list of all events he had attended as CEO of the NCC, along with his spouse, since his appointment to office on February 3, 2014. On January 4, 2018, Dr. Kristmanson submitted a list of all sponsored events he and his spouse had attended. The list included the dates, names of donors, type of events and the estimated monetary value of each accepted gift or advantage.

The list of sponsored events submitted by Dr. Kristmanson showed that the invitations he had accepted were extended to him in his official capacity as CEO of the NCC. For many of those events, Dr. Kristmanson indicated having exercised an official function. For instance, Dr. Kristmanson indicated having regularly been a “presenter” at receptions hosted by various embassies. As a result, the invitations to events where he performed an official function were deemed acceptable.

In one instance, the tickets were valued at \$200 or more which, while acceptable, would have required Dr. Kristmanson to prepare a public declaration within 30 days after the acceptance. On August 14, 2018, Dr. Kristmanson was issued an administrative monetary penalty for failure to disclose that gift.

In several other instances included in his list, it appeared that Dr. Kristmanson had accepted gifts from donors who, based on publicly available information, had official dealings with the NCC.

On January 9, 2018, I began my mandate as Conflict of Interest and Ethics Commissioner. After reviewing the information relating to this matter, I wrote to Dr. Kristmanson on January 26, 2018, with additional concerns. Specifically, I informed him that publicly available information suggested that he had accepted gifts or other advantages from donors, who appeared to be stakeholders of the NCC, and who had or may, in the future, have dealings with the NCC. The donors identified included Place des Festivals, the National Arts Centre, the Canadian Museum of Nature, VIA Rail, and the Royal Canadian Geographical Society of Canada. I asked that Dr. Kristmanson respond to my concerns.

In a letter dated February 23, 2018, Dr. Kristmanson provided additional information, including copies of invitations to dinners, receptions, and concerts he had accepted in his capacity as the CEO of the NCC.

PROCESS

On March 23, 2018, I decided to launch an examination under subsection 45(1) of the Act. I wrote to Dr. Kristmanson accordingly. I indicated that I had reason to believe that he had contravened subsection 11(1) of the Act by accepting invitations from NCC stakeholders to attend events.

Subsection 11(1) prohibits public office holders from accepting gifts or other advantages that might reasonably be seen to have been given to influence them in the exercise of their official powers, duties and functions. I also asked that Dr. Kristmanson provide all relevant documentation in relation to each gift and donor identified.

On May 4, 2018, Dr. Kristmanson submitted over 20,000 documents relating to my examination. Due to the extensive disclosure of documents, I determined that the Office did not need to interview anyone other than Dr. Kristmanson, who was interviewed on July 31 and August 21, 2018. At the end of the fact-finding portion of my examination, I determined that a final interview with Dr. Kristmanson was not required and offered to meet with him if he wished to make any further representations.

In keeping with the practice of the Office, Dr. Kristmanson was given an opportunity to review the transcripts from his interviews and comment on a draft of the factual portions of this report (Concerns, Process, Findings of Fact and Dr. Kristmanson's Position) before it was finalized.

On December 10, 2018, I met with Dr. Kristmanson, who presented his comments on the draft factual portions of the report and made additional representations.

FINDINGS OF FACT

Background

On February 3, 2014, Dr. Kristmanson was appointed CEO of the NCC and became a reporting public office holder subject to the *Conflict of Interest Act*.

The NCC is a federal Crown corporation created in 1959 by Parliament under the *National Capital Act*. As a Crown corporation governed by Part X of the *Financial Administration Act*, the NCC is accountable to Parliament through the Minister of Canadian Heritage.

According to its website, the NCC is responsible for the long-term planning of all federal Crown lands in the National Capital Region, and takes part in its development, conservation and improvement.

The NCC is led by a Board of Directors comprised of a chairperson, a CEO, and 13 other members. Board members are responsible for the stewardship of the assets and affairs of the NCC, the conduct of its business, the supervision of management, and the corporate governance of the NCC in accordance with the *National Capital Act*.

