



**Office of the Conflict  
of Interest and Ethics  
Commissioner**

**Commissariat aux  
conflits d'intérêts et à  
l'éthique**

## **The Finley Report**

made under the  
*CONFLICT OF INTEREST ACT*



**March 10, 2015**

**Mary Dawson  
Conflict of Interest and  
Ethics Commissioner**

The Finley Report

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*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.

An examination under the Act may be initiated at the request of a member of the Senate or House of Commons pursuant to subsection 44(1) of the Act or on the initiative of the Conflict of Interest and Ethics Commissioner pursuant to subsection 45(1).

When an examination is initiated under section 45 of the Act, the Commissioner is required, under subsection 45(3), to 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 examination, unless the examination is discontinued. Subsection 45(4) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the current or former public office holder who is the subject of the report, and 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 the Honourable Diane Finley, P.C., M.P., while she was Minister of Human Resources and Skills Development, relating to her approval of funding for the proposal of the Markham Centre for Skills and Independence under the Enabling Accessibility Fund, in August 2011.

I undertook this examination on my own initiative after media reports in May 2012 indicated that the Markham proposal may have received special treatment from the Minister. It was suggested that the proposal did not meet established funding criteria and was not among the proposals that departmental officials recommended to Ms. Finley for approval. It was also alleged that Ms. Finley approved funding for it while many other proposals that had received much higher ratings from the Human Resources and Skills Development Canada (the Department) received no funding.

My examination focused on whether, in approving this funding, Ms. Finley contravened section 7 or subsection 6(1) of the Act.

Section 7 prohibits public office holders, in exercising an official power, duty or function, from giving preferential treatment to a person or organization based on the identity of someone representing that person or organization. Subsection 6(1) prohibits public office holders from making decisions if they know or reasonably should know that, in making this decision, they would be in a conflict of interest. A conflict of interest, as described in section 4 of the Act, can occur when a public office holder has an opportunity to further his or her own private interests or those of relatives or friends, or to improperly further the private interests of another person.

The Markham proposal was submitted on behalf of the Canadian Federation of Chabad Lubavitch (the Federation) by Rabbi Chaim Mendelsohn, the Federation's Director of Public Affairs. It was among the 167 proposals that met the initial screening criteria under the Enabling Accessibility Fund, but it failed the Department's internal assessment, receiving one of the lowest ratings. However, the Markham project was added, at Ms. Finley's request, to the four projects previously selected for funding.

There were a number of interventions in relation to the proposal by staff in the Prime Minister's Office, two ministers, an employee in Ms. Finley's office and senior departmental officials.



It appears that Ms. Finley did not receive from the Department, nor did she request, a full briefing on the merits of the Markham proposal, although it appears that she was aware that the proposal had certain deficiencies.

I found that the Markham proposal clearly received preferential treatment, as the Federation was allowed to provide additional information to supplement the original proposal, something no other applicants were permitted to do. As well, the proposal was the only one given a last-minute external evaluation at Ms. Finley's request. It is noteworthy that the funding for the Markham project was later withdrawn because established timelines could not be met and significant cost increases had resulted from building deficiencies.

Section 7 is very limited in its application. It only applies to cases where preferential treatment is based on the identity of the person or organization that represents the person or organization that receives preferential treatment. In determining whether Ms. Finley contravened section 7 of the Act, I had to determine whether she gave preferential treatment to the Federation in respect of its Markham proposal based on the identity of Rabbi Mendelsohn as the Federation's representative. I found no evidence that this was the case. I therefore concluded that she did not contravene section 7.

In determining whether Ms. Finley contravened subsection 6(1) of the Act, I had to determine whether she improperly furthered the private interests of any person, and whether she knew, or should have known that, when she made her decision, she would be in a conflict of interest.

In making my decision, I considered the rules under which Ms. Finley was exercising her responsibilities. The Terms and Conditions of the mid-sized projects component of the Enabling Accessibility Fund gave Ms. Finley broad discretion in deciding which projects should be funded.

However, the Treasury Board's *Policy on Transfer Payments* highlights the importance of strengthening accountability for public monies and the government's commitment to ensuring that programs like the Enabling Accessibility Fund are managed with the highest level of integrity, transparency and accountability. In addition, the Prime Minister's guideline, *Accountable Government: A Guide for Ministers and Ministers of State*, highlights the importance for ministers and ministers of state to make effective use of the public service, which is there to provide professional, non-partisan support to ministers and ministers of state.

It appears that some of these guiding principles were not top of mind in the handling of the Markham proposal.



For these reasons, and particularly because the Markham project received preferential treatment, I found that Ms. Finley's decision to fund the Markham project was improper within the meaning of section 4 of the Act and that she reasonably should have known that, in making the decision, she would be in a conflict of interest under subsection 6(1). I therefore concluded that Ms. Finley contravened subsection 6(1) of the Act.

The funding decision may have been influenced by political considerations, but the reasons why this proposal was given preferential treatment remain unclear. The public's confidence in the handling of public funds and the fairness of government transfer payment programs is undermined when ministers do not maintain the government's stated commitment to managing them with integrity, transparency and accountability. Ministers are in a position of power and have a responsibility to ensure that this power is exercised fairly and in a way that is open to all Canadians.





## CONCERNS

On May 11, 2012, media reports indicated that the Honourable Diane Finley, P.C., M.P., then Minister of Human Resources and Skills Development, approved funding for a project in Markham, Ontario, submitted on behalf of the Canadian Federation of Chabad Lubavitch (the Federation) by Rabbi Chaim Mendelsohn, Director of Public Affairs for the Federation, under a Government of Canada funding program, the Enabling Accessibility Fund.

Based on information provided in two separate departmental memoranda obtained by members of the media that included a list of recommended projects, media reports suggested that Ms. Finley approved funding for the project despite the fact that it failed to meet established funding criteria and that it had a number of deficiencies.

In addition, the media reported that the Honourable John Baird, P.C., former Member of Parliament for Ottawa West–Nepean and then Minister of Foreign Affairs, who had close ties with Rabbi Mendelsohn, made representations to Ms. Finley in support of the Markham proposal. Media also reported that following these representations, Ms. Finley asked that the project be sent for an external evaluation and that this evaluation concluded that the project could be funded, but with reservations. Ms. Finley approved the Markham project for funding, even though departmental officials determined that it did not meet the criteria for funding under the Enabling Accessibility Fund.

Based on the information provided through media reports and departmental memoranda, I was concerned that Ms. Finley may have contravened her obligations under subsection 6(1) and section 7 of the *Conflict of Interest Act*. Subsection 6(1) provides that no public office holder shall make a decision in the exercise of an official power, duty or function if he or she knows or reasonably should know that in making the decision he or she would be in a conflict of interest. Section 7 prohibits a public office holder from giving preferential treatment to any person or organization based on the identity of the person or organization that represents it.





## PROCESS

On June 28, 2012, I decided to commence an examination on my own initiative in accordance with subsection 45(1) of the *Conflict of Interest Act* (Act). I wrote to Ms. Finley to inform her that, based on the information before me, it appeared that she had approved funding for the Markham Centre for Skills and Independence under the Government of Canada's Enabling Accessibility Fund despite the fact that it did not meet established funding criteria, that it had a number of deficiencies, and that other projects with higher scores had not received funding. I also informed Ms. Finley that the relevant provisions of the Act were subsection 6(1) and section 7.

As a first step, I asked Ms. Finley to provide me with a written response to my concerns. I received her response on July 31, 2012. It wasn't until January 16, 2013 that I was able to conduct a first interview with Ms. Finley.

