



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

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

The Wright Report

made under the
CONFLICT OF INTEREST ACT



May 25, 2017

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

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PREFACE

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

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

When an examination is initiated under section 45 of the Act, the Commissioner is required, under subsection 45(3), to provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination, unless the examination is discontinued. Subsection 45(4) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the public office holder or former public office holder who is the subject of the report and made available to the public.

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EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) into the conduct of Mr. Nigel Wright when he was Chief of Staff to then Prime Minister Stephen Harper, in relation to a transfer of funds he made to Senator Mike Duffy to pay back over \$90,000 in claimed living expenses.

Senator Duffy's living expenses were the focus of extensive media coverage and the subject of an independent examination by the Deloitte accounting firm ordered in February 2013 by the Senate Standing Committee on Internal Economy, Budgets and Administration, then chaired by Senator David Tkachuk.

I launched the examination in May 2013, but had to suspend it in June 2013 when the Royal Canadian Mounted Police started investigating the transfer of funds. It had to remain suspended until June 2016.

Senator Duffy claimed living expenses in the National Capital Region as a senator for Prince Edward Island although he had lived in the National Capital Region since the 1970s. Mr. Wright viewed the expense claims as a political issue that could embarrass the Government, and believed it was his duty as Chief of Staff to manage that issue and to ensure that the claimed living expenses received by Senator Duffy be paid back. On February 20, 2013, Senator Tkachuk proposed that if Senator Duffy sent Deloitte a letter admitting his mistake and asking what amount should be repaid, then the examination of his expenses would be discontinued.

Mr. Wright approved Senator Tkachuk's proposal and instructed his staff to prepare a repayment scenario, whereby Senator Duffy would repay the funds and publicly acknowledge having made an error resulting from ambiguities in the rules. In return, the Prime Minister's Office would defend his constitutional residency qualification, which would allow Senator Duffy to continue to sit in the Senate.

In the course of negotiations, Senator Duffy said he did not have the funds to pay the money back. Mr. Wright contacted Senator Irving Gerstein, who chaired the Conservative Fund Canada, to see if the Fund could cover Senator Duffy's housing allowance claims, then estimated at \$32,000, as well as his legal fees. After Mr. Wright told Senator Duffy that the amount to be repaid would be covered, Senator Duffy's lawyer sent Mr. Wright an email setting out additional conditions.

Senator Gerstein confirmed to Mr. Wright that the Conservative Fund Canada would cover Senator Duffy's \$32,000 housing allowance claims and his legal fees. When it was determined



that the amount to be repaid, including interest, was actually more than \$90,000, Mr. Wright decided he would pay it himself. He arranged a bank draft that was hand-delivered to Senator Duffy's lawyer's office on March 26, 2013, on condition that the same amount be immediately submitted to the Receiver General for Canada to reimburse the \$90,172.24 in expense claims.

My examination focused on subsection 6(1) and section 9 of the Act.

Subsection 6(1) prohibits public office holders from making a decision or participating in making a decision related to the exercise of an official power, duty or function if they know or reasonably should know that, in the making of the decision, they would be in a conflict of interest. Public office holders are in a conflict of interest when they exercise an official power, duty or function that provides an opportunity to further their private interests or those of their relatives or friends or to improperly further another person's private interests.

Section 9 of the Act prohibits public office holders from using their position as public office holders to seek to influence others in order to improperly further the private interests of a third party. I had to determine whether Mr. Wright used his position as Chief of Staff to seek to influence the decisions of Senator Irving Gerstein and the Conservative Fund of Canada so as to improperly further Senator Duffy's private interests.

I found that Mr. Wright contravened subsection 6(1) of the Act. Mr. Wright managed the political issue in the context of his responsibility as Chief of Staff and his decisions were therefore made squarely within the exercise of his official powers, duties and functions as a public office holder. He furthered Senator Duffy's financial interests by removing the need for Senator Duffy to use his own funds to reimburse the living expenses. I noted the prohibition against giving compensation to senators under subsection 16(3) of the *Parliament of Canada Act* in determining this payment to be improper. I also determined that Mr. Wright should reasonably have known that taking the decision to give Senator Duffy the funds placed him in a conflict of interest.