Dr. Kristmanson testified that, as CEO, he is responsible for overseeing and directing all aspects of the NCC's activities, as well as executing strategic policy direction for the NCC. Dr. Kristmanson is a voting member of the Board of Directors and sits on the Executive Committee which, along with NCC executive directors, the General Counsel and Commission Secretary, and the Chief, Audit and Ethics, oversees the approval of materials that are presented to the Board of Directors, such as board meeting agendas and all matters that require a vote by the Board of Directors.

Dr. Kristmanson also testified that he or other senior executives on the Executive Committee may request that an item be added to an agenda and presented to the Board of Directors if there is a question of policy related to the NCC's mandate.

In his role as CEO, Dr. Kristmanson stated that he regularly meets with other CEOs as part of the Heads of Canadian Heritage Portfolio Organizations group, or as part of the Council for Excellence in Canadian Crown Corporations. He, along with NCC staff members, may meet with the CEOs of corporations that are stakeholders of the NCC to discuss their upcoming proposals which are subject to NCC staff review and the Board of Directors' approval, or issues arising in relation to any project before or during the NCC's federal land use and design approval process.

Prior to being appointed to the position of CEO, Dr. Kristmanson served as Director of Programming for the NCC for 10 years.

The NCC's project approval process

As the NCC is responsible for the management of federal Crown lands in the National Capital Region, all proposed projects are subject to a federal land use and design approval process, which includes a three-level approval system.

Level 1 projects are simple projects that have little or no impact on the National Capital Region. These types of projects include minor improvements to existing buildings, temporary projects of less than a year, or road and wayfinding signs. Level 1 projects are subject to an internal review by NCC staff and the stakeholder receives an approval form.

Level 2 projects are moderately complex projects, such as the creation of a new recreational pathway, projects involving a heritage building or those requiring an environmental assessment. The proposals are reviewed by professional staff of the NCC and a detailed letter, outlining the conditions relating to the approval of the proposal, is submitted to the stakeholder.

Level 3 projects have highly symbolic value for the National Capital Region. They include all major projects located along Confederation Boulevard, national institutions, major public works and infrastructure in the capital, and rehabilitation work on Parliament Hill.

Level 3 projects are reviewed by NCC professional staff. The proposal is then presented to the NCC's Advisory Committee on Planning, Design and Realty (ACPDR), a national committee of advisors composed of leading experts in urban planning and design, who provide comments on the proposal. The CEO, the Board Chair, and two members of the NCC's Board of Directors participate in the ACPDR meetings as observers. Once NCC staff is satisfied that a submission meets the requirements set out in the *National Capital Act*, a recommendation to present it to the Board of Directors is made to the Executive Committee. If the Executive Committee approves the proposed recommendation, the proposal is included in the agenda and NCC staff present a motion requesting that the Board of Directors vote on the matter. The stakeholder then receives a detailed letter outlining the conditions relating to the approval of the proposal.

Given his years as Director of Programming with the NCC, Dr. Kristmanson stated that he was aware, prior to his appointment as CEO, of the NCC's federal land use and design approval process in relation to stakeholder submissions.

All of the projects canvassed in this examination report required Level 3 approval.

The NCC's official dealings with Place des Festivals

Place des Festivals is a corporation composed of representatives from the City of Gatineau, Windmill Development, Kruger Industries, the Canadian Museum of History, and the Casino du Lac-Leamy's Sound of Light. According to public information, the corporation was looking to manage the use of the north shore of the Ottawa River in Gatineau, Quebec, most of which is federal Crown land managed by the NCC.

According to the documentation submitted to the Office and information in the public domain, in 2012 Place des Festivals began making representations to NCC officials and to the Board of Directors, seeking a third-party agreement in order to develop the north shore into a public space which would include gardens, bicycle and pedestrian paths, as well as a space for festivals and special events. Dr. Kristmanson testified he was not involved in the matter at that time as it predated his appointment as CEO. However, according to Dr. Kristmanson, no such proposal had been submitted by Place des Festivals under the NCC's federal land use and design approval process.

