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Commissioner

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l'éthique

The Hill Report

made under the
CONFLICT OF INTEREST ACT



March 26, 2013

Mary Dawson
Conflict of Interest and
Ethics Commissioner

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made under the
CONFLICT OF INTEREST ACT

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PREFACE

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

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

When an examination is initiated by the Commissioner under section 45, unless it is discontinued, subsection 45(3) requires the Commissioner 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. 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 of the conduct of the Honourable Jay Hill in relation to his post-employment obligations under the *Conflict of Interest Act* (Act). Mr. Hill is the former Member of Parliament for Prince George–Peace River and a former cabinet minister, most recently as Leader of the Government in the House of Commons. He left public office on August 6, 2010.

On or about May 31, 2011, Mr. Hill made calls to the Honourable Edward Fast, Minister of International Trade and Minister for the Asia-Pacific Gateway, the Honourable Christian Paradis, Minister of Industry, and the Honourable John Duncan, then Minister of Aboriginal Affairs and Northern Development, regarding a commercial agreement between a Canadian company, Progress Energy Resources Corporation, and a foreign-owned energy company.

Mr. Hill had learned of this agreement from his spouse, Ms. Leah Murray, in late May 2011. Ms. Murray worked for National Public Relations, which had been retained by Progress Energy to assist it in announcing its agreement with Petronas, the national oil company of Malaysia. National Public Relations had developed a strategic communications plan that included calls between the President of Progress Energy and each of Ministers Fast, Paradis and Duncan to take place the day before the June 2, 2011 public announcement. Ms. Murray was responsible for ensuring those calls were scheduled in advance.

Mr. Hill said that he made the calls on his own initiative, to give his former colleagues a heads-up about the impending announcement of the agreement, and not to assist his spouse with her work. The evidence gathered during this examination, however, led me to conclude that Mr. Hill called those ministers in order to assist his spouse.

Mr. Hill spoke to Ministers Fast and Paradis and to Minister Duncan's Chief of Staff. He informed them of the agreement and tried to get the ministers to call the President of Progress Energy before the agreement was announced. He also called Minister Fast a second time, after the agreement was announced.

I sought to determine whether, in making those calls, Mr. Hill had contravened section 33, subsection 35(3) or section 37 of the Act.

Section 33 prohibits former public office holders from taking improper advantage of their previous public office. I found that Mr. Hill called the three ministers in order to assist his spouse with her work at National Public Relations. He had their direct phone numbers and would have expected the three ministers to take his calls because of the relationships he had established with



them while in public office and because of his high profile role in cabinet as Leader of the Government in the House of Commons. He took advantage of his former status and position to facilitate access to the ministers for his spouse, her employer and its client and thereby contravened section 33.

Subsection 35(3) prohibits former ministers from making representations to former ministerial colleagues during a cooling-off period of two years following their departure from public office. Of the three ministers whom Mr. Hill called, only Minister Paradis was a former ministerial colleague. Based on the evidence, I was not able to conclude that Mr. Hill's communications to Minister Paradis amounted to making representations in order to influence official action of Minister Paradis. I therefore found that Mr. Hill did not contravene subsection 35(3) of the Act.

Section 37 requires former reporting public office holders to report to the Commissioner certain communications and meetings arranged with current public office holders during their post-employment cooling-off period. I found that Mr. Hill did not have a communication identified in section 37. I also determined that Mr. Hill did not arrange a meeting that required him to submit a report under section 37 because he did not know whether any of the ministers would follow up on his calls to them by contacting the President of Progress Energy. I therefore found that he did not contravene section 37.

In conclusion, I found that, in relation to his calls to federal ministers, Mr. Hill contravened section 33 of the *Conflict of Interest Act* but did not contravene subsection 35(3) or section 37.



CONCERNS

On June 12, 2011, I received a letter raising concerns related to two telephone calls made by the Honourable Jay Hill, a former federal government minister, to the Honourable Edward Fast, Minister of International Trade and Minister for the Asia-Pacific Gateway.

According to the letter, the first call took place in late May of 2011. The letter indicated that Mr. Hill had requested that Minister Fast contact a Canadian company that was on the verge of signing a significant resource investment deal with a large multinational company. The letter stated that Mr. Hill told Minister Fast that the Canadian company was not a client of his and he was not lobbying on its behalf. It also stated that Mr. Hill had said that his intent was simply to ensure that Minister Fast was aware that a significant resource agreement was on the verge of being finalized.

According to the letter, Mr. Hill called Minister Fast again on June 10, 2011. Mr. Hill reminded Minister Fast of his previous request and noted that Minister Fast had not acted on it. Mr. Hill then encouraged Minister Fast to contact Mr. Hill's spouse, Ms. Leah Murray, who would provide Minister Fast with further particulars about the Canadian company in question. The letter indicated that Mr. Hill had said that he was aware of the post-employment lobbying prohibitions and reiterated that the Canadian company was not a client of his. It stated that Mr. Hill said that he would forward Ms. Murray's contact information to Minister Fast, adding that, shortly after the call, Mr. Hill sent Minister Fast the contact information for Ms. Murray at National Public Relations.

On June 13, 2011, my Office contacted the person who had sent the letter to confirm my understanding of the information provided.

On July 15, 2011, I telephoned Mr. Hill to inform him about the information that I had received and to ask him about the matter. Mr. Hill confirmed that he had called Minister Fast in late May 2011. He did not remember a second call, but confirmed that he had provided Minister Fast with his spouse's coordinates.

Mr. Hill told me that his spouse was working for National Public Relations and that she had been involved with a file related to an agreement between Progress Energy Resources Corporation (Progress Energy) and Petronas, the national oil company of Malaysia. As this deal was worth over \$1 billion, he felt the relevant federal ministers should get a heads-up, so that they would not be caught off-guard when the matter became public. He said that Progress Energy was not a client of his and that neither his spouse nor Progress Energy had asked him to call.



Mr. Hill did not remember if he gave Minister Fast the name of Progress Energy. He remembered that he did not give Minister Fast the name Petronas, but instead mentioned a foreign buyer.