After that first interview, my Office interviewed 16 witnesses, some of whom also provided documentary evidence. Written submissions were received from three other witnesses. My Office also conducted an analysis of a large number of related documents and communications submitted by Human Resources and Skills Development Canada.

A second interview with Ms. Finley was conducted on January 22, 2015. Before this second interview, Ms. Finley was given an opportunity to review the transcript from her first interview, as well as excerpts of transcripts of interviews with several other witnesses and related documents.

In keeping with the practice I have established in conducting examinations, Ms. Finley was given an opportunity to comment on a draft of the factual parts of this report (Concerns, Process, Findings of Fact and Ms. Finley's Position) before it was finalized.

This examination has taken an unusually long time to complete. This resulted from several factors, including challenges faced in gathering the evidence I needed, the number of witnesses who were interviewed, contradictory evidence and, generally, the complexity of the examination.





## **FINDINGS OF FACT**

The purpose of my examination was to determine whether the Honourable Diane Finley, P.C., M.P., had contravened subsection 6(1) or section 7 of the *Conflict of Interest Act* in deciding to fund the proposal of the Canadian Federation of Chabad Lubavitch (the Federation) for the Markham Centre for Skills and Independence (the Markham proposal). The proposal was submitted under the mid-sized projects component of the Enabling Accessibility Fund.

Subsection 6(1) provides that no public office holder shall make a decision if he or she knows or reasonably should know that in making the decision he or she would be in a conflict of interest. Section 7 prohibits a public office holder from giving preferential treatment to any person or organization based on the identity of the person or organization that represents it. In order to determine whether Ms. Finley contravened subsection 6(1) or section 7, it was necessary to understand the nature of the Enabling Accessibility Fund, and whether the Federation's Markham proposal was treated differently from other proposals submitted to the mid-sized projects component of the Enabling Accessibility Fund.

### **Background**

#### ***The Enabling Accessibility Fund process***

The Enabling Accessibility Fund was announced in Budget 2007 as a three-year, \$45-million, nationally delivered grant and contribution program for small-sized projects of up to \$50,000. The Enabling Accessibility Fund was extended in 2010 with an additional \$45 million over three years, and the mid-sized projects component was added. The Enabling Accessibility Fund continues to provide direct funding in the form of grants and contributions for community-based renovation and retrofit projects related to improving accessibility for people with disabilities. Organizations eligible for funding include not-for-profit organizations, small municipalities, small private sector organizations, colleges and universities, and territorial governments.

On October 29, 2010, the Government of Canada announced the call for proposals for the Enabling Accessibility Fund's mid-sized projects component, under which organizations could apply for funding of \$500,000 to \$3 million. The mid-sized projects component was allocated \$10 million in contribution funding. Human Resources and Skills Development Canada (the Department) required that all proposals be postmarked by January 13, 2011 to be considered for funding.



The Office for Disability Issues, within the Department, administered the Enabling Accessibility Fund. It received 355 applications for the mid-sized projects component, representing funding requests totalling over \$470 million. In January 2011, all applications were screened to ensure completeness of the proposal and to determine whether the applicant and activities met the program's basic eligibility criteria. At this stage, the quality of the proposal was not assessed.

One hundred and sixty-seven proposals passed the initial screening and went to the next stage, undergoing an internal assessment by program officers of the Enabling Accessibility Fund in February 2011. Senior departmental officials with the Office of Disability Issues reviewed all of the internal assessments completed by program officers to ensure proposals received a fair evaluation and score. Projects were determined to have "passed" or "failed" this second stage based on their ranking in each of four categories: community support, reduction or elimination of barriers for people with disabilities, budget and work plan, and organizational experience. One hundred and thirty-five proposals passed the internal assessment and remained under consideration. The Markham proposal was one of 32 proposals that failed the internal assessment.

Following the internal assessments, the top 25 proposals were selected for an external evaluation by a team of specialists, including a construction expert who assessed their feasibility, value for money and proposed timelines.

After receiving the external evaluations, an internal review committee comprised of a director, two senior program advisors and a program officer, reviewed the results of the previous internal assessments as well as the external evaluations to ensure consistency in the scoring. The internal review committee then developed a revised ranking of the 25 projects. An overview of each project and their findings were presented by a reviewing departmental program officer to the internal review committee. The internal review committee had an opportunity to ask the reviewing program officer questions about the project and, where necessary, requested that clarification be obtained from the applicant. Any clarification was presented to the internal review committee at a subsequent meeting. On June 17, 2011, the internal review committee finalized their list and recommended to senior departmental officials the four highest scoring projects for funding.

### ***The Federation's Enabling Accessibility Fund proposals***

The Canadian Federation of Chabad Lubavitch submitted three applications to the Department on January 13, 2011.





The Richmond Centre for Skills and Independence proposal from British Columbia did not pass the initial screening, and so did not undergo the internal assessment.

The Côte Saint-Luc proposal from Montreal was screened in for further consideration and passed the internal assessment but was not among the top 25 proposals sent for external evaluation.

The Markham Centre for Skills and Independence proposal from the Greater Toronto Area failed the internal assessment.

The Office for Disability Issues had identified a number of weaknesses with the Markham proposal. Program officers suggested that the proposal was not aligned with the objectives of the program because it did not identify any existing barriers requiring reduction. They also suggested that community support letters for the project were not very strong and that the application did not demonstrate the organization's capacity to manage the project. Only three other proposals of the 167 that were given an internal assessment scored lower than the Markham proposal.

### ***Rabbi Mendelsohn and the Federation***

In the information provided to my Office by Rabbi Chaim Mendelsohn, Director of Chabad Lubavitch of CentrepoinTE in Ottawa, Chabad Lubavitch is described as the world's largest network of Jewish educational and social services institutions with over 3,500 branches in nearly 50 countries. The Canadian Federation of Chabad Lubavitch is the umbrella organization for Chabad Lubavitch branches across Canada and is recognized as a not-for-profit organization.

Rabbi Mendelsohn took on the role of Director of Public Affairs for the Federation several years ago. As Director of Public Affairs for the Federation, Rabbi Mendelsohn has assumed responsibility for raising awareness amongst the Parliament Hill community about the Federation and Jewish culture. Rabbi Mendelsohn told me he is the primary representative of the Federation for interactions with the federal government and with the Conservative Party of Canada. He also explained that he has distributed information about federal funding opportunities to local Chabad Lubavitch communities across the country, and submits proposals on their behalf.

Several witnesses told my Office that Rabbi Mendelsohn is well-known on Parliament Hill and, more specifically, to a number of ministers and Members. He often attends or organizes events on Parliament Hill and has provided advice to Members and to the Prime Minister's Office on matters of protocol with respect to Jewish customs for events hosted by the Prime Minister, such as the Chanukah celebration at 24 Sussex Drive. He was also part of the Prime Minister's delegation to Israel in January 2014.



Through these events, Rabbi Mendelsohn has developed relationships with certain ministers, ministerial staff and staff in the Prime Minister's Office whom he contacts frequently when he is seeking assistance or is planning an event.

Rabbi Mendelsohn had claimed in emails to ministerial staff following the 2011 election that Chabad Lubavitch branches across Canada had mobilized tens of thousands of volunteers and voters. Several witnesses testified, however, that the Chabad Lubavitch community is no more significant for voter mobilization of their community than other elements of the Jewish community are or than other ethnic groups are. The Honourable Peter Kent, P.C., Member of Parliament for Thornhill, noted in his interview that 40 percent of his constituency is Jewish, but he estimated that only about a quarter of them are affiliated with Chabad Lubavitch.