Dr. Kristmanson stated that over the course of several months following his appointment to the position of CEO of the NCC in February 2014, he and NCC executives and staff met several times with the then Executive Director of Place des Festivals, Mr. Claude Hamelin, to listen to the corporation's ideas for the north shore. However, Dr. Kristmanson testified that, following the recommendations of NCC staff and discussions with the NCC's Board of Directors, he informed the members of Place des Festivals that the NCC would not relinquish management of the federal Crown land.

Invitation from Place des Festivals: August 13, 2014

On August 11, 2014, Dr. Kristmanson received and accepted an invitation to attend a Casino du Lac-Leamy's Sound of Light performance from Mr. Jeff Westeinde of Windmill Development, one of the members of Place des Festivals. Dr. Kristmanson believed the invitation was extended as an attempt to reduce the tensions between the NCC and Place des Festivals following the NCC's decision not to pursue a third-party agreement with the corporation.

On August 13, 2014, Dr. Kristmanson and his spouse attended the Casino du Lac-Leamy's Sound of Light performance. The evening included a dinner and seats to the pyrotechnics show located on NCC's lands. Dr. Kristmanson testified that he did not have an official role at the event. Dr. Kristmanson stated that, during the evening, he was seated with members of Place des Festivals and their respective spouses but did not discuss any matters related to Place des Festivals.

Dr. Kristmanson testified that following his attendance at the event, Place des Festivals continued to campaign publicly for several years in relation to the development and use of the north shore. Despite this, senior executives of the NCC maintained their position on the matter and so informed Mr. Hamelin in a September 21, 2015 letter. According to Dr. Kristmanson, the matter was discussed by the NCC's Board but was never presented for decision during his tenure as CEO.

The NCC's official dealings with the National Arts Centre

The National Arts Centre (NAC) is a Crown corporation that reports to Parliament through the Minister of Canadian Heritage. As it is situated on federal Crown land, all design modifications to its exterior require approval from the NCC.

Following his appointment to the position of CEO of the NCC, Dr. Kristmanson testified that he and NCC staff met with the then CEO of the NAC, Mr. Peter Herndorff, and other NAC officials. Dr. Kristmanson submitted documents confirming that he met with Mr. Herndorff on July 30, 2014, and on August 14, 2014.

Dr. Kristmanson stated that during these meetings, discussions revolved around the NAC's upcoming Architectural Rejuvenation Project, which required the NCC's approval of the designs. The project included the creation of a new entrance and the conversion of an exterior terrace space, as well as a digital lantern project, which involved a glass tower that would incorporate transparent LED screens to display images promoting a range of performances from artistic companies across Canada.

Invitations from the NAC: October 8 and November 9, 2014

On October 8, 2014, and November 9, 2014, Dr. Kristmanson and his spouse attended concerts which included cocktail receptions at the NAC. The invitations were extended by email by Mr. Herndorff. Dr. Kristmanson testified that he did not act in any official capacity nor did he discuss any matters relating to the NAC while attending the events in question.

The NAC's Architectural Rejuvenation Project

In December 2014, the NAC submitted their Architectural Rejuvenation Project for design approval under the NCC's federal land use and design approval process.

Documents showed that while NCC officials were reviewing the NAC's Architectural Rejuvenation Project, Dr. Kristmanson was in regular contact with NAC officials advising them regarding their project. Documents also showed that Dr. Kristmanson met with NAC officials in mid-March of 2015 and on June 10, 2015, at the request of NAC senior staff.

Dr. Kristmanson testified that he did not make any commitments during these discussions.

Invitation from the NAC: June 20, 2015

On June 5, 2015, Mr. Herndorff and Ms. Adrian Burns, then Chair of the NAC's Board of Trustees, extended an email invitation to Dr. Kristmanson to attend a June 20, 2015, concert at the NAC. On June 7, 2015, Dr. Kristmanson accepted tickets for himself and his spouse.

Dr. Kristmanson testified that he did not act in any official capacity, nor did he discuss any official matters relating to the NAC during the event.

NCC Board of Directors decisions: June 25, 2015, January 20, 2016, and June 28, 2016

On June 25, 2015, the NCC's Board of Directors passed a motion approving the NAC's Architectural Rejuvenation Project concept. On January 20, 2016, the Board of Directors passed a motion granting the project's final approval.

