



Office of the Conflict
of Interest and Ethics
Commissioner

Commissariat aux
conflits d'intérêts et à
l'éthique

THE RAITT REPORT

made under the
CONFLICT OF INTEREST ACT



April 26, 2012

Mary Dawson
Conflict of Interest and
Ethics Commissioner

The Raitt Report

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CONFLICT OF INTEREST ACT

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Ce document est également publié en français.

This publication is also available online at the following address: <http://ciec-ccie.gc.ca>

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042012-29E



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) or on the initiative of the Conflict of Interest and Ethics Commissioner pursuant to subsection 45(1) of the Act.

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 that the Commissioner 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 44(8) requires that, at the same time that a report is provided to the Prime Minister, a copy of the report be provided also to the Member who made the request and the current or former public office holder who is the subject of the report, and that it be 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) in relation to allegations that the Honourable Lisa Raitt, Minister of Labour, accepted a complimentary upgrade to executive class, authorized by a senior executive of Air Canada, on an Air Canada flight from Toronto to Ottawa on September 25, 2011.

Air Canada was involved in a labour dispute at the time and Ms. Raitt, in her capacity as Minister of Labour, had publicly raised the possibility that the government would introduce back-to-work legislation.

I was asked to examine the matter in relation to several specific sections of the Act. I determined, however, that an examination was warranted only in relation to section 11 of the Act. Section 11 prohibits public office holders from accepting any gift or other advantage that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function.

I found that the flight in question was booked at the last minute after Ms. Raitt had to cancel an earlier flight. Ms. Raitt had used a frequent flyer credit to obtain an upgrade to executive class on the earlier flight. She was entitled to the upgrade as a member of Air Canada's frequent flyer program. She was seated in executive class on the new flight and she had every reason to believe that the credit from the original flight had been transferred.

I found that there was some delay in transferring the credit, but it was eventually assigned to the new flight. The delay in documenting the adjustment was due entirely to delays in the internal processes of Air Canada.

I have concluded that Ms. Raitt did not contravene section 11 of the *Conflict of Interest Act* since the upgrade was obtained using one of Ms. Raitt's frequent flyer credits and did not constitute a gift or other advantage.



ALLEGATIONS

On October 10, 2011, I received an email from a member of the public who identified himself as an Air Canada flight attendant. The email contained a copy of a printout of a passenger report from Air Canada's departure control system. The printout is attached as Schedule I. The sender of the email indicated that the printout showed that Mr. Duncan Dee, Air Canada's Executive Vice President and Chief Operating Officer, authorized a complimentary Executive Class upgrade for the Honourable Lisa Raitt, Minister of Labour, on September 25, 2011.

The flight attendant asked that I investigate the matter, arguing that, in light of the back-to-work legislation that Ms. Raitt was proposing in relation to the flight attendants, this document showed that Air Canada was trying to influence Ms. Raitt in her capacity as Minister of Labour in order to advance the company's interests.

Related media articles started appearing on October 12, 2011. Mr. Dee was described in these articles as being responsible for Air Canada's government relations and corporate communications. He was also identified as one of Air Canada's main spokespersons in relation to the labour dispute that was ongoing at that time between Air Canada and its flight attendants and was often quoted in articles about the dispute.

One of the articles published a statement by Ms. Raitt in which she denied allegations of special treatment. She was quoted as saying that she uses her own upgrade credits when she travels and that she had instructed her staff accordingly. She said that she had no knowledge of any authorization of an upgrade by Mr. Dee.

Between October 12 and October 17, 2011, I received correspondence from five more members of the public, each asking me to investigate the same matter. Three of these individuals identified themselves as current or former employees of Air Canada.

On October 14, 2011, Mr. Yvon Godin, Member of Parliament for Acadie–Bathurst, sent me a letter alleging that Ms. Raitt received a complimentary upgrade to a business class seat on an Air Canada flight. He asked that I investigate this matter. He also included a copy of the passenger report printout I had already received.

He alleged that Ms. Raitt had contravened section 11 of the *Conflict of Interest Act* (Act), which prohibits public office holders from accepting any gift or other advantage that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function. He also cited sections 4, 7, 12 and 23 of the Act, which I address in more detail in the next section called Process.