No one that we interviewed was aware of whether the Chabad Lubavitch community provides significant financial support to the Conservative Party of Canada but most surmised that it did not. I did not find any evidence that Rabbi Mendelsohn was a significant contributor of financial or human resources to the Conservative Party of Canada's election campaign in March and April 2011.

### **Representations by Rabbi Mendelsohn at the political level**

After Rabbi Mendelsohn submitted the three proposals on behalf of the Federation in January 2011, he began contacting the staff of several ministers asking about the status of the proposals and seeking support for them. These exchanges were interrupted by the general election on May 2, 2011; some took place before the election and some took place afterwards.

#### ***Minister Baird's office***

Rabbi Mendelsohn has known Mr. Baird as one of his constituents. Mr. Baird indicated to me that he first met Rabbi Mendelsohn in late 2005 or early 2006 during the federal election campaign, and that his relationship with Rabbi Mendelsohn is similar to his relationships with other rabbis in the city. He said that he encountered Rabbi Mendelsohn on a number of occasions because Rabbi Mendelsohn frequently attends or hosts ceremonies or events on Parliament Hill or at the Chabad Lubavitch of CentrepoinTE, which is located in Mr. Baird's riding.

On March 10, 2011, Rabbi Mendelsohn gave copies of the Federation's three proposals under the Enabling Accessibility Fund to an employee in Mr. Baird's ministerial office. On March 14, 2011, Rabbi Mendelsohn followed up by email to ask whether the Minister had brought the proposals to Ms. Finley's attention. The employee responded, "The Minister got your package and was happy to mention his views on Chabad Lubavitch to Minister Finley."

Mr. Baird told me that he didn't recall speaking to Ms. Finley but that normally when someone asks him to provide support for a project, he requests that they send him something that he can review. Although he doesn't recall speaking to Rabbi Mendelsohn about the proposals, he said that in this case he would have mentioned it verbally to Ms. Finley in general terms, saying that there was a project from an organization he knows that does good work. Ms. Finley told me she did not recall speaking with Mr. Baird about the Federation's proposals.

### ***Minister Finley's office***

On March 14, 2011, the same day that he spoke with staff in Mr. Baird's office, Rabbi Mendelsohn emailed a staff member in Minister Finley's office to ask for an update on his three proposals. The employee replied that the files were still under evaluation by the Department. One week later, Rabbi Mendelsohn emailed again to ask for another update. This time, the staff member replied that the Department had received a greater number of proposals than expected, and a more detailed review of each proposal was required. The employee told Rabbi Mendelsohn that he would be contacted when a decision was made.

Two days later, on March 23, 2011, Rabbi Mendelsohn emailed Ms. Finley's staff again to note that he had heard that decisions were being made as early as that week. Ms. Finley's staff assured Rabbi Mendelsohn that, due to the imminent election call, announcements would be delayed until after the election period. The Canadian federal election was called on March 26, 2011 and took place on May 2, 2011.

Rabbi Mendelsohn sent a series of emails and made a number of phone calls, between May 20, 2011 and June 27, 2011, to Mr. Phil Harwood, then Interim Chief of Staff in Minister Finley's office, seeking updates on the Federation's submitted proposals. Mr. Harwood responded to many of these inquiries saying that he was unable to provide any updates on the status of the files as he had not received any information from the Department.

### ***Rabbi Mendelsohn contacts other ministerial staff***

In June 2011, Rabbi Mendelsohn began contacting other ministerial staff and staff in the Prime Minister's Office seeking their support for the Federation's proposals and asking that they contact Mr. Harwood on his behalf. Some of these individuals responded to Rabbi Mendelsohn, saying they had left phone messages for Mr. Harwood or had discussed it with him at events. Mr. Harwood noted in an email to Rabbi Mendelsohn that he had heard from many people about the Federation's proposals.



Rabbi Mendelsohn told my Office that due to previous unsuccessful funding applications submitted by the Federation, he felt it was very important to him that the Federation's Enabling Accessibility Fund proposals be approved because he felt they had been "left out" previously and said that he emphasised this when seeking support for Federation's proposals. He was also concerned that he would lose credibility within the Federation if their proposals were rejected again.

### **Issues raised by Minister Kent**

Over the course of this examination, my Office learned of interventions in support of the Markham proposal by Mr. Kent, Member of Parliament for Thornhill and Minister of Environment at that time, and by the Office of the Prime Minister, which appear to have been motivated by political issues at that point.

My Office also learned that there were discussions at the political level in late winter 2011, as a result of some discontent among the broader Jewish community in the Greater Toronto Area about funding decisions. Mr. Kent explained that the Canadian Jewish community consists of a complex mix of religious, ethnic and linguistic groups, and that there are also historic political groupings and rivalries among these groups. In a letter to my Office, Mr. Kent wrote, "In recent years, particularly during the minority government years, the rivalries became a very real issue for me as the M.P. for Thornhill (where all factions have significant representation) and for other members of our Caucus who had worked to develop positive political relationships with the broader community."

On March 14, 2011, the Government of Canada had announced the funding of a community cultural project under its Infrastructure Stimulus Fund, just north of Mr. Kent's riding. This announcement evidently provoked complaints from Jewish groups within the Greater Toronto Area and debate within the broader Jewish community.

### ***Discussion between Minister Kent and Mr. Wright***

In a letter to my Office, Mr. Kent wrote that sometime after the March 14, 2011 funding announcement under the Infrastructure Stimulus Fund, he spoke briefly outside the Cabinet room with Mr. Nigel Wright, who at the time was Chief of Staff to the Prime Minister, about his concern that the government needed to be more sensitive as to the manner in which the funding announcements are made in light of the controversy it had caused within Jewish groups. Mr. Kent could not remember the exact timing of the discussion, but wrote that he had told Mr. Wright that he urged that there be a more balanced and transparent approach in the future.

Mr. Wright told me that during this same discussion about the March 14, 2011 funding announcement, Mr. Kent also spoke to him about the Markham proposal. Mr. Wright told me that Mr. Kent conveyed his desire that the proposal receive careful and fair consideration in light of what he thought had been problems with how previous funding applications submitted by the Jewish community in the Greater Toronto Area had been handled. Mr. Wright also told me that he had the impression that Mr. Kent was highlighting the need for fair and consistent application of rules to the proposal and was asking for his assistance in securing careful consideration of the Markham proposal, rather than the need to fund this particular project.

Despite Mr. Wright's recollection that Mr. Kent raised the Federation's Markham proposal with him, Mr. Kent told my Office that he did not discuss the Federation's Markham proposal with Mr. Wright at any time. Mr. Kent also said that he was not aware of Mr. Wright being involved in the handling of that proposal and that there was no connection between the issue he raised with Mr. Wright relating to projects sponsored by the Toronto Jewish community, and the Markham proposal.

Mr. Wright suggested that the Prime Minister was aware that there was a political issue raised by some members of the Greater Toronto Area Caucus regarding how one or more grant applications by groups within the Jewish community were being handled. Mr. Wright wrote, however, that he did not think that the Prime Minister was focused on any individual project or organization.

Ms. Finley told me that she was not aware of any issues within the Jewish community of the Greater Toronto Area regarding funding announcements. She said that as Regional Minister of Southwestern Ontario, which does not include the Greater Toronto Area, it is not the type of issue that would have necessarily been brought to her attention.

### ***Letter from Minister Kent***

It appears that Mr. Kent may have sent a letter to Ms. Finley sometime in early summer of 2011.

While Mr. Kent could not recall speaking with Ms. Finley about the Markham project he acknowledged that he likely signed at least one letter to Ms. Finley in which he recommended giving the Markham proposal "all possible consideration." Mr. Kent said this would have been a typical letter in support of a project. Mr. Kent's office could not locate a signed copy of the letter to Ms. Finley; they did, however, produce a draft letter dated March 23, 2011. Mr. Kent did not know if the letter had been sent or not.