On June 28, 2016, the NAC's digital lantern's management guidelines were presented to the NCC's Board of Directors. The Board members passed a motion approving the guidelines, allowing the NAC to proceed with its digital lantern project.

Dr. Kristmanson testified that, as the CEO and member of the Executive Committee, he would have approved the inclusion of the Architectural Rejuvenation Project proposal and the digital lantern's management guidelines to the Board of Directors' meeting agendas. Dr. Kristmanson testified that he voted in favour of both projects.

Invitation from the NAC: November 26, 2016

On November 17, 2016, Dr. Kristmanson received an email invitation from the Managing Director of the NAC Orchestra to attend a concert at the NAC. Dr. Kristmanson accepted two tickets and attended the November 26, 2016 concert. Dr. Kristmanson testified that he did not act in any official capacity, nor did he discuss any matters relating to the NAC during the event.

The NCC's official dealings with the Canadian Museum of Nature

The Canadian Museum of Nature (Museum) is a Crown corporation that reports to Parliament through the Minister of Canadian Heritage. As the Museum is located on federal Crown land, changes to the building's exterior and to the land are subject to NCC approval.

NCC Board of Directors decision: May 13, 2014

In 2012, prior to Dr. Kristmanson's appointment to the position of CEO of the NCC, the Museum had presented projects that required the NCC's design approval: the transformation of part of the Museum's lawn into a temporary parking lot and a landscape redevelopment plan for the area surrounding the proposed parking lot.

On May 13, 2014, the matter relating to the temporary parking lot went before the NCC's Board of Directors in the form of an electronic vote. Given the matter had been reviewed prior to his appointment, Dr. Kristmanson stated that he had little involvement in the proposal. The members of the Board of Directors passed the motion and approved the temporary parking lot. Although Dr. Kristmanson was absent and did not vote on the matter, he testified that he supported the motion.

According to the documentary evidence, approval for the parking lot would also require renewal from the NCC after five years.

Invitations from the Museum: November 5 and December 2014

On September 16, 2014, the Museum's CEO, Ms. Margaret Beckel, and Mr. Stephen Henley, Chair of the Board of Trustees, extended an invitation via email to Dr. Kristmanson to attend the Canadian Museum of Nature Inspiration Awards Gala on November 5, 2014. Dr. Kristmanson accepted tickets on behalf of himself and his spouse. The event included a cocktail reception, dinner and an awards ceremony.

In December 2014, Ms. Beckel and Mr. Henley extended an invitation to Dr. Kristmanson to attend the opening of a special exhibit later that month. Dr. Kristmanson accepted two tickets and attended the event with his spouse.

Dr. Kristmanson testified that he did not have an official role at either event. While he did not have a clear recollection of whom he was seated with during the November 5, 2014 dinner, Dr. Kristmanson stated that he did not discuss any business related to the Museum during the award ceremony. During the opening of the special exhibit, Dr. Kristmanson recalled that other federal officials were present. However, he did not discuss any business related to the Museum during the event.

NCC Board of Directors decision: February 18, 2015

On January 7, 2015, Dr. Kristmanson testified that he and a senior staff member of the NCC met with the CEO of the Museum to discuss the Museum's landscape proposal and to offer suggestions. Dr. Kristmanson stated that neither he nor the other NCC staff member made any commitments to Ms. Beckel during their discussion.

On February 18, 2015, the matter relating to the Museum's temporary parking lot design and phase 1 landscape redevelopment proposal was presented to the NCC's Board of Directors. The members passed a motion approving the Museum's proposal.

Dr. Kristmanson stated that, as the CEO and member of the Executive Committee, he would have approved the inclusion of the landscape proposal to the Board of Directors meeting agenda. Dr. Kristmanson testified that he voted in favour of the project.

Dr. Kristmanson stated that the Museum's landscape redevelopment is a long-term project. Additional phases will require approval of the NCC.

Invitations from the Museum: November 5, 2015, and November 9, 2016

On November 5, 2015, and November 9, 2016, Dr. Kristmanson and his spouse attended the Canadian Museum of Nature Inspiration Awards Gala. The invitations were extended on behalf of Mr. Henley and Ms. Beckel. The events included a cocktail reception, dinner and an awards ceremony.

