



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Wernick Report

Referral from the
Public Sector Integrity
Commissioner

2020

March 2020



Mario Dion

Conflict of Interest and
Ethics Commissioner

Wernick Report

made under the *CONFLICT OF INTEREST ACT*

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PREFACE

The *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2 (Act) came into force on July 9, 2007.

Pursuant to section 68 of the Act, if a matter is referred to the Conflict of Interest and Ethics Commissioner by the Public Sector Integrity Commissioner pursuant to subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, the Conflict of Interest and Ethics Commissioner must provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the referral. A copy is provided to the public office holder or former public office holder who is the subject of the report and to the Public Sector Integrity Commissioner. The report is also made public.

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REFERRAL

[1] Pursuant to the *Public Servants Disclosure Protection Act*, the Public Sector Integrity Commissioner is mandated to review and report on disclosures of wrongdoing by public servants. However, where the subject matter of any disclosure received is within the jurisdiction of this Office, the Public Sector Integrity Commissioner must, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, refer the matter to this Office.

[2] When I receive a referral in this manner, the *Conflict of Interest Act* (Act) requires that I issue a public report setting out the facts in question and my analysis and conclusions, irrespective of the outcome. If I have reason to believe that the public office holder, who is the subject of the referral, has contravened the Act, I may commence an examination under section 45 of the Act. Even if I do not launch an examination under section 45 of the Act, the Act nevertheless requires that I write and publish a report.

[3] In this case, in a letter dated September 20, 2019, the Public Sector Integrity Commissioner referred to me, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, a disclosure of an allegation of a conflict of interest made against Mr. Michael Wernick, former Clerk of the Privy Council and Secretary to the Cabinet.

[4] The allegation in the disclosure related to whether Mr. Wernick, while he was Clerk of the Privy Council and Secretary to the Cabinet, inappropriately pressured the Honourable Jody Wilson-Raybould, former Minister of Justice and Attorney General of Canada, to pursue a remediation agreement with SNC-Lavalin. As Clerk, Mr. Wernick was a reporting public office holder subject to the Act.

PROCESS

[5] On November 7, 2019, I wrote to Mr. Wernick informing him of the referral I had received from the Public Sector Integrity Commissioner, and invited Mr. Wernick to comment on the allegation. I also informed Mr. Wernick that I would consider his response to determine whether to proceed with the publication of the report without the need to gather additional information or whether to commence an examination under the Act.

[6] On November 28, 2019, I received a detailed response from Mr. Wernick through his legal counsel.

[7] After having considered the information received from Mr. Wernick relating to the allegation made in the disclosure, I determined that none of the information gathered indicated that Mr. Wernick may have contravened any of his obligations under the Act. I therefore did not have reason to believe that Mr. Wernick had contravened the Act and did not pursue the matter further.

FACTS AND ANALYSIS

[8] The following sets out the facts in relation to the allegation made in the disclosure, the information received from Mr. Wernick, and other information available to this Office.

[9] According to the discloser, as Clerk of the Privy Council, Mr. Wernick inappropriately pressured the Honourable Jody Wilson-Raybould, when she was Minister of Justice and Attorney General of Canada, to pursue negotiations with SNC-Lavalin towards a remediation agreement, in contravention of section 9 of the Act.

[10] Section 9 of the Act prohibits public office holders from using their position to influence a decision of another person. It reads as follows:

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

[11] In support of the allegation, the discloser pointed to the *Trudeau II Report*, in which I concluded that the Right Honourable Justin Trudeau, Prime Minister of Canada, had contravened section 9 of the Act when he sought to influence the Attorney General's decision on whether she should pursue negotiations with SNC-Lavalin towards a remediation agreement.

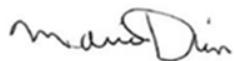
[12] In response to the allegation, counsel for Mr. Wernick wrote that his client did not seek to improperly further the private interests of SNC-Lavalin and resubmitted the information that Mr. Wernick had previously provided to this Office in the context of my examination of the Prime Minister on the same subject matter.

[13] As part of my examination of Mr. Trudeau's conduct, I interviewed several witnesses and received extensive documentary evidence from them, including Mr. Wernick. I also had the opportunity to question Mr. Wernick in respect of his role in the matter.

[14] On the basis of the evidence gathered, I concluded at paragraph 285 of the *Trudeau II Report* that "the individuals who acted under the direction or authority of the Prime Minister in this matter [...] could not have influenced the Attorney General simply by virtue of their position." Consequently, I determined that I did not have reasonable grounds to pursue concurrent examinations of these reporting public office holders, nor did I have reason to believe that they may have breached another substantive rule under the Act. This conclusion applied to a number of reporting public office holders, including Mr. Wernick.

CONCLUSION

[15] In light of the above, I have concluded that I do not have any reason to believe Mr. Wernick may have contravened section 9 of the Act on the basis of the alleged facts. I will, therefore, not initiate an examination under section 45 of the Act and consider the matter closed.

A handwritten signature in black ink, appearing to read "Mario Dion".

Mario Dion
Conflict of Interest and Ethics Commissioner

March 10, 2020