Three departmental officials, however, told me that, in early summer of 2011, the Department received a letter from Minister Kent to Ms. Finley, in which he referred to the Markham proposal. They recalled that in the letter, Minister Kent addressed the importance of the Federation and the Markham proposal and urged Ms. Finley to consider funding it. Two of these officials vaguely recalled that Minister Kent referred to a relationship between the Jewish community of the Greater Toronto Area and the Conservative Party of Canada.

Given the content of the letter, departmental officials concluded that it had been sent to the Department in error and that it was a letter more appropriately handled by Minister Finley's office. While departmental officials could not remember exactly when they saw this letter, at least one official told me that she believed that it was before Ms. Finley instructed officials to send the Markham project for an external evaluation. The matter of the external evaluation is discussed later.

On the strength of the testimony of three departmental officials, my Office requested from a number of different sources that a copy of this letter be provided to me. None was ever provided.

Mr. Kent told me that he did not send, and would not have sent, a letter that referred to such a relationship adding that he tries to maintain a strict line between his political and parliamentary responsibilities.

Ms. Finley told me that she was not aware of a letter from Minister Kent relating to the Markham proposal. She said her chief of staff oversaw all correspondence from the Department and that he may not necessarily have brought it to her attention. She also stated that correspondence routed from the Department could take months before it made it to her ministerial office. Mr. Harwood told me that he did not recall seeing a letter from Minister Kent.

### **Discussions between Minister Finley's office and the Prime Minister's Office**

Other senior officials within the Prime Minister's Office, as well as Mr. Wright, were aware of the Federation's Enabling Accessibility Fund proposals in June 2011. Ms. Rachel Curran, who was Policy Advisor for Social Affairs in the Prime Minister's Office at the time, contacted Mr. Harwood to inquire about the status of the Federation's proposals. She informed him that Mr. Wright wanted to speak to him directly about the file. Furthermore, Mr. Harwood told me that he recalled raising the matter around this time with Mr. Wright and with Mr. Raymond Novak, who at the time was Principal Secretary to the Prime Minister. Mr. Harwood said that the conversation, which took place following a chief of staff meeting, was general in nature and that he was seeking mainly to determine what Rabbi Mendelsohn's relationship was with other ministerial staff and the staff of the Prime Minister's Office.



Mr. Harwood said that he was told that Rabbi Mendelsohn tended to exaggerate the nature of his relationships with ministerial staff and the staff of the Prime Minister's Office.

When asked about this conversation with Mr. Harwood, Mr. Wright responded to me in a letter that he had a very vague recollection of a possible telephone call with Mr. Harwood to discuss the Markham proposal, although he could not recall the specifics of the conversation. He did, however, recall one conversation with Ms. Finley. He wrote that she had pulled him aside outside the Cabinet room and asked him whether he considered the Markham proposal "important." Mr. Wright wrote that he told her he had been asked by the Prime Minister to "sort it out." He recalled that Ms. Finley told him that the proposal was eligible for funding under a particular program, that it had not scored as high as other proposals submitted under that program, but that it had elements that made it a valid and appropriate recipient for funding under that program.

According to Mr. Wright, he did not intend to suggest to Ms. Finley that funding should be approved for the Markham project, only that it was important that the matter be considered carefully and fairly. Mr. Wright believed he had "sorted out" the matter by communicating that request to Ms. Finley. He said he was not involved in any decision-making regarding the application following this conversation with Ms. Finley.

In her first interview, Ms. Finley told me that she would not have had any reason to communicate with the Prime Minister's Office about the Markham proposal. She also told me she was unaware of any interest in the matter from the Prime Minister's Office. After reading Mr. Wright's account of his conversation with her about the Markham proposal, Ms. Finley told me she could not recall a discussion with Mr. Wright.

### **Ms. Finley asks staff to look at the Markham proposal**

Ms. Finley told me that the Markham proposal was brought to her attention by various colleagues. Although she could not recall who had spoken to her about the proposal, or the timing of these representations, she recalled that there were several individuals who spoke in support of the Federation and the Markham proposal. She also recalled a letter of support from the Honourable Irwin Cotler, P.C., Member of Parliament for Mount Royal. She said that this letter, along with the many verbal representations, was what led her to ask her staff to look at the Markham proposal, to see how it compared to other proposals, and to make sure it received a "fair shake."



In the course of this investigation, my Office received a copy of the letter Mr. Cotler sent to Ms. Finley. The letter, dated June 15, 2011, was in support of the Federation's Côte Saint-Luc Centre in Montreal. In her second interview with my Office, Ms. Finley told me that she believes she may have misread the letter, leading her to believe it was in support of the Markham proposal.

### *Additional submissions for the Markham proposal*

In late June 2011, Mr. Harwood provided information to Rabbi Mendelsohn regarding the Federation's proposals. He told Rabbi Mendelsohn that only one of these projects could be funded and that, if it was approved, the chosen project would be the one located in Markham.

Rabbi Mendelsohn told me that he was not aware of why the Markham project had been identified and he was only concerned with the fact that one of his projects would be getting funding. He said that Mr. Harwood told him that there were some things missing in the Markham proposal. Rabbi Mendelsohn said that Mr. Harwood provided him with a list of additional information that was needed and asked him to compile the information based on concerns expressed by officials in the Department about the completeness of the Federation's Markham application. He understood that he needed to collect this additional information in order to get the Department's approval of the Markham proposal. On June 30, 2011, Rabbi Mendelsohn began collecting information from construction experts to supplement the cost estimates and construction budget documents he had submitted with his original proposal. He asked Mr. Harwood to review the information before submitting it to the Department.

Mr. Harwood said he was unable to recall clearly why Rabbi Mendelsohn had submitted additional information on the Markham project. He said that the Department may have responded to his inquiries about the status of the Federation's proposals by indicating that the Markham proposal didn't score well because some information was missing. He added that it is possible that he would have asked the Department what would be needed to send this proposal for external evaluation. Ms. Finley told me that she did not direct Mr. Harwood to assist Rabbi Mendelsohn in this manner, and that she was unaware of any communication between Mr. Harwood and Rabbi Mendelsohn.

Officials from the Office for Disability Issues told my Office that Mr. Jacques Paquette, the Senior Assistant Deputy Minister, Income and Social Development Branch of the Department, in response to a request from Minister Finley's office, asked them, in the summer of 2011, to provide an update on the status of the three proposals submitted by the Federation. They said Mr. Paquette subsequently asked for additional information regarding the findings of the internal assessment of the Markham proposal, which they provided. Although they could not recall, and had no record of, the precise dates on which these inquiries were made, they believe they were



before a July 25, 2011 memorandum was submitted to Ms. Finley recommending she approve the top four proposals.

Rabbi Mendelsohn submitted additional information relating to construction cost estimates for the Markham proposal to the Office of Disability Issues on July 15, 2011 by fax after being told by Mr. Harwood to do so. At the time, none of the Federation's three proposals were being considered for funding by the Department, but officials testified that they knew there was an interest in Minister Finley's office in revisiting the Markham proposal. The July 15, 2011 fax with the additional information was, at the request of Mr. Paquette, added to the Markham file the day it was received, but it was not assessed or scored at that time. After the fax was placed on the file, officials from the Office of Disability Issues were asked to prepare a copy of the file for Minister Finley's office.