In his letter, Mr. Godin referred to the labour dispute and noted that the date on which Ms. Raitt would have been given the complimentary seat upgrade, September 25, 2011, was just days after Ms. Raitt had publicly raised the possibility of back-to-work legislation related to the dispute.

On October 19, 2011, I received a request from the Honourable John McCallum, Member of Parliament for Markham–Unionville, regarding a possible breach of section 11 of the Act by Ms. Raitt on the same matter.



THE PROCESS

I contacted Ms. Raitt's office on October 12, 2011, before I had received the requests from Mr. Godin and Mr. McCallum. Her staff told me that they were going to look into this matter and said that, if there was a gift, it would have to be reimbursed.

On October 17, 2011, Ms. Raitt's executive assistant provided me with some additional information. Ms. Raitt's office also provided some documents the next day. My Office also spoke to Mr. Duncan Dee on October 18, 2011, who provided general information on processes used by Air Canada related to upgrades.

With respect to Mr. Godin's request, I was satisfied that he had set out his reasonable grounds to believe that Ms. Raitt had contravened section 11 of the *Conflict of Interest Act* (Act) and that his letter constituted a valid request for an examination under section 44 of the Act.

Although Mr. Godin had also cited sections 4, 7, 12 or 23 of the Act, I did not undertake an examination in relation to those sections because no reasonable grounds had been put forth.

Section 4 defines when a public office holder is in a conflict of interest, but does not set out a specific rule of conduct. Section 7 prohibits preferential treatment to a person or organization based on the identity of someone who is representing them. I found that the circumstances described in Mr. Godin's letter did not support the allegation that preferential treatment may have been offered by Ms. Raitt.

Section 12 restricts the ability of ministers to accept travel on chartered or private aircraft. As the flights in question were commercial, this section does not apply. Section 23 requires ministers to report gifts or other advantages valued at more than \$200 within 30 days. As Mr. Godin's request to my Office was made within that 30-day period, Ms. Raitt could not have contravened this section at that time.

With respect to Mr. McCallum's request, I was satisfied that he also had set out his reasonable grounds to believe that Ms. Raitt had contravened section 11 of the Act.

On October 21, 2011, I wrote to Ms. Raitt to advise her that I was proceeding with an examination under the Act on the request of Mr. Godin and Mr. McCallum. I informed her that the relevant provision of the Act appeared to be section 11. I asked her to respond in writing to the allegations and to provide me with any other documents relevant to my examination by November 4, 2011.

I also wrote to Mr. Godin and Mr. McCallum on October 21, 2011 to inform them that their requests satisfied the requirements set out in subsection 44(2) of the Act with respect to their allegations that Ms. Raitt may have contravened section 11. I informed them that I had commenced an examination under subsection 44(3) and that I had forwarded copies of their requests to Ms. Raitt. I indicated that, although I had received two separate requests, I was going to conduct one examination and issue one report on the matter.

In my letters of October 21, 2011 to Ms. Raitt, Mr. Godin and Mr. McCallum, I also informed them that some information provided to me by Ms. Raitt and Air Canada indicated that



the seat upgrade that she had obtained on the flight of September 25, 2011 may not have been a gift. I noted that I might discontinue my examination if I were able to confirm this information.

On November 8, 2011, I received a letter from Ms. Raitt responding to the allegations made by Mr. Godin and Mr. McCallum. My Office wrote to her on November 16, 2011 to request additional documentation, which was received on November 17, 2011.

At that point, this matter looked relatively straight-forward. However, we experienced difficulty in obtaining sufficiently clear and complete information from Air Canada. As a result it became necessary to conduct interviews with Air Canada staff and others involved in making Ms. Raitt's travel arrangements. It took some time to gather all the information needed to determine the facts. Consequently, I decided to complete the examination rather than to discontinue it.

A list of all the witnesses who were interviewed or provided written submissions is included in Schedule II.



