



Office of the
Conflict of interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et à
l'éthique

The Flaherty Report

made under the
CONFLICT OF INTEREST ACT



July 16, 2008

Mary Dawson
Conflict of Interest and
Ethics Commissioner

The Flaherty Report

pursuant to the
THE CONFLICT OF INTEREST ACT

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PREFACE

The *Conflict of Interest Act (Act)* came into force on July 9, 2007, and replaced the *Conflict of Interest and Post Employment Code for Public Office Holders (2006 Code)*.

Pursuant to the transitional provisions of the *Federal Accountability Act* (subsections 3(6) and (8)) and subsection 44(1) of the *Act*, a request for an examination may be made by a member of the Senate or the House of Commons (Member) who has reasonable grounds to believe that a public office holder who was subject to the *2006 Code* did not comply with his or her obligations under that *Code* in respect of events which took place while that *Code* was in effect.

Pursuant to subsection 44(3) of the *Act*, unless the Commissioner determines that the matter is frivolous or vexatious or is made in bad faith, the Commissioner is required to examine the matter. Subsection 44(7) requires the Commissioner to provide to the Prime Minister a report setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the request. Subsection 44(8) provides that, at the same time that the report is provided to the Prime Minister, a copy of the report is also to be provided to the Member who made the request and to the public office holder who is the subject of the request. The report is also to be made public.

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THE REQUEST FOR AN EXAMINATION

On April 30, 2008, the Honourable John McCallum, Member of Parliament for Markham-Unionville, sent me a letter requesting that I review allegations of a potential conflict of interest involving the Honourable James Flaherty, Minister of Finance, in connection with a measure introduced in the 2007 Federal Budget that extended the tax exemption for scholarship, fellowship and bursary income to elementary and secondary school students.

In his letter, Mr. McCallum alleged that Mr. Flaherty is an “owner” of a private school that stood to benefit from the tax exemption and, therefore, that he was in a possible conflict of interest situation. In raising this concern, Mr. McCallum relied on Mr. Flaherty’s public declaration of assets statement under the *Conflict of Interest and Post-Employment Code for Public Office Holders (the 2006 Code)*, in which Mr. Flaherty indicated that he and his wife, Ms. Christine Elliott, were joint mortgagees of a mortgage extended to the Wasdell Centre for Innovative Learning Inc. (the Wasdell Centre).

On May 26, 2008, Mr. McCallum sent my Office a follow up letter in which he amended his original letter of request and acknowledged that neither Mr. Flaherty nor Ms. Elliott were “owner(s)” of the Wasdell Centre. In refining his request for an examination, Mr. McCallum suggested that the “impression of a possible conflict of interest” could be created by the fact that the Wasdell Centre, a private school carrying a mortgage owing to Mr. Flaherty, could potentially benefit from the tax exemption.



THE PROCESS

On May 1, 2008, my Office wrote to Mr. McCallum and acknowledged receipt of his letter of request dated April 30, 2008.

On May 13, 2008, I wrote to Mr. Flaherty to notify him that Mr. McCallum had requested that I examine whether he had contravened the *Conflict of Interest Act* (the Act) either by participating in the decision-making process that led to the introduction of the tax exemption in the 2007 Budget or by neglecting to make a public declaration in the event that Mr. Flaherty had recused himself from participating in these deliberations. I asked Mr. Flaherty to inform me as to whether he participated in any discussions or decision-making processes that could have had a direct impact on the Wasdell Centre and enclosed a copy of Mr. McCallum's letter of April 30, 2008.

On May 23, 2008, Mr. Flaherty informed me that he did not recuse himself from any discussions or decision-making with respect to the tax exemption on the basis that there could be no conflict of interest, real or potential, between the mortgage that he and his wife had extended to the Wasdell Centre and an exemption included in the 2007 Budget effecting a general change to the tax status of scholarship, fellowship and bursary income for elementary and secondary school students.

On May 29, 2008, I requested that Mr. Flaherty provide my Office with a copy of the mortgage agreement and that he confirm that he has no other financial interests or responsibilities with respect to the Wasdell Centre.

On June 10, 2008, Mr. Flaherty provided my Office with a copy of both the original mortgage agreement and a second document discharging the loan and refinancing the outstanding interest. He also confirmed that neither he nor his wife have any other financial interests in the Wasdell Centre.