Dr. Kristmanson testified that he did not have an official role at either event. At one of the events, he recalled being seated with Mr. Henley and another CEO of a Crown corporation; however, he did not discuss any business related to the Museum.

NCC's official dealings with VIA Rail

VIA Rail is a Crown corporation that operates the national passenger rail service on behalf of the Government of Canada. VIA Rail reports to Parliament through the Minister of Transport. As the Ottawa Train Station is situated on federal Crown land in the National Capital Region, all design modifications are subject to NCC approval.

NCC Board of Directors decisions: January 20, 2016, and April 28, 2016

In 2015, VIA Rail submitted its proposed concept design for Phase 1a of the Ottawa Train Station's elevated passenger platforms—the first of a multiphase project—under the NCC's federal land use and design approval process.

According to documents submitted to the Office and publicly available information, Phase 1a of the project involved modifications to the Ottawa Train Station's lateral platform and ramps, and included a new elevator. Phase 1b, which at that time was still awaiting federal funding, involved modifications to the central island platform. A final phase, which involves modifications to the Ottawa Train Station's south island platform, will not be implemented until after 2035.

As part of being subject to the NCC's federal land use and design approval process, VIA Rail's Phase 1a platform project was presented to the NCC's Board of Directors on January 20, 2016. Members of the Board of Directors passed a motion to grant the project concept design approval subject to further design recommendations. According to public information, several of the members of the NCC's Board of Directors criticized the scope of VIA Rail's concept design as recommended by NCC staff. Dr. Kristmanson testified that he encouraged those members in the public meeting to view the project in a positive light.

On April 28, 2016, the Board of Directors passed a motion granting final federal design approval for VIA Rail's elevated passenger platforms proposal.

Dr. Kristmanson testified that, as the CEO and member of the Executive Committee, he approved the inclusion of the proposal to be added to the Board of Directors' meeting agendas, and confirmed that, as a member of the Board of Directors, he voted in favour of the proposal.

Dr. Kristmanson indicated that while he is not aware of the future timelines for the additional phases of VIA Rail's elevated passenger platforms project, he stated that future proposals will require NCC approval.

Invitation from VIA Rail: June 29, 2017

On June 12, 2017, Dr. Kristmanson accepted, on behalf of himself and his spouse, an invitation to attend the June 29, 2017, Governor General Performing Arts Awards extended by Mr. Yves Desjardins-Siciliano, President and CEO of VIA Rail.

Dr. Kristmanson testified and provided documentation showing that, traditionally, the NCC's CEO and the Chair of the Board of Directors would attend the gala with tickets purchased by the NCC. However, he stated that since the NCC had been unsuccessful in purchasing tickets to attend the event that year, he gladly accepted the invitation from Mr. Desjardins-Siciliano.

During the dinner portion of the evening, Dr. Kristmanson recalled that he and his spouse were seated with Mr. Desjardins-Siciliano along with other federal and provincial officials.

Dr. Kristmanson stated that he and Mr. Desjardins-Siciliano did not discuss matters relating to VIA Rail during the evening, nor did they have any meetings or discussions relating to VIA Rail following the event.

The NCC's official dealings with The Royal Canadian Geographical Society

The Royal Canadian Geographical Society (RCGS) is a non-profit organization with a mandate of making Canada better known to Canadians and to the world.

On March 31, 2015, Mr. John Geiger, CEO of the RCGS, met with Dr. Kristmanson to discuss the possibility of the RCGS leasing the former World Pavilion at 50 Sussex Drive in Ottawa, which is owned and managed by the NCC, as its national headquarters.

The building, which had been primarily used for commercial purposes after the World Pavilion was closed in 2005, had sat empty for many years. Dr. Kristmanson testified that due to the building's location along Sussex Drive, also known as Ottawa's Mile of History, the NCC sought a tenant who could offer activities that were complementary to the NCC's mandate and add cultural value to the area, rather than one who could simply pay market rent.

In late April 2015, the NCC received expressions of interest from four other private organizations looking to lease the building. Dr. Kristmanson requested from his staff additional information on the programming vision and proposed use of the facility by two of the organizations.