When asked if he had spoken to other ministers, Mr. Hill said that he had also tried to reach the Honourable John Duncan, then Minister of Aboriginal Affairs and Northern Development. Mr. Hill did not reach Minister Duncan, but spoke instead to Minister Duncan's Chief of Staff, Mr. David McArthur, to give him a heads-up.

Based on the information before me, I was concerned that Mr. Hill may have contravened his post-employment obligations under the *Conflict of Interest Act* (Act), in particular section 33, subsection 35(3) and section 37.

Section 33 of the Act prohibits former public office holders from taking improper advantage of their previous public office. Subsection 35(3) prohibits former ministers from making representations to former ministerial colleagues during a two-year cooling-off period after leaving public office. Section 37 requires former ministers to report to the Commissioner any communication referred to in paragraph 5(1)(a) of the *Lobbying Act*, or any arrangement of a meeting referred to in paragraph 5(1)(b) of that Act, with current public office holders during that same cooling-off period.



PROCESS

On October 14, 2011, I decided to commence an examination on my own initiative in accordance with subsection 45(1) of the *Conflict of Interest Act* (Act), and I wrote to Mr. Hill to inform him accordingly. In my letter, I informed Mr. Hill that, based on the information before me, it appeared that he may have been acting as an intermediary between his spouse and his former government colleagues. I also informed him that the relevant provisions of the Act were section 33, subsection 35(3) and section 37. As a first step, I asked Mr. Hill to provide me with a written response to the concerns by November 14, 2011.

I received Mr. Hill's response on November 9, 2011. In that letter he informed me that, at the end of May 2011, he had spoken to the Honourable Christian Paradis, Minister of Industry, as well as Minister Fast and Minister Duncan's Chief of Staff, about the Progress-Petronas agreement. I wrote to Mr. Hill on December 8, 2011, providing additional information about the examination process. Mr. Hill provided a further response on December 19, 2011.

On February 14, 2012 I conducted a first interview with Mr. Hill. A second interview was conducted on August 27, 2012. Before the second interview, Mr. Hill was given an opportunity to review the transcript from his first interview, as well as excerpts of transcripts of several witness interviews and related documents. After the second interview my Office conducted additional interviews with witnesses. I also received written and oral representations from Mr. Hill's counsel, Mr. Gregory Kane, at various times during the examination process, the last one on March 20, 2013.

My Office interviewed 12 witnesses, some of whom also provided documentary evidence. Written submissions were received from one other witness. The Schedule includes a list of all witnesses.

In keeping with the practice I have established in conducting examinations, Mr. Hill was given an opportunity to comment on a draft of the factual parts of this report before it was finalized; specifically the sections titled Concerns, Process, Findings of Fact and Mr. Hill's Position. I accepted and included in this report some of the comments made by Mr. Hill and his counsel.



FINDINGS OF FACT

Mr. Hill held the cabinet position of Leader of the Government in the House of Commons from October 30, 2008 to August 6, 2010. Before that, he held the position of Secretary of State and Chief Government Whip, a minister of state, from January 4, 2007 to October 29, 2008. From July 9, 2007, when the *Conflict of Interest Act* (Act) came into force, until he left office, he was a reporting public office holder subject to the Act.

On his departure from public office, Mr. Hill became subject to the Act's post-employment obligations. As a former public office holder he is prohibited from taking improper advantage of his previous public office and, as a former reporting public office holder, he was also subject, during a two-year cooling-off period ending on August 6, 2012, to a number of additional post-employment rules. These included a prohibition against making representations to current ministers who were former ministerial colleagues and a requirement to report to the Commissioner certain communications and meetings arranged with current public office holders.

On or about May 31, 2011, Mr. Hill made calls to three federal ministers: the Honourable Edward Fast, Minister of International Trade and Minister for the Asia-Pacific Gateway, the Honourable Christian Paradis, Minister of Industry, and the Honourable John Duncan, then Minister of Aboriginal Affairs and Northern Development. These calls related to a commercial agreement between Progress Energy Resources Corporation (Progress Energy) and Petronas, the national oil company of Malaysia (Progress-Petronas agreement). Mr. Hill spoke with Minister Fast and Minister Paradis, as well as Minister Duncan's Chief of Staff, who had returned Mr. Hill's call to Minister Duncan.

At the time of those calls, Mr. Hill's spouse, Ms. Leah Murray, worked for National Public Relations in Calgary. National Public Relations had been engaged by Progress Energy in May 2011 to assist it with communications and government relations relating to the agreement with Petronas. Ms. Murray was responsible for the federal and Alberta and British Columbia government relations aspects of that file.

In order to determine whether Mr. Hill had contravened the Act, it was necessary to consider the details of Mr. Hill's calls and any connection those calls may have had with the work being done by his spouse, Ms. Murray, at National Public Relations.

Progress Energy's announcement of the agreement with Petronas

On June 2, 2011, Progress Energy announced that it had reached a multimillion dollar agreement with Petronas to share the ownership and development of three shale gas sites in



northeastern British Columbia, and to capture, liquefy and export natural gas to Malaysia. Arrangements for the announcement were made by National Public Relations.

National Public Relations had prepared a draft strategic communications plan relating to the agreement. The draft was provided to my Office by National Public Relations and had been last updated on May 30. No other version of this document was provided to my Office.

The plan provided that, among other things, calls would take place between the President of Progress Energy and three federal ministers on June 1, 2011, the day before the public announcement of the agreement. These calls were to be scheduled in advance by National Public Relations by the end of day May 31, 2011. The three ministers identified were Ministers Fast, Paradis and Duncan. The plan indicated that National Public Relations would organize follow-up face-to-face meetings for June 14, 2011 between Progress Energy officials and federal ministers, including Ministers Fast, Paradis and Duncan.

Ms. Beth Diamond, Ms. Murray's manager at National Public Relations in Calgary, told my Office that Ms. Murray was responsible for all aspects of federal government relations related to the announcement, including the organization of the calls between the President of Progress Energy and federal ministers.

Ms. Murray told my Office that she had identified Ministers Fast and Duncan because of their relation to British Columbia and the energy file. She said that Minister Paradis was selected because he was the Minister of Industry and Industry Canada was responsible for foreign investment in Canada.