As part of this examination process, Ms. Elizabeth Moxley-Paquette, the Principal and owner of the Wasdell Centre, was interviewed. Mr. Flaherty was given an opportunity to present additional information and comments in a telephone interview with me on July 4, 2008. He was subsequently given an opportunity to comment on a draft of this report, not including the Analysis and Conclusions.



MR. FLAHERTY'S POSITION

Mr. Flaherty informed me that he did not recuse himself from any of the deliberations relating to the tax exemption in the 2007 Budget because he was not in a real or potential conflict of interest. He indicated that he could not personally benefit from the tax exemption by virtue of his financial interest in the mortgage to the Wasdell Centre. In particular, he argued that there is no direct or specific connection between such a tax exemption and either his son's attendance at a private school or his financial interest in the mortgage extended to the Wasdell Centre. Mr. Flaherty noted that, although his son attended the Wasdell Centre from 2002 to 2006, he was no longer enrolled as a student by the time deliberations began on the 2007 Budget. He also pointed out that the tax exemption could not, in any way, benefit the Wasdell Centre or the parents of its student body because the Centre does not offer any scholarships, fellowships or bursaries.

In this connection, Mr. Flaherty explained that the budget initiative was targeted at larger, established private schools that charge substantial tuition and have sizeable endowment funds from which they provide scholarships, fellowships and bursaries to students who would otherwise be unable to attend. According to Mr. Flaherty, the tax exemption was designed to rectify the "perverse result" by which scholarships, fellowships and bursaries were being treated as taxable income in the hands of parents of students who would not, in the absence of financial assistance, be able to send their children to private schools. Mr. Flaherty claimed that, because the Wasdell Centre is a different category of institution from those targeted by this tax measure (insofar as it does not have either an endowment fund or reasonable prospects of being able to offer scholarships, fellowships or bursaries), it is not in a position to benefit from the tax exemption.



FACTS

Both Mr. Flaherty and Ms. Moxley-Paquette were cooperative and credible. Their accounts of the circumstances in which the loan was extended to the Wasdell Centre were virtually identical and were confirmed in the mortgage documentation provided to my Office. On the basis of the information gathered in this examination, I make the following findings of fact.

The Wasdell Centre

The Wasdell Centre is an Ontario business corporation owned and operated by Elizabeth Moxley-Paquette, who acts as its Director, President, Secretary and Treasurer. Ms. Moxley-Paquette is also the Principal of the Wasdell Centre, which functions as a private elementary and secondary school.

In her interview, Ms. Moxley-Paquette explained the corporate structure of the Wasdell Centre in the following terms. She is the owner of three related companies, Mkt Perspectives Inc., Wasdell Centre for Innovative Learning Inc. and 1625047 Ontario Inc., a numbered corporation registered in Ontario. Mkt Perspectives, which owns the Wasdell Centre, was created first and functions as an umbrella organization for the school. It owns what Ms. Moxley-Paquette referred to as the “mobile assets” used in the school, including such items as desks and computers. The Wasdell Centre for Innovative Learning Inc. functions as the administrative branch of the school and is the entity that both receives student tuition and pays all of the school’s teachers and staff. 1625047 Ontario Inc. was created for the express purpose of purchasing the school building and land that now houses the Wasdell Centre.

Apart from their financial interest as joint mortgagees of the loan extended to Ms. Moxley-Paquette, neither Mr. Flaherty nor Ms. Elliott has any other financial interest in the Wasdell Centre. Moreover, neither Mr. Flaherty nor Ms. Elliott has any other role in the operations, governance or functioning of Mkt Perspectives Inc., the Wasdell Centre for Innovative Learning Inc. or 1625047 Ontario Inc.

Ms. Moxley-Paquette further stated that the Wasdell Centre does not offer any of its students scholarships, fellowships or bursaries. She did, however, suggest that she would like to be able to offer such financial assistance in the future. She also confirmed that Mr. Flaherty’s son was enrolled as a student at the Wasdell Centre between 2002 and the end of the 2005-2006 school year.

The Mortgage Agreement

Mr. Flaherty provided some background information regarding the circumstances in which he and wife, Ms. Elliott, agreed to extend a mortgage to the Wasdell Centre. Mr. Flaherty explained that his son, John, attended the Wasdell Centre as a student between 2002 and 2006. In August 2004, Ms. Moxley-Paquette approached Mr. Flaherty about providing the Wasdell Centre with financial assistance for the purchase of a school



building in Ajax, Ontario that had been declared surplus by the local school board. The Wasdell Centre had, to that point, operated out of a rented house.