### **Ms. Finley's July 2011 decision**

On July 25, 2011, the Department sent a memorandum to Ms. Finley for decision. In this memorandum, the Department described the process it had followed to screen and assess the projects submitted under the mid-sized projects component of the Enabling Accessibility Fund, and recommended the funding of the four highest scoring projects from among the 25 projects that were sent for external review. The memorandum also included an annex of all 167 of the screened-in proposals and their internal review score.

The total contribution that would be required for the four projects was \$10,024,000. The Department recommended that the amount of \$24,000 over the allocation for the mid-sized projects component of the program be taken from the small-sized projects component of the program to cover the difference.

On July 26, 2011, Ms. Finley signed the memorandum from the Department approving funding for the four projects it recommended. At the same time, Ms. Finley added a handwritten note requesting that the Markham proposal be sent for an assessment by an external evaluator and asked that she be informed of the results.

Mr. Harwood testified that he briefed Ms. Finley about the Markham proposal when she received the July 25, 2011 memorandum and that he advised her that this project should be sent for external review. Mr. Harwood could not recall all the details of their discussion but he said that he recommended that Ms. Finley consider sending the Markham project for external review. He said he made this recommendation in part because of Rabbi Mendelsohn's persistence and to see whether the project was feasible, having regard to the additional information Rabbi Mendelsohn had submitted. Ms. Finley told me that she did not specifically recall discussing the Markham proposal with Mr. Harwood. Ms. Finley also told me that she did not



recall seeing or being briefed on the conclusions of the Department's internal assessment, and that she was unaware that the Markham proposal was one of the 32 proposals that failed the internal assessment.

### ***External evaluation of the Markham proposal***

On August 5, 2011, the Office for Disability Issues sent the Markham proposal to an external evaluator. The additional project information that Rabbi Mendelsohn had faxed to the Department on June 15, 2011 was included in the material sent.

Departmental officials in the Office for Disability Issues told my Office that no other applicants were permitted to submit additional information for assessment, either by the internal or the external evaluators, because their applications were incomplete. The only time that any additional information was requested or accepted in relation to other proposals was in cases where additional information was required to respond to questions raised by the internal review committee when reviewing the top 25 projects.

On August 18, 2011, the external evaluator submitted his evaluation of the Markham proposal to the Department. The external evaluator considered that, with a rating of 51 out of 80 possible points, the Markham project could be funded, but with the reservation that some elements required by the Department had not been fully substantiated. The external evaluator recommended that the Federation provide additional information confirming further support for the requested funding amount. It does not appear that the additional information was requested from the organization. Following the external evaluation, the Markham proposal was not subjected to additional evaluations by the internal review committee as were the top 25 projects.

### **Ms. Finley's funding decision**

After the Department received the results of the external evaluator's review of the Markham proposal, officials in the Office for Disability Issues prepared a second memorandum to Ms. Finley, informing her of the results as requested by her on July 26, 2011. A draft of the second memorandum, dated August 23, 2011, set out a number of weaknesses in the proposal identified by both the internal and the external assessments. It stated that the project was not aligned with the objectives of the program, that there were concerns that the application did not demonstrate that the organization had the capacity to manage the project, and that the community support letters were not very strong and did not provide a rationale as to the need and benefit of the project. The memorandum stated that "A letter of decision will be sent to the organization to inform them they were unsuccessful in their application."



That version of the memorandum was not sent to the Minister's office. It was redrafted at the direction of senior officials in the Department. Departmental officials told me they were instructed by the Senior Assistant Deputy Minister, Mr. Paquette, to provide only the findings of the external evaluation. The final version, dated August 26, 2011, set out the scores, several of which were very low, from the external evaluator but contained none of the details included in earlier drafts regarding the specific weaknesses identified through the internal assessment. The final version referred generally to "a number of weaknesses" having been identified in the internal assessment.

While the final version of the memorandum did not bring to Ms. Finley's attention the nature of the weaknesses identified by the Department, it did include certain concerns that were raised by the external evaluator. These concerns included the observation that the proposal did not directly address the requirements for making buildings and other facilities accessible to persons with disabilities and the question as to whether the organization would be able to raise the funds necessary to cover bank loan repayments. The memorandum included the external evaluator's recommendation that further information be provided by the organization to support its claims that the fundraising amount was realistic and achievable. It directed Ms. Finley to make a decision by answering the following question: "Do you wish to proceed to fund this project?"

Ms. Finley signed the memorandum, dated August 26, 2011, approving the funding of the Markham project by checking the "yes" box. Ms. Finley told me that she based her decision to fund the Markham project on the external evaluator's general statement that the project was doable and that it offered value for money, two of the criteria evaluated by the external evaluator. As the Enabling Accessibility Fund contribution funding available for the mid-sized projects component in 2011-2012 was exhausted following approval of the four other recommended projects, an additional \$1,044,000 to cover the funding for this project was taken from the small-sized projects component of the program. On September 9, 2011, a program officer from the Department contacted Rabbi Mendelsohn to inform him officially that funding for the project had been approved.

The Government of Canada announced the funding of the Federation's Markham project on October 11, 2011. A contribution agreement in the amount of \$1,044,000.00 was signed with the Federation on December 8, 2011. Responsibility for the project was transferred to Chabad Lubavitch of Markham on December 19, 2011.

### **The Department withdraws funding**

The Department ultimately withdrew its funding for this project. Information provided to my Office indicated that the Chabad Lubavitch of Markham was unable to obtain the necessary



construction permits required for the work to be completed within the timeline negotiated with the Department, and there were significant increases in costs to deal with building deficiencies. It appears that approximately \$50,000 of the federal funds was spent and the remainder of the funds allocated for this project was returned for future projects.

### **Evidence from the Deputy Minister**

Mr. Ian Shugart, Deputy Minister of Employment and Social Development Canada (previously Human Resources and Skills Development Canada), testified that final approval for funding of projects under the Enabling Accessibility Fund was the responsibility of the Minister. Mr. Shugart testified that, because the Federation's Markham project was screened in as having met the mandatory eligibility criteria for the Enabling Accessibility Fund, it was, in his view, a legitimate candidate for funding consideration by Ms. Finley in the exercise of her discretionary authority.

According to Mr. Shugart, the exercise of ministerial discretion is very much a part of the decision-making process. He suggested that the process of screening, ranking and recommending certain projects to Ms. Finley is always subject to the possibility that the Minister will have other views. Mr. Shugart did not know the basis on which Minister Finley's office singled out the Federation's Markham project for further consideration and approval, and did not recall discussing this with Minister Finley's office or providing any direction on the file. He indicated, however, that he very likely would have indicated his overall comfort with the process followed and his view that this was within Ms. Finley's appropriate discretion.

While Mr. Shugart confirmed that the Department never recommended that the Markham project be funded and that it was unusual not to include a recommendation, he said that the fact that the external evaluator had provided a professional assessment indicating the Markham project could be funded, albeit with reservations, was sufficient basis for Ms. Finley to proceed with funding. Mr. Shugart also added that, even without a recommendation, the final version of the memorandum was transparent on the results of the external evaluation.

Mr. Shugart explained that Ms. Finley's discretionary authority to approve funding for the Markham project stems from both policy and legal authorities. The Minister's policy authority arises from the Terms and Conditions for the Enabling Accessibility Fund mid-sized projects component and her legal authority was under section 7 of the now repealed *Department of Social Development Act*. Mr. Shugart noted that these authorities are, in turn, supported by the Treasury Board's *Policy on Transfer Payments* and the Treasury Board's *Directive on Transfer Payments* and its annexes.



## **Treasury Board’s Policy on Transfer Payments**

The Treasury Board’s *Policy on Transfer Payments* (the Policy) sets out roles and responsibilities for the Treasury Board, the President of the Treasury Board, the Secretary of the Treasury Board, ministers and deputy heads in the design, delivery and management of transfer payment programs.