FINDINGS OF FACT

The emails I received from members of the public and the letters I received from Mr. Godin and Mr. McCallum allege that Ms. Raitt received a complimentary upgrade to executive class on an Air Canada flight from Toronto to Ottawa on September 25, 2011. The letters and emails made reference to a passenger report that suggested that the upgrade had been authorized by Mr. Duncan Dee, Air Canada's Executive Vice President and Chief Operating Officer. Ms. Raitt said that she believed that she had used her own credits for the upgrade.

For the purposes of this examination it was necessary to determine the circumstances relating to Ms. Raitt's flight and her seat upgrade in order to determine whether she had received a gift prohibited under subsection 11(1) of the *Conflict of Interest Act* (Act) or had used a credit to which she was entitled as a frequent flyer to obtain the upgrade. It was also necessary to understand how Air Canada processed the upgrade and whether Mr. Dee was involved in the transaction.

Context

The events in question took place during an ongoing labour dispute between Air Canada and its flight attendants.

On September 16, 2011, the union representing Air Canada's 6,800 flight attendants served notice to their employer of their intent to strike. The union had been in negotiations since the collective agreement had expired on March 31, 2011. Three days later, in response to this notice, Ms. Raitt publicly stated that the government would not tolerate any disruption to the travelling public and was weighing its options, including the possibility of tabling a back-to-work bill in Parliament.

On October 9, 2011, after flight attendants had rejected a tentative agreement reached with Air Canada, their union served notice of their intent to strike. On October 11, 2011, Ms. Raitt announced that the federal government had referred the Air Canada labour dispute to the Canada Industrial Relations Board, a decision that prevented flight attendants from going on strike as they had planned to do on October 13, 2011.

Ms. Raitt's Flight of September 25, 2011

On September 23, 2011 Ms. Raitt asked her personal and scheduling assistant to book a flight for her from Toronto to Ottawa for September 25, 2011. Her assistant booked a one-way economy class ticket on Air Canada flight AC464, departing at 7:10 p.m., through a travel agent routinely used by Ms. Raitt's office. Ms. Raitt's assistant also asked the travel agent to upgrade Ms. Raitt's seat to executive class using frequent flyer credits to which she was entitled as an Air Canada Top Tier customer.

The Top Tier customer recognition program allows frequent flyers to earn and accumulate credits for every mile travelled with Air Canada. These credits can be used to purchase seat upgrades on future flights. Based on the frequency of Ms. Raitt's travel on Air Canada, she was, at that time, entitled to Super Elite status, the highest category offered within the program. As a Super Elite member she was also entitled to Air Canada concierge services.



The Treasury Board Secretariat's *Policies for Ministers' Offices – January 2011* provides that Ministers may collect and use air travel loyalty points earned on official government travel. These points can be used for business or personal travel.

Ms. Raitt provided my Office with an email dated September 23, 2011 from the travel agent to a member of her staff confirming that Ms. Raitt had been upgraded to executive class on the 7:10 p.m. flight using one of her frequent flyer credits.

Ms. Raitt told me that, shortly before her 7:10 p.m. flight was scheduled to depart, she told her assistant that she would not be able to make that flight and asked her to book the next available flight. Her assistant confirmed that she passed these instructions on to the travel agent along with a request that Ms. Raitt's seat upgrade be transferred as well.

The travel agent phoned Air Canada's Director of Premium and Concierge Services and asked her to book Ms. Raitt on the next available flight from Toronto to Ottawa. The travel agent confirmed with Air Canada that he had already deducted an upgrade credit for the original flight. Ms. Raitt was then booked on flight AC196 leaving Toronto at 8:10 p.m.

Ms. Raitt told me that, until media stories began to appear on October 12, 2011, she had assumed that the transfer of the upgrade credit had been made. Interviews with Ms. Raitt's assistant and her travel agent confirmed that this had also been their understanding.

Steps Taken by Air Canada to Upgrade Ms. Raitt's Seat

Air Canada told my Office that there are several ways in which a seat upgrade can be made at the last minute. It can be done immediately using their automated electronic system. It can also be done manually, through a written request from an Air Canada agent to Air Canada's Customer Recognition Services.