The President of Progress Energy told my Office that Minister Fast was identified because he was the Minister of International Trade and the agreement involved a foreign enterprise. He said that Minister Paradis was identified because, as Minister of Industry, he was responsible for the administration of the *Investment Canada Act* and that the Progress-Petronas agreement might be subject to requirements set out in that Act. He said that Minister Duncan was identified because he was from British Columbia.

Mr. Hill's reasons for calling the three ministers

Mr. Hill told me that he had learned about the Progress-Petronas agreement from his spouse, Ms. Murray, in the last week of May 2011. He said that, while speaking with her about the forthcoming announcement of the Progress-Petronas agreement, he volunteered to contact Ministers Fast, Paradis and Duncan. Mr. Hill told me his calls were meant as a heads-up. He wanted to inform the ministers of the announcement of this agreement and give them some



information about it so that they were not caught off-guard by any questions related to the announcement.

Mr. Hill said that he did not want to give anyone a heads-up before receiving confirmation that the agreement would go ahead. He said he thought his spouse had confirmed this on either May 30 or 31, 2011 and that there was therefore a very short time period during which to make his calls before the planned time of the announcement on June 2, 2011.

Mr. Hill said that he had not seen National Public Relations' strategic communications plan before my Office provided him with a copy of the draft. When asked if it was coincidental that he had called the same three ministers that National Public Relations had identified in its communication plan, Mr. Hill said he didn't know, but that anyone with any rudimentary understanding of government relations would know which ministers would be likely targets. However, he also said that Ms. Murray may have told him that National Public Relations was planning to call the offices of the same three ministers, but he did not recall with certainty.

Mr. Hill said he had called Minister Fast because he was a new minister and, as his portfolio was International Trade, the agreement could result in him being asked to comment. Mr. Hill and Minister Fast were both Members of Parliament from British Columbia and had been caucus colleagues since Mr. Fast was first elected on January 23, 2006.

As for Minister Paradis, Mr. Hill said that he contacted him because he was the Minister of Industry and that, based on Mr. Hill's past experience in public office, he was aware that it was not unusual for the Minister of Industry to get a heads-up when a deal like this was pending. Minister Paradis was elected on January 23, 2006 and was a caucus colleague of Mr. Hill. Minister Paradis was appointed to Cabinet on January 4, 2007 and was a cabinet colleague of Mr. Hill from that date until Mr. Hill left office on August 6, 2010. Both Mr. Hill and Minister Paradis were alternate members of Treasury Board in 2007 and 2008 and Mr. Hill said he got to know him better on that Cabinet committee.

Mr. Hill said that he decided to call Minister Duncan because he was a senior minister from British Columbia in the sense that he was the longest serving Member of Parliament from British Columbia in cabinet. It was for this reason that Mr. Hill decided to contact him, even though there were no immediate implications for Minister Duncan's portfolio as Minister of Aboriginal Affairs and Northern Development. Minister Duncan had been a British Columbia caucus colleague of Mr. Hill since they were both first elected in 1993 until Mr. Hill's departure in 2010, with the exception of the period between the 2006 election, when Minister Duncan was not re-elected, and the 2008 election.



I asked Mr. Hill if he had also considered calling the designated senior political Minister for British Columbia. He told me that he believed this was the Honourable James Moore, but that he had not called him because Mr. Moore was unlikely, as Minister of Canadian Heritage, to be asked questions about the announcement.

Details of Mr. Hill's phone calls made in advance of the announcement

Mr. Hill said that he believed that all of his calls to the ministers were made on May 31, 2011. He said that he had direct numbers for the ministers. He called Minister Paradis on the minister's cell phone and may have called the other ministers on their cell phones, but could not specifically recall if he did.

Mr. Hill spoke to Ministers Fast and Paradis, as well as to Mr. McArthur, Minister Duncan's Chief of Staff, who had returned Mr. Hill's call to Minister Duncan. He said that he provided each of them with the same information. He told them that an agreement would be announced shortly in which a foreign-owned energy company was purchasing a major share of the holdings in British Columbia of Progress Energy. He said that he told them that if they wanted more information, they could obtain it from Ms. Murray at National Public Relations or from Progress Energy. Mr. Hill said that, although he did not specifically recall providing each minister with contact information, it is possible that he had done so.

Minister Fast provided my Office with a note to file that he had written on June 10, 2011. It summarized two calls from Mr. Hill related to the Progress-Petronas agreement, one on or about May 31 and one on June 10. During an interview with me, Minister Fast discussed the information in the note and provided me with additional details.

Minister Fast said that, during the first call, Mr. Hill had mentioned a soon-to-be-announced agreement between a Canadian company and a foreign multinational company. He said that Mr. Hill requested that he call the Canadian company and that Mr. Hill had named the Canadian company, but Minister Fast did not recall the name of the company or whether Mr. Hill had left specific contact information. For his part, Mr. Hill said he did not ask Minister Fast to call Progress Energy, but had simply directed him to the company, should Minister Fast wish to learn more about the agreement. Minister Fast said that he did not contact the company following his conversation with Mr. Hill.

Minister Paradis also confirmed that Mr. Hill had called him and spoken to him about the Progress-Petronas agreement prior to the public announcement. Minister Paradis said that the call was a heads-up and also that Mr. Hill had suggested that he contact Progress Energy. Mr. Hill told me that he did not ask Minister Paradis to contact Progress Energy or to take any action with regard to the deal.



Minister Paradis said that he told Mr. Hill that he could not discuss the agreement with him as the matter might involve Minister Paradis' responsibilities under the *Investment Canada Act*. Minister Paradis consulted with his ministerial staff and then asked one of them to call Mr. Hill, which was done at the beginning of June 2011. The staff member said he also explained to Mr. Hill that if this was something that was covered under the *Investment Canada Act* it would be up to the department to advise the minister and that he could not speak with Mr. Hill about it. Mr. Hill told me that he was not aware of whether an approval by the Industry Minister would be required to confirm the Progress-Petronas agreement.