The Policy highlights the government’s commitment to ensuring that transfer payment programs are managed with integrity, transparency and accountability. Section 3.6 of the Policy addresses the government’s resolve to ensure “that transfer payment programs are designed, delivered and managed in a manner that is fair, accessible and effective for all involved – departments, applicants and recipients [ . . .].” Furthermore, section 3.7 of the Policy highlights the importance of managing transfer payments in a manner that supports strengthened accountability for public monies. The Policy applies to the contributions made to projects through the Enabling Accessibility Fund.





## MS. FINLEY'S POSITION

It is Ms. Finley's position that she did not contravene subsection 6(1) or section 7 of the *Conflict of Interest Act* when she made the decision to fund the Federation of Chabad Lubavitch's Markham proposal under the Enabling Accessibility Fund, as Minister of Human Resources and Skills Development.

Ms. Finley said that she does not know Rabbi Mendelsohn, the Director of Public Affairs for the Federation, nor did she meet with him to discuss the proposals he submitted on behalf of the Federation.

Ms. Finley said that the Markham proposal was brought to her attention by several colleagues who made representations to her in support of the proposal. However, she could not recall who had made representations. She did not recall any discussion with former Minister Baird on the matter.

Ms. Finley did not recall receiving a letter from Minister Kent urging her to fund the project. She did, however, recall a letter of support from Mr. Cotler, Member of Parliament for Mount Royal. She said it was Mr. Cotler's letter of support, along with verbal representations from others, that led her to have the Markham proposal looked at. When it was pointed out to Ms. Finley that Mr. Cotler's letter was in support of the Federation's Côte Saint-Luc Centre, which is located in Mr. Cotler's Mount Royal riding, and not the Markham Centre, Ms. Finley acknowledged that she may have confused the Federation's two centres, Chabad Côte Saint-Luc and Chabad Markham, both of which begin with the word Chabad, as well as confused the "M" in Mr. Cotler's Mount Royal riding for the "M" in Markham.

Ms. Finley conceded in her second interview that the Markham proposal may have received support from her colleagues due to Rabbi Mendelsohn's persistence in contacting many parliamentary staffers in order to ensure that the Federation's proposals were considered by Departmental officials.

As a result of the representations made to her in support of the Markham proposal, Ms. Finley asked that her staff take a look at the proposal and see how it compared with other submitted proposals. She also asked that it receive a "fair shake." Ms. Finley said she was unaware of the assistance her chief of staff, Mr. Harwood, was affording Rabbi Mendelsohn, nor did she instruct him to do so. Ms. Finley said that she was also not aware that the Federation was the only organization that had been permitted to submit additional information to supplement the Markham proposal during the department's internal assessment phase.



As the then Minister of Human Resources and Skills Development, Ms. Finley said that she was the head of a very large department that handled as many as 25,000 grants and contributions a year. She did not get involved in the early stage of any of these processes and explained that the Department reviewed and evaluated all of the proposals submitted under the Enabling Accessibility Fund before making recommendations to her.

Ms. Finley said that it was on the basis of her staff's favourable review that she asked, on July 26, 2011, that the Markham proposal be sent for external evaluation. However, she said she could not recall what she was told about the proposal. Ms. Finley said that she also did not recall seeing the conclusions of the Department's internal assessment or being briefed on them, nor was she aware that the Markham proposal was one of the 32 proposals that failed the internal assessment. She said that she would not have sent it for external evaluation had she thought it was not a worthwhile proposal.

Ms. Finley said that she was unaware of any political issues within the Jewish community of the Greater Toronto Area relating to funding announcements that Minister Kent had raised with Mr. Wright, former Chief of Staff to the Prime Minister, and that these were not issues that would have necessarily been brought to her attention. She also could not recall a discussion with Mr. Wright relating to the Markham proposal.

On August 26, 2011, Ms. Finley approved funding of the Markham project. Ms. Finley said she based her decision to fund the project on the external evaluation's conclusion that it offered value for money and that it was doable. Ms. Finley said that it was not the role of the Department to make funding decisions; rather, it was her responsibility as Minister. Ms. Finley also cited the Prime Minister's guidance document, *Accountable Government: A Guide for Ministers and Ministers of State – 2011*, which accords her the discretion to make the final funding decision. She noted as well that the Department's August 26, 2011 memorandum did not include a recommendation against funding the Markham proposal. She believes that, had the Department included this recommendation, she would not have proceeded with her funding decision. However, Ms. Finley indicated that since the Federation's Markham proposal had passed the initial screening, it "was determined to have met the criteria for funding by departmental officials."

Ms. Finley maintained that at the time she made her decision, she did not have concerns about funding the proposal because she believed it had been dealt with through a fair process. Based on the evidence presented to her by my Office, Ms. Finley agreed that it would appear that the Markham proposal did receive additional assistance. She added that her goal is always to be objective and transparent.



## ANALYSIS AND CONCLUSIONS

I must determine whether Ms. Finley contravened subsection 6(1) or section 7 of the *Conflict of Interest Act* (Act) in connection with the decision she made in August 2011 to approve funding for the Markham Centre for Skills and Independence. Rabbi Mendelsohn submitted this proposal to the Department on behalf of the Canadian Federation of Chabad Lubavitch (the Federation) in his capacity as Director of Public Affairs for the Federation. At the time Ms. Finley made the decision, she was Minister of Human Resources and Skills Development.

In this examination I was faced with contradictory evidence and, in some cases, claims of lapses of memory. I was unable to get a clear understanding as to why the Markham project was funded, despite continued efforts to do so.

To determine whether Ms. Finley contravened the *Conflict of Interest Act*, it is helpful at the outset to summarize what appears to be the relevant evidence.

### Summary of relevant evidence

Human Resources Skills and Development Canada (the Department) received 355 proposals under the mid-sized projects component of the Enabling Accessibility Fund. Rabbi Mendelsohn submitted three proposals on behalf of the Federation of Chabad Lubavitch. The 167 proposals that passed the initial screening received an internal assessment. One hundred and thirty-five proposals passed the internal assessment. The Markham proposal passed the initial screening but failed the internal assessment. Only three of the 32 proposals that failed the internal assessment scored lower than the Markham proposal.

The evidence shows that Rabbi Mendelsohn made many representations to Mr. Harwood, Chief of Staff to Minister Finley, supporting the three Chabad proposals. Rabbi Mendelsohn made similar representations to several other ministerial offices, including the Prime Minister's Office.

Mr. Kent told me that he had concerns that he shared, in late winter 2011, with Mr. Wright, then Chief of Staff to the Prime Minister, about how funding decisions and announcements were being made in the Greater Toronto Area. These concerns arose from a March 14, 2011 funding announcement relating to a federal funding program of a different government department for another Jewish group in the Greater Toronto Area. That announcement was made very shortly before the issuance of the writs of election for the 2011 election on March 26, 2011.



According to Mr. Kent, a lack of transparency in the selection process leading up to that announcement provoked complaints from various Jewish groups. Rivalries between different components of the Canadian Jewish community, including Chabad Lubavitch, became an issue for Minister Kent as the Member of Parliament for Thornhill, where approximately 40 percent of his constituency was Jewish.

Three officials of the Department testified that sometime in early summer 2011, Minister Kent sent a letter to Ms. Finley supporting the Markham proposal. They recalled that, in the letter, Minister Kent addressed the importance of the Federation and the Markham proposal and urged Ms. Finley to consider funding it. Two of these officials vaguely recalled that Minister Kent referred to a relationship between the Jewish community of the Greater Toronto Area and the Conservative Party of Canada. Minister Kent testified that he did not send, and would not have sent, a letter that referred to such a relationship. Ms. Finley told me she did not recall seeing the letter from Minister Kent. My Office requested, from a number of different sources, that a copy of this letter be provided to me. None was ever provided.

