



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Report on alleged wrongdoing by the head of a federal organization

Referral from the
Public Sector Integrity
Commissioner

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January 2023



Mario Dion

Conflict of Interest and
Ethics Commissioner

Report on alleged wrongdoing by the head of a federal organization: Referral from the Public Sector Integrity Commissioner

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 under 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 AND PROCESS

[1] Pursuant to the *Public Servants Disclosure Protection Act*, the Public Sector Integrity Commissioner receives and investigates disclosures of wrongdoing in, or relating to, the federal public sector. However, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, where the Public Sector Integrity Commissioner is of the opinion that the subject matter of any disclosure received is within my jurisdiction as Conflict of Interest and Ethics Commissioner, the matter must be referred to this Office.

[2] If, having received a referral in this manner, I have reason to believe that the public office holder who is the subject of the referral has contravened the *Conflict of Interest Act* (Act), I may investigate the matter by commencing an examination under section 45 of the Act. Even if I do not launch an examination under such circumstances, section 68 of the Act nevertheless requires that I issue a public report setting out the facts in question and my analysis and conclusions.

[3] In this case, in a letter dated August 18, 2022, the Public Sector Integrity Commissioner referred to me, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, allegations of a conflict of interest contained in a disclosure in relation to the conduct of the head of a federal organization (hereafter referred to as the “Organization”).

[4] According to the summary of the disclosure provided by the Public Sector Integrity Commissioner, the discloser alleged that the subject of the allegations placed themselves in a conflict of interest by continuing to engage in activities involving their prior employer in the context of their public duties. It was also alleged that the subject gave “the impression of a favourable treatment” of a particular topic, a field of expertise that relates to the mandate of the Organization and corresponds to the subject's own specialty and professional expertise.

[5] In support of these allegations, the discloser provided partial copies of seven internal emails sent from the subject in which they update the Organization’s staff on recent and upcoming activities such as meetings with federal partners and outside stakeholders, as well as public events. The subject line of these emails indicates they are a weekly occurrence, and the seven emails provided span a period of approximately one year.

[6] The discloser also provided copies of posts made on the subject’s Twitter account and other accounts, as well as a copy of an excerpt from the journal of an association listing the subject as a member of its executive body and a link to a recent announcement by the same association indicating that the subject would be assuming a new role in relation to another one of its periodical publications.

[7] These documents also referenced a number of activities the subject appeared to be engaged in and that could have raised concerns in respect of the Act's prohibition on certain outside activities.

[8] Having considered the information received from the Public Service Integrity Commissioner and other information found in public sources, as well as information contained in the Office's records regarding the subject of the allegations, I determined that I did not have any reason to believe that the subject of the allegations may have contravened the Act. Therefore, I did not commence an examination under section 45 the Act and proceeded directly to preparing this report.

[9] Having considered a number of factors including the absence of a reason to believe a contravention occurred and the lack of prior public attention to this matter, I have determined that there would be no benefit in identifying any individuals or organizations involved in the matter, which could result in undue reputational damage. For this reason, I have drafted this report addressing the substance of the allegations in a way that preserves their anonymity.

FACTS AND ANALYSIS

Allegation of a conflict of interest involving the subject's interactions with their prior employer

[10] The first allegation in the referred disclosure is that the subject, as the head of the Organization, has been interacting with their prior employer both in the exercise of their public office and outside of that context, blurring the distinction between the two roles, thus resulting in a conflict of interest. This prior employer belongs to a category of important stakeholders of the Organization.

[11] Based on the internal emails provided by the discloser, the subject, as the head of the Organization, held meetings with their prior employer on three occasions. The purpose of these meetings, as stated in the emails, was to gather feedback on the Organization's programs and to discuss general themes relating to the Organization's mandate. On one other occasion, the subject was recorded at their prior employer's facilities for the purpose of creating a public video for the Organization, where they appear in the context of their official duties. The prior employer was not credited in the video for providing access to their facilities.

[12] In this sample of seven emails out of approximately one year's worth of weekly emails, the subject mentions having held similar meetings with other institutions on two occasions. These other institutions all belong to the same category of stakeholders of the Organization as the prior employer.

[13] The sample of emails also contained information about meetings and other interactions unrelated to the subject's public office, but rather to their position with their prior employer, and mentions of interactions of a more personal nature held in the margins of official interactions.