The Director of Premium and Concierge Services told my Office that Air Canada had recently changed from a paper upgrade system to an electronic system. While all upgrades should be made through the automated system, Air Canada employees are still getting used to it. In some circumstances they find it easier to process upgrades manually. She also noted that Ms. Raitt's flight was booked at the last minute on a Sunday evening, which is normally a busy time, and that this was likely why Ms. Raitt's upgrade was processed manually.

When an upgrade is processed manually, the frequent flyer points are not automatically adjusted and this process can take up to several weeks. To enable the passenger to use the upgrade immediately, the adjustment must be authorized by one of three designated senior executives, or by someone who has been delegated to do so on their behalf. This authorization is recorded on an electronic report called a Departure Control System passenger report, which allows the passenger to be seated in executive class before the upgrade has been reflected in the automated system.

Air Canada officials interviewed by my Office confirmed that the document forwarded to my Office by a member of the public and by Mr. Godin, which, as mentioned earlier, is attached to this report as Schedule I, is a printout of that report relating to Ms. Raitt's second booking for flight AC196.



Air Canada explained the report's annotations to me. With respect to the annotation "COMP U/G TO J", my Office was told that it refers to a complimentary upgrade to executive class. Although the word complimentary would appear to suggest that the upgrade had been given free of charge, my Office was told that Air Canada uses the annotation "COMP" in a variety of circumstances, including those in which a passenger used a frequent flyer credit to which he or she was entitled to obtain the upgrade, but where the credit has not yet been deducted in the system. My Office was told that this was the case for Ms. Raitt.

With respect to the annotation "NO CERT REQUIRED" Air Canada told me that the abbreviation "CERT" refers to a paper upgrade certificate. These certificates were used by Air Canada before the upgrade system was computerized, but some employees still use this annotation. My Office was told that, in this case, it was written in order to inform the Air Canada agent at the gate that Ms. Raitt should be seated in executive class even though no upgrade had yet been processed.

With respect to the annotation "CONFIRMED UPGR AUTH DUNCAN DEE", my Office was told that it refers to the use of the authority delegated by Mr. Duncan Dee to authorize a seat upgrade outside of the automated system. The Director of Premium and Concierge Services told my Office that it was she who instructed staff to use Mr. Dee's name and that she has the delegated authority to do so. She said that these are routine transactions and that Mr. Dee was not personally involved.

The Adjustment of Ms. Raitt's Frequent Flyer Credit Account

Air Canada provided me with a status report for Ms. Raitt's frequent flyer credit account that shows that one credit had been deducted on October 13, 2011. They also provided me with another document from their automated system showing that the credit that had been deducted on October 13, 2011 had been assigned to the 8:10 p.m. flight on September 25, 2011.

October 13 was more than two weeks after Ms. Raitt's flight and one day after media reports began to appear in which Ms. Raitt's passenger report was reprinted and allegations were made that Ms. Raitt had received a complimentary upgrade. The Director of Premium and Concierge Services told my Office that she had taken the usual steps to make the adjustment following Ms. Raitt's flight on September 25, 2011, and that she followed up on the matter as a result of the related media stories. The adjustment had not yet been processed on October 13, but it was done after she followed up.

I am satisfied, based on the evidence provided, that a credit was deducted from Ms. Raitt's account and that the delay in recording this deduction occurred entirely as a result of internal processing delays within Air Canada, of which Ms. Raitt had no knowledge.



MS. RAITT'S POSITION

Ms. Raitt's position is that she has not contravened any provisions of the *Conflict of Interest Act*.

Ms. Raitt told me that, on September 23, 2011, she asked her assistant to book a flight from Toronto to Ottawa for September 25, 2011. She asked her assistant to use a credit to which she was entitled as a frequent flyer to upgrade her seat to executive class. It was her understanding that her seat upgrade would be transferred to the later flight.

She said that she was at no time advised that anything other than a routine transfer of the earlier booking and upgrade had been made.