Ms. Curran, then Policy Advisor for Social Affairs in the Prime Minister's Office, testified that she contacted Mr. Harwood to inquire about the status of the Federation's proposals. Mr. Harwood testified that following a meeting of chiefs of staff, he spoke to Mr. Wright and to Mr. Novak, who at the time was Principal Secretary to the Prime Minister, to determine what Rabbi Mendelsohn's relationship was with other ministerial staff and with the staff of the Prime Minister's Office. Mr. Harwood said he was told that Rabbi Mendelsohn tended to exaggerate the nature of his relationships with ministerial staff and with the staff of the Prime Minister's Office. Mr. Wright vaguely recalled a telephone call with Mr. Harwood regarding the Markham proposal.

Mr. Wright wrote to me that the Prime Minister was aware that there was a political issue raised by some members of the Greater Toronto Area Caucus regarding how one or more grant applications by groups within the Jewish community were being handled by the government. However, Mr. Wright did not think that the Prime Minister was focused on any particular project or organization.

Mr. Harwood told Rabbi Mendelsohn at the end of June 2011 that only one of the Federation's proposals could be funded and that the chosen project, if approved, would be the one located in Markham. Rabbi Mendelsohn testified that he was not aware of why the Markham proposal had been identified and that he was only concerned with the fact that one of his projects would be getting funding.

Mr. Wright wrote that Ms. Finley had asked him whether he considered the Markham proposal to be “important.” Mr. Wright told her that he had been asked by the Prime Minister to “sort it out.” Mr. Wright also wrote that Ms. Finley told him that the proposal was eligible for funding and that it had not scored as high as other proposals submitted, but that it had elements that made it a valid and appropriate recipient for funding under a particular funding program. Mr. Wright wrote that he indicated to Ms. Finley that it was important that the matter be considered carefully and fairly.

Ms. Finley testified that she had no recollection of this conversation with Mr. Wright.

Following the Department’s internal assessment, completed in winter 2011, only the top 25 proposals out of a total of 167 proposals that passed the initial screening process for funding were sent for external evaluation by Department officials and subsequently to an internal review committee for further review. The Markham proposal was not one of those 25 proposals. The Department recommended to Ms. Finley that four of the 25 projects be funded.

Ms. Finley testified that she had received several oral representations from colleagues who encouraged her to support the Markham proposal. She could not recall any of them but she did recall a letter from Mr. Cotler, Member of Parliament for Mount Royal. During the examination, I learned that Mr. Cotler had in fact been supporting the Côte Saint-Luc proposal from Montreal.

Mr. Harwood testified that he recommended to Ms. Finley that the Markham proposal be sent for external evaluation, with additional information that Chabad Markham was allowed to submit. Ms. Finley took the decision to instruct the Department to do so.

Following the external evaluation of the Markham proposal, a draft memorandum was prepared by the Department that raised concerns that the Markham proposal was not aligned with the objectives of the program, that the application did not demonstrate that the organization had the capacity to manage the project, and that the community support letters were not very strong and did not provide a rationale as to the need and benefit of the project. The Department proposed that the Federation be informed that the Markham project would not be funded. That memorandum was never sent to Minister Finley’s office.

Departmental official testified that the memorandum was redrafted at the direction of the Senior Assistant Deputy Minister, Mr. Paquette, who instructed them to provide only the findings of the external evaluation. Accordingly, the Department’s concerns and recommendation were not included in the August 26, 2011 memorandum that was sent to Ms. Finley. The memorandum merely asked Ms. Finley if she wished to proceed with funding the Markham project. Ms. Finley told me that, had the Department recommended that the Markham project not be funded, she would not have made the decision to fund it. Mr. Shugart,



Deputy Minister of the former Human Resources and Skills Development Canada, testified that it was unusual for the Department not to include a recommendation in the memorandum to the Minister.

Ms. Finley did take the decision to fund the Markham project. We now know that the government ultimately withdrew its funding for the Markham project, although that was after some public funds had been spent.

### *Assessment of the evidence*

A review of this evidence does not give a clear picture of why Ms. Finley decided to add the Markham proposal to the other four proposals that she had decided to fund as recommended by the Department.

It remains unclear why Ms. Finley took the decision to fund the Markham project. It would appear that the political concerns expressed about funding proposals submitted by Jewish groups in the Greater Toronto Area, the persistence of Rabbi Mendelsohn in seeking support for his three proposals, the involvement of Mr. Wright and Minister Kent, the recommendation of Mr. Harwood, the misunderstanding of Mr. Cotler's recommendation in relation to a different proposal and possibly several other recommendations from colleagues relating to the Markham proposal, the sources of which she cannot remember, all contributed to Ms. Finley's decision to give special consideration to the Markham project and to approve its funding.

As noted in the Findings of Facts, three departmental officials testified that a letter from Minister Kent, in support of the Markham proposal, which included political concerns, had been received within the Department. It would not appear likely that these three officials could all be mistaken about the existence of such a letter, but my Office was unable to obtain a copy of that letter.

The evidence shows that when Ms. Finley raised the matter with Mr. Wright, she was aware that the Markham proposal had not scored as high as other proposals submitted. It appears that Ms. Finley may not have been provided with, and may not have sought, advice from departmental officials following the external evaluation of the Markham proposal.

It was clearly inappropriate that the funding went to the Markham project. This appears to have occurred as a result of the input that Ms. Finley received without regard to the conclusions that resulted from the detailed evaluations by the Department of all the proposals that had been made.

The one conclusion that I can draw is that Ms. Finley clearly afforded preferential treatment in relation to the Federation's Markham proposal in singling out that proposal for an external evaluation and ultimately for funding.

## **Analysis**

I will first address section 7 of the Act.

### ***Prohibition against preferential treatment: Section 7***

Section 7 reads as follows:

*7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.*

Section 7 is very limited in its application. It only applies to cases where preferential treatment is based on the identity of the person or organization that represents the person or organization that receives preferential treatment. I have recommended on a number of occasions that section 7 be broadened to cover all cases where preferential treatment is found.

As I have already concluded that Ms. Finley extended preferential treatment in relation to the Federation's Markham proposal, I have only to determine whether this treatment was based on the identity of its representative, Rabbi Mendelsohn, who made the funding application on behalf of the Federation.

As noted earlier in this report, I heard from a number of witnesses that Rabbi Mendelsohn is well-known on Parliament Hill to a number of ministers and Members. However, Ms. Finley and Rabbi Mendelsohn had no recollection of ever meeting each other. Ms. Finley said she heard of the Federation for the first time in connection with its Enabling Accessibility Fund proposal. There is no evidence to contradict this testimony.

I did not find any evidence that Rabbi Mendelsohn was particularly important to the government as a significant contributor of financial or human resources to the Conservative Party of Canada or in delivering votes. Several witnesses told me that Rabbi Mendelsohn and the Federation are no more important than any of the other cultural groups they communicate with. Although I did not find any evidence to the contrary, I do have some doubts and remain mystified as to why the Markham project was funded.



Without any further evidence, I must conclude that the preferential treatment that Ms. Finley extended to the Federation's Markham proposal was not based on the identity of Rabbi Mendelsohn.

I must find, therefore, that Ms. Finley did not contravene section 7 of the Act in requesting an exceptional external evaluation and ultimately approving funding for the Federation's Markham project.