Mr. McArthur, Minister Duncan's Chief of Staff, returned Mr. Hill's phone call to Minister Duncan on June 1, 2011, the day before the announcement. Mr. McArthur said that, during that call, Mr. Hill said he wanted to give a heads-up and that Minister Duncan should be informed as Minister of Aboriginal Affairs and as a senior minister from British Columbia. Mr. McArthur said that Mr. Hill told him that a Progress Energy representative would like to speak with Minister Duncan to explain the agreement before he learned of it from the media and that Mr. Hill had provided him with the name and phone number of someone from Progress Energy. Mr. McArthur said that Mr. Hill did not request that he call Progress Energy, but provided him with the name of the person to call if he was interested and wanted to know more.

Mr. Hill told me that he told Mr. McArthur about the agreement, and informed him that he could call his spouse or Progress Energy if he or Minister Duncan wanted more information, but that he left it to Mr. McArthur's discretion.

Mr. McArthur told me that, after his conversation with Mr. Hill, he told Minister Duncan that Mr. Hill had called and that a British Columbia company was to announce shortly a significant investment from a foreign entity and that, in order for the minister to be knowledgeable about what was going on, Mr. Hill had suggested they might want to contact Progress Energy.

Minister Duncan told me that Mr. McArthur had informed him that Progress Energy wanted to speak with him concerning something important and significant for the northeast region of British Columbia and to advise him that an announcement would follow. He added that Mr. McArthur wanted to make sure Minister Duncan spoke with Progress Energy, which he did. Mr. McArthur set up a phone call, which took place that same day, between Minister Duncan, Mr. McArthur and the President of Progress Energy. Minister Duncan said that, during this call, the President provided additional information about the agreement.

Mr. Hill described these calls to the ministers as simple heads-up calls. The evidence, however, shows that he went further. Minister Fast told me that Mr. Hill had requested that he call Progress Energy. Minister Paradis told me that Mr. Hill had also suggested that he call the



company. Mr. McArthur told me that Mr. Hill told him that someone from Progress Energy would like to speak to Minister Duncan before the announcement was made. Although each of these accounts differs slightly, they indicate to me that Mr. Hill's calls were intended to get the ministers to call the President of Progress Energy and were an effort to assist his spouse in carrying out one of the steps identified in the strategic communications plan that had been developed by National Public Relations.

Although only one of the three ministers chose to contact the President of Progress Energy, Mr. Hill succeeded in bringing the agreement to the attention of all three ministers before the public announcement was made. Ms. Murray was able to report to Progress Energy that this had been accomplished.

Calls planned by National Public Relations

Ms. Murray told my Office that any calls made by Mr. Hill to Ministers Fast, Paradis and Duncan were separate and independent from the scheduling calls to the same ministers identified on National Public Relations' strategic communications plan. She said that it was a coincidence that Mr. Hill had called the same three ministers targeted in the plan. However, the evidence set out below shows that no one from National Public Relations called the ministers' offices before the public announcement.

On May 30, 2011, Ms. Murray sent an email to Ms. Diamond, stating that "My 'assistant' will be contacting the ministers as soon as Mike's [the President of Progress Energy] EA has been briefed." During her interview, Ms. Murray said the "assistant" she was referring to was a junior consultant working at National Public Relations. She said the calls had been assigned to a junior consultant because they were meant only to set up a call between each of the ministers and the President of Progress Energy. She provided my Office with the name of that junior consultant.

My Office interviewed the junior consultant, as well as another junior consultant at National Public Relations who had also worked on the Progress-Petronas file. They both told my Office that they had not called any federal ministers' offices in relation to the Progress-Petronas agreement.

In an email of May 31, 2011 from Ms. Murray to the two junior consultants, she wrote that messages had already been left with Ministers Fast, Paradis and Duncan. She asked the junior consultants to set up calls with a number of provincial ministers from British Columbia and Alberta and with an additional federal minister. One of the junior consultants told my Office that he had not been involved in this file before receiving that email. The other junior consultant told



my Office that he had had some minimal involvement before that in the preparation of the stakeholder chart for the strategic communications plan.

Both Ms. Diamond, who was Ms. Murray's manager at National Public Relations, and the President of Progress Energy told my Office that National Public Relations was responsible for making the scheduling calls to the three federal ministers, but they did not know who, if anyone, had made the calls.

Ministers Fast, Paradis and Duncan told me that they and their staff were not aware of having received any calls from National Public Relations or Progress Energy relating to the Progress-Petronas agreement prior to the public announcement of that agreement on June 2, 2011.

Email exchanges

Mr. Hill and Ms. Murray exchanged several emails in connection with the announcement of the Progress-Petronas agreement. These emails demonstrate an ongoing consultation between Mr. Hill and Ms. Murray.

On May 26, 2011, Mr. Hill forwarded to Ms. Murray and Ms. Diamond emails he had exchanged with a former federal Minister of Foreign Affairs. Mr. Hill had written to the former minister saying he had just been asked to provide advice regarding a potential joint venture between a Canadian company and a crown corporation from Malaysia. He asked the former minister for his impression of Malaysia as a Pacific Rim trading partner and as a country, and how the country was viewed by Canada's government. Mr. Hill told me he did not recall this email exchange but assumed that his spouse had asked him for the advice. Ms. Murray said that she had never seen the emails and that no one had asked Mr. Hill to do this.

In an email on May 27, 2011, Mr. Hill asked Ms. Murray when the announcement, which was to be preceded by the phone calls, was to be scheduled. Mr. Hill told me that the phone calls he was referring to were the ones he had volunteered to make to the three ministers.

On May 30, 2011, Mr. Hill wrote in an email to Ms. Murray, "I suspect I can help you secure those meetings over the convention weekend". Mr. Hill told me that he was referring to the Conservative Party Convention that took place in Ottawa from June 9 to 12, 2011 and that the meetings that he mentioned were meetings that Ms. Murray would be trying to get with some ministers. Mr. Hill told me that he did not, however, assist her in this regard at the convention.