On August 24, 2004, Mr. Flaherty and Ms. Elliott agreed to extend a loan of \$250,000 to allow the Wasdell Centre to purchase the public school building in Ajax. The loan, which was made to 1625047 Ontario Inc., was secured by way of a mortgage against the land on which the school is situated.

In February, 2007, Mr. Flaherty and Ms. Elliott were repaid the entire amount of the principal and part of the interest owing on the loan. At this time, the mortgage was discharged and Ms. Moxley-Paquette agreed to pay the rest of the interest, amounting to \$14,000, on or before February 23, 2009.

Previous Advice from the Ethics Commissioner

On April 6, 2006, Mr. Flaherty returned his completed Disclosure Statement and Supplementary Disclosure Statement to my predecessor, former Ethics Commissioner Dr. Bernard Shapiro. At this time, Mr. Flaherty disclosed that he and his wife were joint mortgagees on a \$250,000 mortgage to the Wasdell Centre. On May 9, 2006, Dr. Shapiro advised Mr. Flaherty that, as a result of his mortgage interest in the Wasdell Centre, he should not make any representations on behalf of the Centre nor participate in any decision-making processes in discharging his duties as Finance Minister that are “specifically and directly related to this organization.”

The 2007 Budget

The 2006 Federal Budget was released on May 2, 2006. The 2007 Budget was released on March 19, 2007. The deliberations leading up to the release of the 2007 Budget began in the early autumn of 2006.

The 2006 Budget contained a measure exempting from taxation all scholarship, fellowship and bursary income received by post-secondary students. The 2007 Budget extended this tax exemption to elementary and secondary school students. When the 2007 Budget was released, it was estimated that the tax exemption would benefit the families of approximately 1,000 Canadian children, but would have little fiscal impact.



ANALYSIS AND CONCLUSIONS

In this examination, I have been asked to determine whether, by virtue of a private interest in the mortgage extended to the Wasdell Centre, Mr. Flaherty placed himself in a conflict of interest by participating in the decision-making process that led to the inclusion of the tax exemption in the 2007 Budget and, if so, whether he ought to have recused himself from these deliberations.

The 2006 Code

The deliberations leading up to the 2007 Budget commenced in the early autumn of 2006. Mr. Flaherty's involvement in introducing the tax exemption and the potential conflict of interest alleged by Mr. McCallum must, therefore, be evaluated with respect to the *2006 Code* and not the *Act* as suggested in Mr. McCallum's letter of request.

Conflict of Interest

Subsection 3(4) of the *2006 Code* relates to public office holders having private interests that would be "particularly" or "significantly" affected by government actions in which they participate. That provision reads as follows:

Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

At the time of the deliberations that led to the 2007 Budget, Mr. Flaherty had a private interest in the form of a mortgage interest for a fixed amount secured against the land owned by the Wasdell Centre.

Although Mr. Flaherty participated in the deliberations that led to the inclusion of the tax exemption in the 2007 Budget, there is no direct or specific connection between the tax exemption and his financial interest as a joint mortgagee for the loan extended to the Wasdell Centre. Up to the present, the Wasdell Centre has not offered scholarships, fellowships or bursaries. Mr. Flaherty's private interest cannot, therefore, be understood to have been particularly or significantly affected by his participation in the budget deliberations.

Thus Mr. Flaherty has not contravened subsection 3(4) of the *2006 Code*.

Recusal

In light of this conclusion, the recusal regime provided for in subsections 7(1) and (2) and paragraph (3)(c) as well as paragraph 1(c) of the Schedule to the *2006 Code* is not engaged by the circumstances at issue in this examination.

Mr. Flaherty received advice from the former Ethics Commissioner with respect to his financial interest in the mortgage extended to the Wasdell Centre. In my view,



Mr. Flaherty complied with this advice in that his participation in the deliberations that led to the tax exemption contained in the 2007 Budget did not specifically or directly relate to the Wasdell Centre.

Because there is no specific or direct connection between the tax exemption and Mr. Flaherty's mortgage interest in the Wasdell Centre, there was no need for him to recuse himself from participating in the deliberations and decision-making processes that led to the 2007 Budget.

Conclusions

For the reasons stated above, I have determined that Mr. Flaherty has not contravened subsection 3(4) of the 2006 Code by participating in the decision-making process that led to the tax exemption contained in the 2007 Federal Budget and, therefore, that there was no need for him to recuse himself from these deliberations.