***Decision-making: Subsection 6(1)***

Subsection 6(1) of the Act prohibits public office holders from making a decision, or participating in the making of a decision, related to the exercise of their official powers, duties or functions if they know or reasonably should know that in making the decision they would be in a conflict of interest.

Section 4 of the Act sets out the circumstances in which a public office holder is understood to be in a "conflict of interest" within the meaning of the Act and must be read with subsection 6(1) when applying that subsection. These provisions read 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.*

[. . .]

*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.*

It is clear that Ms. Finley is exercising an official power, duty or function whenever she makes any decision to fund a proposal under any program of the Department and this was the case for the decision to fund the Markham project. It is also clear that, whenever she makes such a decision, there is an opportunity to further someone's private interests. Both of these conclusions apply, as with any other funding decision, to the decision to fund the Markham proposal.

What remains to be determined is whether she knew or reasonably should have known that in taking such a decision she would be furthering the private interests of her relatives or friends or improperly furthering another person's private interests.

There is no suggestion that Ms. Finley or any of her relatives or friends had a private interest that related to the decision to fund the Markham Centre for Skills and Independence. There is no evidence that Ms. Finley and Rabbi Mendelsohn are friends within the meaning of the Act. As noted above, there is no evidence that Ms. Finley had ever met Rabbi Mendelsohn.

That leaves the question of whether Ms. Finley made a decision that improperly furthered someone's private interests.

I have already determined that the Markham proposal received preferential treatment. This could in and of itself be sufficient to find that the decision to fund the project was improper.

I also considered whether I should take into account the fact that there were political considerations at play in this case. While the evidence shows that there was political involvement around the Markham proposal, Ms. Finley testified that this was not a factor in her decision.

It is, however, useful to examine the rules under which Ms. Finley was exercising her responsibilities in relation to the Enabling Accessibility Fund.

According to the Terms and Conditions of the mid-sized projects component of the Enabling Accessibility Fund, Minister Finley had considerable discretion in deciding which proposals to approve for funding. There is nothing in the Terms and Conditions that requires the Minister to ensure that all steps of a departmental process are followed or to take into account the relative rating of a proposal. The only requirement was that the proposal met the mandatory eligibility criteria for funding, which was determined at the initial screening.

However, the Treasury Board's *Policy on Transfer Payments*, which applies to government departments, including Human Resources and Skills Development Canada, should be taken into consideration as well. This policy highlights the importance of strengthening accountability for public monies and the government's commitment to ensuring that transfer payment programs, like the contributions made to certain projects through the Enabling Accessibility Fund, are managed with the highest level of integrity, transparency and accountability. Section 3.6 of the policy addresses the government's resolve to ensure that:

*[. . .] transfer payment programs are designed, delivered and managed in a manner that is fair, accessible and effective for all involved – departments, applicants and recipients [. . .]*



It appears that some of these guiding principles were not top of mind within the Minister's office or for senior officials of the Department in the handling of the Markham proposal.

I also take into account the Prime Minister's guidance document, *Accountable Government: A Guide for Ministers and Ministers of State* (the Accountable Government Guide). Ms. Finley cited a paragraph from this guideline when she first wrote to me about this examination confirming that she had the authority to reserve any particular decision to herself. It reads:

*As both the legal authority and accountability to Parliament for departmental decision making rests with the Minister, it is within the Minister's authority to reserve any particular decision to him or herself.*

I note, however, that immediately after the excerpt that Ms. Finley cited, the Accountable Government Guide also states:

*It is important in all cases, however, that Ministers determine appropriate program and policy frameworks for public servants to follow in assessing specific files, and that Ministers have the benefit of public service analysis regarding whether criteria have been met before making their decisions.*

In addition, this guideline highlights the importance for ministers and ministers of state to make:

*[. . .] effective use of the public service, which is there to provide professional, non-partisan support in discharging your statutory powers, duties and functions [. . .]*

In this connection, I note that Minister Finley is responsible not only for her own actions but for those of her staff.

It would appear that Ms. Finley was not given all of the relevant information concerning the Markham project, although she appears to have been aware that the proposal had certain deficiencies. Senior departmental officials and staff within her office appear to have deliberately omitted important information. However, it is my opinion that her decision to fund the Markham project lacked rigour. She should have given this decision more attention. It is noteworthy that the government ultimately withdrew the funding for the Markham project because the Chabad Lubavitch of Markham was unable to meet established timelines.



For these reasons, particularly because the Markham project received preferential treatment, I have concluded that Ms. Finley's decision to fund it was improper within the meaning of section 4 and that she should have known that, in making the decision, she would be in a conflict of interest under subsection 6(1). Therefore, I find that Ms. Finley contravened subsection 6(1) of the Act.

### **Conclusion**

I have found, despite my conclusion that there was preferential treatment in this case, that Ms. Finley did not contravene section 7 in light of its limited scope. I have found, however, that Ms. Finley did contravene subsection 6(1) of the Act.





## OBSERVATIONS

I hope that this report will serve as a reminder to all who read it of the importance of upholding the government's commitment to supporting strengthened accountability for public monies and to ensuring that transfer payment programs are designed, delivered and managed in a manner that is fair, accessible and effective for all involved. The public's confidence in the handling of public funds and the fairness of government transfer payment programs is undermined when decision makers do not follow the government's commitment to ensuring that programs like the Enabling Accessibility Fund are managed with the highest level of integrity, transparency and accountability. Ministers are in a position of power and have a special responsibility to ensure that that power is exercised fairly and in a way that is open to all Canadians.

Ironically, Minister Kent raised his concerns with Mr. Wright about a lack of transparency on the part of the government relating to funding announcements and the controversy it had caused in relation to a previous funding announcement by another department. He highlighted a need for fair and consistent application of the rules. It appears that the process followed in approving funding for the Markham project was plagued by some of the same problems that may have originally led Minister Kent to speak to Mr. Wright.





## **SCHEDULE: LIST OF WITNESSES**

Except where noted, the names of all witnesses are listed below according to the organizations to which they belonged at the time the events that are the subject of this examination occurred.

### *Interviews*

#### Office of the Minister of Human Resources and Skills Development

- The Honourable Diane Finley, P.C., Minister
- Mr. Phil Harwood, Director of Policy and Interim Chief of Staff to Minister Finley

#### Office of the Prime Minister

- Mr. David Belous, Advisor, Stakeholder Relations and Outreach
- Ms. Rachel Curran, Policy Advisor for Social Affairs
- Mr. Raymond Novak, Principal Secretary

#### Office of the Minister of the Environment

- The Honourable Peter Kent, P.C., Minister
- Ms. Melissa Lantsman, Director of Communications

#### Office of the Minister of Foreign Affairs

- The Honourable John Baird, P.C., Minister
- Mr. Oren Cainer, Policy Advisor

#### Department of Human Resources and Skills Development Canada

- Ms. Collinda Joseph, Team Leader, Enabling Accessibility Fund
- Ms. Jessica Kerr, Director, Programs Division, Office for Disability Issues
- Ms. Donna Lynette, Manager, Program Division, Office for Disability Issues
- Ms. Nancy Milroy-Swainson, Director General, Office for Disability Issues
- Mr. Jacques Paquette, Senior Assistant Deputy Minister
- Mr. Ian Shugart, Deputy Minister
- Ms. Jennifer Wilson, Program Generalist, Office of Disability Issues

#### Canadian Federation of Chabad Lubavitch

- Rabbi Chaim Mendelsohn, Director of Public Affairs



*Written submissions*

Office of the Prime Minister

- Mr. Nigel Wright, Chief of Staff

Department of Human Resources and Skills Development Canada

- Ms. Jasmine Bois, Manager
- Ms. Christine Nagy, Senior Advisor