A little later on May 30, Mr. Hill sent an email to Ms. Murray asking for the name and number of a contact person at Progress Energy should the ministers wish to speak with the



President of Progress Energy. The next day, Ms. Murray emailed Mr. Hill asking that, when he reaches “the 3 gentlemen in question”, he ask them to contact the executive assistant to the President of Progress Energy. She added that the assistant was expecting the calls and that she had asked the assistant to book 10-minute calls. Mr. Hill confirmed that “the 3 gentlemen in question” referred to in Ms. Murray’s email were Ministers Fast, Paradis and Duncan.

In another email of May 30, 2011, Mr. Hill asked Ms. Murray to let him know what he was supposed to tell Minister Paradis. Mr. Hill told me that he was referring to a contact name and number to give Minister Paradis in case he wanted to get more information. Ms. Murray said she did not recall what instructions she gave him.

On the morning of May 31, 2011, in an email to Ms. Murray, Mr. Hill asked what would happen to “their grand plan” if he said he was too busy or unable to reach the ministers “to have them coordinate a call”. Mr. Hill told me that “have them coordinate a call” referred to the calls that the ministers would make to the President of Progress Energy, using the contact information provided by Mr. Hill, if they wanted more information about the Progress-Petronas agreement. He said the “grand plan” was a somewhat sarcastic reference to a plan by National Public Relations to have Petronas officials come to Canada.

Later that morning, Ms. Murray sent an email to the senior executive assistant of the President of Progress Energy. She wrote that “we will be making calls to government immediately.” She also provided a script to be used by the President of Progress Energy when he spoke with Ministers Fast, Paradis and Duncan.

A few minutes later, Mr. Hill sent Ms. Murray an email indicating that he had reached Minister Paradis’ voicemail on his cell phone and had left a message asking him to call Mr. Hill back.

In an email of June 1, 2011 from Ms. Murray to the senior executive assistant of the President of Progress, she wrote that “we reached John Duncan’s chief of staff, and while they appreciated the heads up, didn’t feel a call as [sic] necessary. So the fact the ministers were told first hand means we’ve got it covered.” Ms. Murray told my Office that the reference “we reached John Duncan’s chief of staff” referred to the telephone conversation Mr. Hill had with Mr. McArthur after Mr. Hill had left a message for Minister Duncan. The senior executive assistant replied: “I just actually scheduled a phone meeting with Minister John Duncan’s assistant”. Ms. Murray responded, “Wow, I thought they were brushing us off – that’s great news”.

The above-mentioned emails show that Mr. Hill sought direction from his spouse in relation to his calls to the ministers and kept her updated on his progress in making those calls.



Ms. Murray in turn kept officials at National Public Relations and Progress Energy updated on the progress of those calls, although she did not mention in those emails that these were calls made by Mr. Hill.

Mr. Hill said that he was in communication with Ms. Murray about the calls he had volunteered to make so that he could make sure his calls were made at the appropriate time and that he had appropriate contact information in case the ministers wanted to follow up with Progress Energy. He also said that, as he had volunteered to make the calls, she would be interested in knowing if he had reached the ministers.

Ms. Murray was responsible for scheduling calls between the ministers and the President of Progress Energy and it appears that Ms. Murray relied on Mr. Hill to contact the ministers as a first step before the announcement. Mr. Hill requested or suggested that the ministers call the President of Progress Energy before the public announcement. As mentioned earlier, Mr. Hill wrote, in an email of May 31, 2011, that the purpose of his call was to have the ministers “coordinate a call”.

Although there was no evidence of a formal arrangement, the emails, together with the evidence that Mr. Hill was the only one to call the federal ministers prior to the announcement, demonstrate that Mr. Hill was working with his spouse and assisting her to meet her responsibilities at National Public Relations when he made those calls. In my view, given the short time frame within which the calls had to be made, Mr. Hill would likely be more effective in getting the three ministers to contact the President of Progress Energy than if a junior staff member from National Public Relations had contacted the ministers’ offices.

The June 10, 2011 call

Mr. Hill placed a second call to Minister Fast on June 10, 2011. He explained that he decided to make this call after seeing Minister Fast at the Conservative Party Convention that took place in Ottawa from June 9 to 12, 2011. Mr. Hill asked his spouse whether the Minister had contacted her following his first call. She said that he had not, and that prompted him to call Minister Fast a second time.

Mr. Hill said the reason for his second call was to ask Minister Fast if he had Ms. Murray’s contact information in case Minister Fast wanted to follow up and get more information. After the call he sent an email to Minister Fast with her contact information at National Public Relations as well as her personal contact information, adding that she was expecting Mr. Fast’s call.



In Minister Fast's note to file of June 10, 2011, referred to earlier, he wrote that, during the second call, Mr. Hill had reminded him of his earlier request, noted that Minister Fast had not followed up on it and encouraged him to contact his spouse to receive further particulars about the company in question. Minister Fast confirmed this during his interview with me. Mr. Hill told me he had not made a request that Minister Fast call his spouse.

Minister Fast told me that when Mr. Hill called him the second time, it convinced him that this was an effort by Mr. Hill to lobby him on behalf of a Canadian company. Minister Fast told me that he assumed that he was being referred to Ms. Murray because she was a representative of the Canadian company and that she would provide more information or make further requests with respect to her client.

Regardless of whether Mr. Hill requested or encouraged Minister Fast to call his spouse or was simply providing him with contact information, the fact that he called Minister Fast a second time shows that he continued his involvement in the file for which his spouse was responsible.

Mr. Hill, as noted earlier, had offered in late May to help Ms. Murray secure meetings with ministers during the convention weekend. As this call was made during the convention period, I think it is likely that Mr. Hill's second call was made for this purpose.

Meeting with Progress Energy officials and Mr. Hill on June 13, 2011

Mr. Hill remained involved with Ms. Murray's work on the Progress-Petronas file by attending a dinner meeting with her and Progress Energy officials in Ottawa on Monday, June 13, 2011. The purpose of this meeting was to prepare company officials for meetings with government officials, including Minister Duncan, the next day.

On June 6, 2011, Ms. Murray had sent an email to an official from Progress Energy advising him that, if Progress Energy approved, Mr. Hill would be in Ottawa and could join them at the June 13 dinner meeting and that he would be able to provide an additional level of insight prior to the meetings scheduled for the next day. She mentioned that Mr. Hill was a former cabinet minister and former Member of Parliament for Prince George–Peace River.