Dr. Kristmanson testified that after receiving the information, he made the decision to explore leasing the building to the RCGS, since he believed that its programming and mandate aligned with the NCC's priorities.

Dr. Kristmanson testified that since the leasing agreement raised a number of issues including a partnership component between the NCC and the RCGS, he decided that the matter should go before the Board of Directors.

According to the documentary evidence, NCC staff began working with the RCGS to develop a letter of intent for the lease of 50 Sussex Drive, that would include in-kind services. On May 8, 2015, Mr. Geiger submitted to Dr. Kristmanson a letter of intent for the lease of 50 Sussex Drive.

NCC Board of Directors decision: May 12, 2015

During a May 12, 2015, Board of Directors meeting, NCC staff recommended that the Board of Directors endorse the RCGS and provide the NCC with the authority to negotiate the terms of the lease. The Board members approved the recommendation. Dr. Kristmanson testified that he was present at the meeting and voted in favour of the recommendation.

On May 15, 2015, Dr. Kristmanson emailed Mr. Geiger to inform him of the Board of Directors' motion to proceed with leasing negotiations.

Over the next several months, NCC staff members and the RCGS continued to negotiate the terms of the leasing agreement. Dr. Kristmanson was regularly updated by staff on the progression of the negotiations.

Invitation from the RCGS: May 3, 2016

On April 20, 2016, Mr. Geiger extended an invitation by email to Dr. Kristmanson to attend a dinner on May 3, 2016, celebrating the new honorary President of the RCGS. Dr. Kristmanson attended the event with his spouse. Dr. Kristmanson said that he and his spouse were seated with several government and parliamentary officials; however, he did not discuss any matter relating the RCGS during the course of the evening.

Dr. Kristmanson testified that he said a few words on behalf of the NCC in recognition of the new honorary president's donation to the capital costs of 50 Sussex Drive. Further information was sought on this point, since it was not clear from the evidence gathered whether Dr. Kristmanson had been asked by the RCGS to perform an official power, duty or function prior to accepting the invitation. In response, Dr. Kristmanson wrote that in accepting the invitation he expected to thank and congratulate the honorary president on behalf of the NCC.

NCC Board of Directors decision: June 9, 2016

On June 9, 2016, the NCC Board of Directors passed a motion to proceed with the execution of the lease negotiated with the RCGS. Dr. Kristmanson testified that as a member of the Executive Committee, he approved the inclusion of the matter on the June 9, 2016 meeting agenda, and that he voted in favour of the matter.

On September 28, 2016, a five-year lease agreement for 50 Sussex Drive was signed by Dr. Kristmanson on behalf of the NCC and by Mr. Geiger on behalf of the RCGS.

Invitation from the RCGS: November 16, 2016, College of Fellows Annual Dinner

On November 16, 2016, Dr. Kristmanson and his spouse attended the RCGS College of Fellows Annual Dinner. The invitation was extended by Mr. Geiger. Dr. Kristmanson stated that he attended in his capacity as CEO and appeared in a video presentation about his role in renovating the NCC's property at 50 Sussex Drive. When asked to clarify whether he had been asked to record the video prior to having accepted the invitation, Dr. Kristmanson wrote that he "understood [he] would be seated at the head table" with Mr. Geiger and "would be featured" in the video.

NCC Board of Directors decisions: April and September 2017

On April 5, 2017, the NCC's Executive Committee passed a motion to grant the CEO the authority to execute all necessary documentation to seek Governor-in-Council authorization relating to an extension of the RCGS's lease of 50 Sussex Drive. According to the *National Capital Act*, the NCC requires Governor-in-Council authority for a lease term that is greater than five years.

On September 12, 2017, the Board of Directors passed a motion approving the additional funding for a tenant inducement allowance for renovations of 50 Sussex Drive.

Dr. Kristmanson testified that as a member of the Executive Committee, he approved the inclusion of the matters relating to the lease extension and additional funding for renovations to the Board of Directors' meeting agendas. Dr. Kristmanson testified that he voted in favour of both motions, and executed all necessary documentation relating to the lease extension.