[14] Section 5 and subsection 6(1) of the Act, the substantive provisions relevant to the discloser's allegation of a conflict of interest, read as follows:

5. Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest.

6. (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

[15] Section 4 of the Act defines conflicts of interest as follows:

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

[16] The Act does not provide a positive definition of what constitutes a private interest. Instead, it only provides at section 2 that a public office holder's interest is not a private interest if it relates to a decision or matter that is of general application, that affects the public office holder as one of a broad class of persons or that concerns the remuneration or benefits received by virtue of being a public office holder. To date, in applying the Act, the Office has interpreted the term to refer largely to interests of a financial nature.

[17] The information reviewed does not suggest that the subject had the opportunity to further their private interests or those of a relative or friend, or to improperly further the private interests of any other person in the exercise of their public duties. In particular, no decision making appears to have taken place in relation to any of the interactions with the subject's prior employer. Furthermore, none of the information suggests that the subject participated in any discussions about any specific opportunity for the prior employer to gain any financial benefit. As such, there are no concerns regarding a real or potential conflict of interest as defined in section 4 of the Act.

[18] Any concerns of a potential contravention of section 5 or subsection 6(1) of the Act, which would require the existence of such a conflict of interest, are therefore dispelled.

[19] While the discloser may find it unexpected for the subject to be interacting with their prior employer in the manner described above and to discuss these interactions in weekly emails to the Organization's staff, such activities do not, however, raise concerns of a conflict of interest as defined in the Act.

Allegation of favourable treatment of a particular field of expertise

[20] The second allegation set out in the Public Sector Integrity Commissioner's summary of the disclosure was that the subject appears to give favourable treatment to one topic, the subject's field of expertise, presumably over other areas of the Organization's work.

[21] In support of this allegation, the discloser provided copies of publications from the subject's Twitter account, consisting of original tweets and retweets mostly relating to this topic. I note that the subject's Twitter account is not an official government account, though it mentions the subject's position as head of the Organization in the short bio and many posts are retweets from the Organization's official account and refer to the work of the Organization. The topic in question also features prominently in the sample of weekly emails to staff discussed above.

[22] An interest in a topic such as a field of expertise or study is not financial in nature. Furthermore, no connection can be readily drawn between the interest identified by the discloser and any person's financial interests, nor is this interest unique to the subject or shared only with a narrow class of individuals. In light of this, it cannot be considered as a private interest for the purpose of the Act's prohibitions. The discloser's second allegation and the information provided in support of it, therefore, do not raise concerns of a contravention of the Act.

Information relating to the subject's outside activities

[23] The summary provided by the Public Service Integrity Commissioner of the referred disclosure did not formulate an allegation in respect of outside activities. However, the accompanying materials provided by the discloser and forwarded along with the summary contained information in respect of activities of the subject that are unrelated to their public office.

[24] Section 15 of the Act prohibits reporting public office holders from engaging in certain activities outside of the exercise of their public office, allowing exceptions under some conditions. Subsection 15(1) of the Act, which sets out the prohibition, reads as follows:

15. (1) *No reporting public office holder shall, except as required in the exercise of his or her official powers, duties and functions,*

(a) engage in employment or the practice of a profession;

(b) manage or operate a business or commercial activity;

(c) continue as, or become, a director or officer in a corporation or an organization;

(d) hold office in a union or professional association;

(e) serve as a paid consultant; or

(f) be an active partner in a partnership.

[25] The activity referred to in the excerpt from the journal of an association listing the subject as a member of its executive body did indeed fall within the ambit of subsection 15(1) of the Act. However, this activity was disclosed by the subject in the context of their initial compliance process under the Act and dealt with appropriately in consultation with the Office. None of the remaining activities reviewed were found to place the subject in contravention of section 15 of the Act.

[26] As a result, I have no concerns that a contravention may have occurred in relation to the subject's outside activities.

CONCLUSION

[27] In light of the above, I have no reason to believe that the subject may have contravened the Act. Therefore, I will 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". The signature is fluid and cursive, with the first name "Mario" and last name "Dion" clearly distinguishable.

Mario Dion
Conflict of Interest and Ethics Commissioner

January 24, 2023