Attendees at the dinner meeting, including Mr. Hill, stated that this was primarily a social get-together but that the Progress-Petronas agreement was discussed at one point. Mr. Hill told me that he discussed his insights into the political situation in British Columbia at the dinner meeting. He said he also gave them some unsolicited advice on how to make their presentation as effective as possible, in the same way as he had done for others who had met with him when he was a minister. Ms. Murray and the President of Progress Energy said that Mr. Hill had given Progress Energy advice on protocol in meeting with government departments and ministers.



MR. HILL'S POSITION

Mr. Hill's position is that he has not contravened any of his post-employment obligations under section 33, subsection 35(3) or section 37 of the *Conflict of Interest Act* (Act).

With respect to his conversations with Ministers Fast and Paradis, and Mr. McArthur, the Chief of Staff of Minister Duncan, Mr. Hill stated that these calls were made to provide a heads-up to these ministers about the upcoming announcement of an agreement between Progress Energy and a foreign company, so that they would not be taken by surprise by questions after the public announcement. Mr. Hill has pointed to the testimony of Minister Paradis and Mr. McArthur as confirming this description of the conversation. In addition, Minister Paradis said that Mr. Hill suggested that he call Progress Energy and that Mr. Hill was never insistent, nor did he ask him to do anything. As well, Mr. McArthur said Mr. Hill did not ask for anything from either Minister Duncan or the department, specifically denying that Mr. Hill requested him to call Progress Energy.

Mr. Hill also highlighted several portions of Minister Fast's testimony. He noted that Minister Fast testified that Mr. Hill identified Progress Energy but not Petronas, that Mr. Hill did not mention his wife in the first call and that Minister Fast did not recall Mr. Hill leaving a contact name or telephone number for Progress Energy.

Mr. Hill said he learned of the agreement from his spouse, Ms. Murray, and that while discussing the agreement with her, had volunteered to make these calls. However, he stated that he did not do so at her request or on her behalf, or on behalf of her employer, National Public Relations, or Progress Energy, which were not his clients. The testimony of the witnesses from both National Public Relations and Progress Energy indicate that they had not asked him to make the calls. He added that he had not made the calls to assist his spouse, but rather to assist the three ministers by giving them a heads-up in relation to an impending announcement.

Mr. Hill stated that when he spoke to Ministers Fast and Paradis and to Mr. McArthur, he only provided basic information about the Progress-Petronas agreement, never identifying Petronas. He suggested they could obtain further information from Ms. Murray at National Public Relations or from Progress Energy and may have provided contact information. He said that he did not make any representations and did not make any requests for the ministers to contact the President of Progress Energy or Ms. Murray.

Mr. Hill said that the purpose of his second call to Minister Fast was simply to make sure that the Minister had the contact information for his spouse, should he wish to reach her in the future about this agreement or anything else.



Through his counsel, Mr. Hill also made legal submissions on what he considered was the case he had to meet in answer to my concern that he may have acted as an intermediary between his spouse and his former colleagues and that his actions may have contravened his post-employment obligations under the Act found in section 33, subsection 35(3) and section 37.

Counsel argued that there is no provision in the Act that addresses someone being an “intermediary” and that the Commissioner has no power to expand the application of the Act by finding that it is implicitly included. Alternatively, he argued that the meaning of “acting as an intermediary” requires a person’s activities to be integral to parties on either side in order to be the link between them. He submitted that there was no evidence that Mr. Hill had acted in this manner.

In Mr. Hill’s view, he did not act in any way as to take improper advantage of his previous position as a public office holder under the Act, as prohibited by section 33 of the Act. Mr. Hill’s counsel argued that in order to find Mr. Hill in contravention of section 33, in applying dictionary definitions of the terms “taking advantage” and “improper”, Mr. Hill would have had to make good use of or exploited or outwitted other persons as a result of formerly being Government House Leader in a manner that was unseemly, indecent, not in accordance with accepted rules of behaviour or in a dishonest, or irregular manner.

Counsel argued that Mr. Hill’s heads-up calls to former colleagues was not in any way dependent upon having been in the office of Government House Leader. They were former colleagues as Members of Parliament and Ministers Fast and Duncan did not serve in Cabinet with Mr. Hill when he was Government House Leader. Section 33 of the Act does not prohibit contact with former colleagues. In making heads-up calls with no ask, request or pressure to do anything, counsel argued that Mr. Hill did not act in a manner as to take improper advantage of his previous public office.

Counsel also submitted that in light of the generality of section 33, there must be a finding of impropriety under another more specific section of the post-employment rules found in Part 3 of the Act, in this case, subsection 35(3) and section 37. In his view, there is no such impropriety.

With respect to subsection 35(3), only Minister Paradis had been a minister at the same time as Mr. Hill. Mr. Hill’s position is that he did not make any representations to Minister Paradis during his phone call to him, and so did not contravene subsection 35(3) of the Act.

Counsel argued that in its ordinary dictionary definition and in legal interpretation, a representation is a statement made with a view to effecting some change or influencing some



action. At no time did Mr. Hill ask or make a comment about whether the agreement was reviewable under the *Investment Canada Act*. Mr. Hill was merely giving a heads-up by providing information to Minister Paradis and making a suggestion to contact a person in the event that the Minister wished to have more information. These do not constitute making representations.

As for section 37, Mr. Hill's position is that he was not required to file a return under subsection 37(2) of the Act, as the subject-matter of the calls did not fall under paragraph 5(1)(a) of the *Lobbying Act* and he did not arrange a meeting referred to in paragraph 5(1)(b) of the *Lobbying Act*. More particularly, counsel submitted that Mr. Hill did not discuss and certainly did not cause a meeting to occur between a public office holder and another person. No meetings were held as a result of the heads-up calls made by Mr. Hill.



ANALYSIS AND CONCLUSIONS

Analysis

As set out in the section titled Findings of Fact, Mr. Hill became involved, in late May 2011, with the work his spouse was doing at National Public Relations on behalf of Progress Energy. I am aware of six occasions when he assisted her in relation to this file. He consulted a former Minister of Foreign Affairs, he called three current federal ministers, he made a second call to one of the ministers and he participated in a meeting with Ms. Murray's clients to prepare them for meetings with federal officials, including one of the ministers he had called.