DR. KRISTMANSON'S POSITION

In his written submissions and in his interview, Dr. Kristmanson was of the view that his acceptance of these invitations received from stakeholders of the NCC fell under paragraph 11(2)(c) of the *Conflict of Interest Act*, where acceptance is a normal expression of courtesy or protocol, or received within the customary standards that normally accompany a public officer holder's position.

In his written submissions and in his interview, Dr. Kristmanson stated that he has followed the precedent established by previous CEOs of the NCC in accepting invitations from stakeholders. He said that his attendance at events reflected the expectation that the NCC's CEO should act as a community leader assuming a visible public role at events and ceremonial occasions in the national capital.

In his written submissions, Dr. Kristmanson referred to his annual performance agreements as CEO, established by the Board of Directors, which set out targets for outreach and meetings with stakeholders in support of the NCC's corporate priority adopted in 2015 to make the NCC a "value-added partner in the capital region." This priority was approved annually by the Governor in Council as part of the NCC's corporate plan during the period under review.

Dr. Kristmanson stated that the acceptability of an invitation to an event hosted by another federal Crown corporation within the portfolio of Canadian Heritage was not questioned since, in his view, these invitations were extended widely to federal senior officials and, as such, could not reasonably be seen to have been given to influence them. Dr. Kristmanson wrote that the NCC, the NAC, the Museum and VIA Rail report to the same "shareholder" with complementary mandates expressed in their respective corporate plans tabled in Parliament.

Dr. Kristmanson also testified that CEOs of federal Crown agencies attend sponsored events on their organizations' properties as part of their official duties. As such, his attendance at the fireworks performance at the annual Casino du Lac Leamy's Sound of Light festival held on the NCC's lands formed part of his official duties in light of a particularly difficult stakeholder situation at that time.

ANALYSIS AND CONCLUSION

Analysis

I must determine whether Dr. Kristmanson contravened section 11 of the *Conflict of Interest Act* (Act) when, as CEO of the NCC, he accepted, on behalf of himself and his spouse, invitations to attend various events sponsored by Place des Festivals, the NAC, the Museum, VIA Rail, and the RCGS, all of which are NCC stakeholders.

The relevant portions of section 11 read as follows:

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

(a) that is permitted under the Canada Elections Act;

(b) that is given by a relative or friend; or

(c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.

The Act defines “gift or other advantage” under subsection 2(1) as follows:

“gift or other advantage” means

[. . .]

(b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

The acceptability of gifts has been the subject of numerous examination reports conducted by the Office. The “acceptability test” set out in section 11 and canvassed in prior reports is based on an objective standard. The question all public office holders must ask themselves before accepting a gift or advantage is not whether the donor intended to influence them, or whether they were indeed influenced, but whether a reasonable person—having regard to all the facts surrounding a particular situation—might think that the gift or advantage was given to influence them.

In determining whether a contravention of section 11 of the Act occurred in each of the 12 situations before me, I must first consider whether the gifts given by stakeholders of the NCC might reasonably be seen to have been given to influence Dr. Kristmanson in the exercise of an official power, duty or function as CEO of the NCC.

The evidence shows that there was ongoing or foreseeable official business between the NCC and each of the stakeholders identified in this report at the time Dr. Kristmanson accepted each of the invitations to the various events hosted by these entities. Dr. Kristmanson, in his official capacity, was personally involved in:

- Ongoing dealings with Place des Festivals on the management of the north shore of the Ottawa River in Gatineau;
- The approval of the NAC's Architectural Rejuvenation Project and the digital lantern project;
- Supporting the Museum's temporary parking lot project and approval of the landscape redevelopment project;
- The approval of VIA Rail's proposed design concept for the Ottawa Train Station's elevated passenger platforms; and
- The approval of the renovation allowances and the lease of 50 Sussex Drive by the RCGS, including the execution of lease extensions.

Moreover, Dr. Kristmanson, as CEO, was in a position to advance matters of interest to these stakeholders, whether by adding items to the NCC's Board of Directors' agendas, making recommendations to other members of the Board, or voting in favour of specific stakeholder proposals. The evidence shows that Dr. Kristmanson was the liaison between the stakeholders identified above and the NCC's decision makers. His position allowed him to exert influence over the Board in reaching decisions relating to stakeholder projects.