Ms. Raitt said that it was always her express intention to utilize a personal upgrade and that at no time had she requested or knowingly accepted a complimentary upgrade for the purpose of this travel. She said that at no time had she either discussed this travel with anyone associated with Air Canada management or been advised that a member of Air Canada management team had interceded in any way with respect to her travel arrangements on September 25, 2011.

Ms. Raitt told me that she had met with Mr. Dee several times in official meetings related to labour issues and that Mr. Dee was the lead representative of Air Canada at these meetings. Ms. Raitt told me that, as a matter of policy, she does not communicate with management at Air Canada, except in the context of official meetings in her capacity as Minister of Labour.

Ms. Raitt emphasized that she had regularly used upgrades in the past and had never been aware of any related issues.

Ms. Raitt also noted that, as a frequent flyer with Air Canada, she had more frequent flyer upgrade credits than she could use herself. She therefore does not believe that Air Canada would try to influence her by providing her with a free flight upgrade.



ANALYSIS AND CONCLUSIONS

It was alleged that Ms. Raitt had accepted a complimentary upgrade to an executive class seat on an Air Canada flight while she was Minister of Labour and that this was a gift that could reasonably be seen to have been given to influence her in her official duties as Minister of Labour. At that time, there was a labour dispute within Air Canada and Ms. Raitt, as Minister of Labour, had publicly raised the possibility of back-to-work legislation related to this labour dispute.

Ms. Raitt told me that she had asked her assistant to upgrade her seat to executive class on the original flight from Toronto to Ottawa and provided me with an email from her travel agent confirming that the travel agent had made the upgrade. She told me that it was her expectation that this credit would be transferred when her flight was rescheduled. Ms. Raitt told me that, until media stories began to appear on October 12, 2011, she assumed that this transfer had been made. Interviews with Ms. Raitt's assistant and her travel agent corroborated this.

I accept Ms. Raitt's explanation and believe that, as far as she knew, her upgrade had been properly accounted for using one of her frequent flyer credits.

As I have noted previously, a frequent flyer credit was charged to her account. The delay in charging the credit was due entirely to internal processing delays at Air Canada.

Section 11 of the Act sets out a prohibition against public office holders receiving gifts and other advantages, as well as some exceptions. Subsection 11(1) reads as follows:

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

The evidence shows that the seat upgrade was obtained using one of Ms. Raitt's frequent flyer credits to which she was entitled and did not constitute a gift or other advantage. I therefore conclude that Ms. Raitt did not contravene section 11 of the *Conflict of Interest Act*.



SCHEDULE I

DEPARTURE CONTROL SYSTEM PASSENGER REPORT

AC0196 25SEP YYZ SELECTED PAX
MACCORMACKRAITT LISA MS
YOW J C S 1 J **02D-F 1
CHECKED IN E004AD/YYZ T1 25SEP 23.28Z
AGENT CHECKIN
SECURITY NO. 169
FQTV - [REDACTED]
ELECTRONIC TICKET
ECONOMY/E LATITUDE
COMMENTS COMP U/G TO J NO CERT REQUIRED
GATE COMMENTS CONFIRMED UPGR AUTH DUNCAN DEE CTC CONCIERGE
OFFICE [REDACTED] YYZ
TAG DETAILS AC A 156500*YOW
PREVIOUS TRANSACTION HISTORY
25SEP/2328Z YYZ/T1/E004AD-XH BTP
25SEP/2345Z YYZ/T1/E2068F-SG PASSENGER BOARDED

SA XH L2UFEM
C/IN RQST NO-SMOKING

Printout of a passenger report from Air Canada's departure control system. Ms. Raitt's account number and the name and telephone number of the concierge who handled the transaction have been removed.



SCHEDULE II

LIST OF WITNESS INTERVIEWS AND WRITTEN SUBMISSIONS

Interviews

Office of the Minister of Labour

- Ms. Jacquelyn Chiaravalloti
- The Honourable Lisa Raitt
- Mr. Douglas Smith

Air Canada

- Mr. Duncan Dee
- Ms. Deborah-Ann De Souza
- Ms. Julia Hartman
- Mr. Derek Whitworth

McCord Travel Management Ltd.

- Mr. Scott McCord

Written submissions

- Air Canada