The purpose of my examination was to determine whether, in making the calls to current federal ministers, Mr. Hill contravened his post-employment obligations under the Act. The other instances in which he assisted his spouse provide the context in which to consider the significance of those calls.

Mr. Hill, as a former public office holder, was prohibited under section 33 of the Act from taking improper advantage of his previous public office. During a two-year cooling-off period ending on August 6, 2012, he was also prohibited under subsection 35(3), as a former minister, from making representations to former ministerial colleagues and, as a former reporting public office holder, he was required to report, under section 37, certain communications and meetings arranged with current public office holders.

Section 33: taking improper advantage of former public office

Section 33 prohibits former public office holders from taking improper advantage of their former public office. This prohibition applies to all former public office holders for an indefinite period after leaving public office. Section 33 reads as follows:

33. *No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.*

In order to determine whether Mr. Hill contravened section 33, it is necessary to determine whether, by his actions in calling Ministers Fast, Paradis and Duncan about the Progress-Petronas agreement, he acted in a manner as to take improper advantage of his previous public office as a cabinet minister, including most recently as Leader of the Government in the House of Commons.

Section 33 establishes a broad, general provision that requires the circumstances of each case to be considered in order to determine whether the post-employment conduct constitutes taking improper advantage of the previous public office.



“Taking improper advantage” must be determined in accordance with an objective standard. I must consider whether a reasonable person, aware of all the circumstances, would view the conduct as inappropriate and falling short of the standard of ethical conduct that could reasonably be expected of the particular former public office holder in question.

Some guidance as to what would be considered improper can be found in certain other provisions of the Act. The most obvious examples of taking improper advantage of previous public office are set out in section 34. That section prohibits former public office holders from switching sides on files in which they were involved in their previous public office, and from giving advice to clients or colleagues using confidential information obtained during their previous public office.

The obligations that apply under the Act while in public office and the principles underlying these obligations also assist in determining what would be considered to be taking improper advantage of one’s previous public office. Central to many of the provisions of the Act is the prohibition on furthering private interests.

Of particular relevance for this case is section 9 of the Act, which prohibits public office holders from using their positions to seek to influence the decision of another person so as to further their own private interests or those of their relatives, including their spouse or common law partner, or to improperly further the private interests of another person.

The Act puts particular emphasis on ensuring that a spouse or common law partner and dependent children cannot obtain advantage from the reporting public office holder’s position. For example, ministers must make reasonable efforts to include in their confidential reports the same information regarding the assets, liabilities and outside activities of these family members as they provide in respect of themselves. These family members must also refuse to accept gifts that could reasonably be seen as having been given to influence the public office holder.

When Mr. Hill learned that his spouse was doing government relations work for Progress Energy in respect of the Progress-Petronas agreement, a red flag should have been raised when he considered calling federal ministers whom he knew in connection with that work. He should not have made the calls.

Although there was no evidence of a formal arrangement, I have found that Mr. Hill called the three ministers in order to assist Ms. Murray, his spouse, with her work at National Public Relations. Mr. Hill, who had their direct phone numbers, would have expected the three ministers to take his calls because of the relationships he had established with them while in public office and because of his high profile role in cabinet as Leader of the Government in the House of Commons. Mr. Hill took advantage of his former status to facilitate access to the



ministers for his spouse and her employer and client. The purpose of his calls was to make the ministers aware of the agreement and get them to call the President of Progress Energy before the public announcement was made.

Because of his calls, the agreement involving Progress Energy and a foreign company was brought directly to the attention of the ministers in a short timeframe. This can be contrasted with the usual practice at National Public Relations, which was to have junior consultants contact the ministers' offices to try to schedule these telephone meetings. Mr. Hill's calls increased the likelihood that Ms. Murray and her employer would succeed in implementing some of the objectives of the strategic communications plan. In fact, because of Mr. Hill's call, one of the three ministers did speak with the President of Progress Energy following his call.

I am of the view that a reasonable person would find that Mr. Hill's conduct was, in the circumstances, inappropriate and fell short of the standard of ethical conduct that could reasonably be expected of him. I find that Mr. Hill acted in such a manner as to take improper advantage of his previous public office as a cabinet minister, including most recently as Leader of the Government in the House of Commons and therefore that he contravened section 33 of the Act.

Subsection 35(3): making representations to former ministerial colleagues

Subsection 35(3) prohibits former ministers from making representations to current ministers who were ministerial colleagues of the former minister. Under subsection 36(2), this prohibition applies during a two-year post-employment cooling-off period. Subsection 35(3) reads as follows:

35. (3) *No former reporting public office holder who was a minister of the Crown or minister of state shall make representations to a current minister of the Crown or minister of state who was a minister of the crown or minister of state at the same time as the former reporting public office holder.*

Of the three ministers whom Mr. Hill called about the Progress-Petronas agreement, only Minister Paradis had been a minister at the same time as Mr. Hill. Mr. Paradis was Secretary of State (Agriculture), a minister of state, from January 4, 2007 to October 29, 2008, Minister of Public Works and Government Services from June 25, 2008 to January 18, 2010, and then Minister of Natural Resources from January 19, 2010 to May 17, 2011. Mr. Hill was Secretary of State and Chief Government Whip, a minister of state, from January 4, 2007 to October 29, 2008 and was Leader of the Government in the House of Commons from October 30, 2008 to August 6, 2010.



Mr. Hill called Minister Paradis on or about May 31, 2011, during Mr. Hill's two-year post-employment cooling-off period, from August 7, 2010 to August 6, 2012. I must determine whether, during that call, Mr. Hill made representations within the meaning of subsection 35(3) to Minister Paradis.

In the Sullivan Report (October 17, 2012), I interpreted "representations" to mean formal or informal communications made with a view to influencing official decisions, opinions or actions. Merely communicating factual information without this intention to influence official decisions, opinions or actions would not amount to making representations.