Past examination reports dealing with acceptability of gifts involved entities from the private sector that sought to influence a public office holder. In this case, three of the stakeholders are federal public sector entities: the NAC, VIA Rail, and the Museum. Dr. Kristmanson's position was that a gift given from one federal public sector entity to another cannot reasonably be seen to have been given to influence a public office holder, especially when the stakeholder entities with complementary mandates report to the same minister as the public office holder's entity.

I see no distinction that can be drawn on the basis of the corporate status of the donor and see no reason to treat donors from federal public sector entities differently than private sector counterparts. In deciding whether to accept a gift, public office holders must always consider the surrounding circumstances when a gift is being offered. The donor's current or future relationship with a public office holder and his or her office is particularly important. Examples of gifts that could reasonably be seen to have been given to influence a public office holder include a gift from a registered lobbyist or a gift from someone whose interests could be affected by a decision that a public office holder may be called upon to make.

In light of the dealings and the importance of the relationship between the NCC and Place des Festivals, the NAC, the Museum, VIA Rail and the RCGS, I find that all these gifts could reasonably be seen to have been given to influence Dr. Kristmanson in the exercise of his official powers, duties and functions.

Dr. Kristmanson submitted that an exception to the prohibition on accepting gifts would apply on the grounds that the gifts were received “as a normal expression of courtesy or protocol, or within the customary standards that normally accompany a public office holder’s position” under paragraph 11(2)(c) of the Act. In that regard, Dr. Kristmanson raised the fact that he was simply following the protocol established by his predecessors in deciding when to accept or decline these types of invitations.

It is worth reiterating that the gifts in question consisted of tickets to events extended by the NCC’s stakeholders.

What is considered to be a normal expression of courtesy or protocol or within the customary standards of a position depends on the circumstances surrounding the acceptance of the gift. I have interpreted this exception to include a gift that is normally or generally accepted as being given to a public office holder in relation to, or commensurate with, the exercise of an official function at an event.

If a public office holder has been invited to perform an official function at an event, it is normal or customary that the public office holder will not be required to pay to attend the event. This type of gift would generally fall within the exception of paragraph 11(2)(c) of the Act. The value of a gift considered to be a normal expression of courtesy or protocol or within the customary standards of a position will likely vary, depending on the status of the public office holder and the official functions exercised.

The evidence shows that Dr. Kristmanson did not perform an official function at the events for which he received an invitation from Place des Festivals, the NAC, the Museum and VIA Rail. He and his spouse were simply in attendance as guests.


With respect to the two RCGS events examined, in one instance Dr. Kristmanson was asked to say a few words on behalf of the NCC, and in another instance, was featured in a video presentation. Nothing in the documentary evidence nor in Dr. Kristmanson’s testimony suggested that he was asked by the RCGS to perform an official function during either of those events. When prompted to clarify the circumstances surrounding the acceptance of both gifts, Dr. Kristmanson wrote that he “expected” and “understood” that he would play a role during both events. The circumstances surrounding the acceptance of the gifts by Dr. Kristmanson lead me to believe that his role at both events appeared to have been formalized only following the acceptance of those gifts. In my view the gifts were not given by the RCGS as an expression of appreciation for the exercise of an official function.

Consequently, I have determined that the exception in paragraph 11(2)(c) does not apply to any of the 12 gifts received.

Conclusion

For the reasons set out above, I have determined that the acceptance of invitations extended by Place des Festivals, the NAC, the Museum, VIA Rail, and the RCGS constitute gifts or other advantages that might reasonably be seen to have been given to influence Dr. Kristmanson in the exercise of his official powers, duties or functions as CEO of the NCC. I have also determined that the exception in paragraph 11(2)(c) of the Act does not apply in relation to any of these gifts.

Therefore, I find that, by accepting gifts from these stakeholders, Dr. Kristmanson contravened subsection 11(1) of the Act on 12 different occasions.



Mario Dion
Conflict of Interest and Ethics Commissioner
December 12, 2018