Mr. Hill informed Minister Paradis of the Progress-Petronas agreement and suggested that he call the President of Progress Energy before the public announcement was made to obtain more information. In my view, this was an informal communication to get Minister Paradis to call the President of Progress Energy.

In the circumstances of this case, the issue is whether Mr. Hill's suggestion that a call be made, amounts to a representation to influence Minister Paradis to make the call. Minister Paradis said he was not asked to make the call nor was Mr. Hill insistent that he make it. It is impossible to know exactly what was said and how it was said, particularly when compared to the testimony of the other two witnesses who received Mr. Hill's calls. Minister Fast said that Mr. Hill requested that he call the President of Progress Energy while Mr. McArthur testified that Mr. Hill was simply informing him that the President would like to speak to him.

Had Minister Paradis called the President of Progress Energy, he would have done so in his official capacity as Minister of Industry. It is less clear that the call would have been an official action because there was no file related to the Progress-Petronas agreement before him at that time.

I have already found, under section 33, that it was improper for Mr. Hill to have made these calls. I have also found that one of his purposes in making these calls was to get the ministers, including Minister Paradis, to call the President of Progress Energy. However, Minister Paradis testified that Mr. Hill merely suggested this and did not in any way insist on it. Therefore, on balance, I am not able to conclude that Mr. Hill's communications to Minister Paradis amounted to representations in order to influence an official action of Minister Paradis, which would be prohibited by subsection 35(3).

For these reasons, I find that Mr. Hill did not contravene subsection 35(3) of the Act.



Section 37: reporting a communication or arrangement of a meeting

Subsection 37 of the Act requires former reporting public office holders to report to the Commissioner certain communications and meeting arrangements that take place during their post-employment cooling-off period. The relevant portion of section 37 reads as follows:

37. (1) A former reporting public office holder who, during the applicable period under section 36, has any communication referred to in paragraph 5(1)(a) of the Lobbying Act or arranges a meeting referred to in paragraph 5(1)(b) of that Act shall report that communication or meeting to the Commissioner.

[...]

The communications that must be reported under section 37 of the Act are described in paragraph 5(1)(a) of the *Lobbying Act* and the meeting arrangements that must be reported are described in paragraph 5(1)(b) of that Act, as follows:

5. (1) [...]

(a) communicate with a public office holder in respect of

(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,

(iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,

(iv) the development or amendment of any policy or program of the Government of Canada,

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or

(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or

(b) arrange a meeting between a public office holder and any other person.



The calls made by Mr. Hill to Ministers Fast and Paradis and to Minister Duncan's Chief of Staff were communications but did not relate to any of the matters set out in paragraph 5(1)(a) of the *Lobbying Act*. Therefore he was not required to report them under section 37.

With respect to arranging a meeting referred to in paragraph 5(1)(b) of the *Lobbying Act*, I interpret this in the ordinary sense of organizing or setting up a face-to-face or telephone meeting, where there is an understanding of the arrangements for the meeting, although possibly subject to change or cancellation. A report under section 37 would be required when a meeting is arranged, whether or not it actually takes place.

During the calls in question, Mr. Hill either requested, suggested or encouraged the ministers to call the President of Progress Energy. It is clear that he made an effort to facilitate the arrangement of a telephone meeting. However, none of the ministers undertook to call the President of Progress Energy, although one, in fact, did make such a call.

After the conversations, Mr. Hill did not know whether any of the ministers would follow up or not. In fact, there was no follow-up by Minister Fast or Minister Paradis. In the case of Minister Duncan, although there was a follow-up telephone meeting with the President of Progress Energy, Mr. Hill did not know that this telephone meeting would take place when he spoke to Mr. McArthur. This is supported by the email of June 1, 2011 from Ms. Murray to Progress Energy, referred to in the Findings of Fact, in which she reported that Mr. McArthur had said that he did not feel that a phone call was necessary.

For this reason, I do not find that Mr. Hill arranged any meetings. Therefore, he was not required to report under section 37 of the Act.

Conclusions

With respect to section 33 of the Act, Mr. Hill made calls to Ministers Fast, Paradis and Duncan, assuming they would take his calls because of the relationship he had developed with them while in public office and because of his high profile role in cabinet as Government House Leader. He made these calls in order to assist his spouse in carrying out her work for National Public Relations. His calls increased the likelihood that Ms. Murray and her employer would succeed in implementing some of the objectives of the strategic communications plan. Mr. Hill therefore acted in a manner as to take improper advantage of his previous public office as Leader of the Government in the House of Commons, and thereby contravened section 33.

With respect to subsection 35(3) of the Act, I was not able to conclude that Mr. Hill's communications with Minister Paradis amounted to representations in order to influence an



official action of Minister Paradis, who had been a ministerial colleague of Mr. Hill. Therefore, I did not find that Mr. Hill contravened subsection 35(3).

With respect to section 37 of the Act, Mr. Hill did not, with respect to his telephone conversations with Ministers Fast and Paradis and Mr. McArthur, the Chief of Staff of Minister Duncan, have a communication or arrange a meeting that required him to report, and therefore did not contravene section 37.



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 of the events that are the subject of this examination occurred.

Interviews

Office of the Minister of Industry

- The Honourable Christian Paradis, Minister
- Mr. Bruce Winchester, Director of Policy

Office of the Minister of International Trade and Asia Pacific Gateway

- The Honourable Edward Fast, Minister
- Mr. Bill Hawkins, Chief of Staff

Office of the Minister of Aboriginal Affairs and Northern Development

- The Honourable John Duncan, Minister
- Mr. David McArthur, Chief of Staff

National Public Relations

- Mr. Neil Babaluk, Coordinator, Calgary Office
- Ms. Beth Diamond, Managing Partner, Calgary Office
- Ms. Leah Murray, Director, Calgary Office
- Mr. Aaron Zimmerman, Communications Coordinator, Calgary Office

Progress Energy Resources Corporation

- Mr. Michael Culbert, President and Chief Executive Officer
- Mr. Greg Kist, Vice-President of Marketing and Corporate and Government Relations

Written submissions

Office of the Minister of Aboriginal Affairs and Northern Development

- Mr. Steven Hobbs, Chief of Staff (since June 2012)