I found that Mr. Wright contravened section 9 of the Act. I had already determined, in relation to subsection 6(1), that Mr. Wright acted in his capacity as a public office holder and that he was improperly furthering Senator Duffy's private interests. By asking Senator Gerstein if the Conservative Fund Canada could provide the \$32,000, thought at the time to be the amount Senator Duffy should reimburse, Mr. Wright clearly sought to influence them so as to improperly further Senator Duffy's private interests.

I therefore found that Mr. Wright contravened both subsection 6(1) and section 9 of the Act.

CONCERNS

On May 14 and 15, 2013, the media reported that Mr. Nigel Wright, who was the Chief of Staff to then Prime Minister Stephen Harper, had allegedly helped to negotiate an agreement with the Honourable Mike Duffy, a senator for Prince Edward Island. According to the media, Mr. Wright personally provided Senator Duffy with \$90,172.24 to pay back the allowance that he had received for living expenses in the National Capital Region. Senator Duffy had lived in the National Capital Region for many years.

In the days that followed, the media published additional reports and information on the matter. The media reported that Senator Duffy would not have to repay the money that was given to him by Mr. Wright and that the deal was approved by Mr. Wright in his capacity as Chief of Staff to the Prime Minister. Some articles alleged that Mr. Wright and Senator Duffy were friends, which would have required Mr. Wright to recuse himself from any decisions regarding Senator Duffy.

In light of the information published by the media, I was concerned that Mr. Wright might have breached his obligations under subsection 6(1) and sections 7, 8, 9, and 21 of the *Conflict of Interest Act* (Act).

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

Section 7 of the Act prohibits public office holders from giving preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

Section 8 of the Act prohibits public office holders from using information that is not available to the public to improperly further another person's private interests.

Section 9 of the Act prohibits public office holders from using their position as a public office holder to seek to influence others so as to improperly further another person's private interests.

Section 21 of the Act requires public office holders to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.



Based on the media reports, I had reason to believe that Mr. Wright might have contravened some or all of the above-mentioned provisions of the Act.

PROCESS

On May 15, 2013, I wrote to Mr. Wright to inform him that I had concerns about subsection 6(1) and sections 7, 8, 9, and 21 of the *Conflict of Interest Act* (Act) arising from the media reports.

On May 21, 2013, I commenced an examination on my own initiative under subsection 45(1) of the Act. I wrote to Mr. Wright to inform him of this decision. I told him that the reason for this examination was to determine whether he had contravened subsection 6(1) and sections 8, 9, and 21 of the Act. I asked him to provide me, in writing, with any factual information or documentation related to my examination.

I received Mr. Wright's response on May 28, 2013, and interviewed him on June 5, 2013. During that interview, I informed Mr. Wright that I had decided to exclude section 7 of the Act from my examination. Mr. Wright provided my Office with additional information on June 12, 2013.

On June 13, 2013, I approached Senator Duffy requesting that he testify as a witness, but, that same day, I was informed by the Royal Canadian Mounted Police (RCMP) that it was investigating, under section 121 of the Criminal Code (frauds on the government), the payment of approximately \$90,000 that Mr. Wright made to Senator Duffy. I was therefore required to suspend my examination under subsection 49(1) of the Act and informed Mr. Wright that I was doing so. Subsection 49(1) of the Act requires the Commissioner to immediately suspend an examination if it is discovered that the subject matter of the examination is also the subject matter of an investigation to determine whether a federal offence has been committed.

I was not aware at the time that the RCMP had also considered laying other charges against Mr. Wright for breach of trust, bribery and giving compensation to a senator as prohibited under the *Parliament of Canada Act*. I learned this in a letter dated April 15, 2014, from the Assistant Commissioner of the RCMP National Division, informing me that it had concluded its investigation of Mr. Wright without laying criminal charges. I determined, despite Mr. Wright's arguments to the contrary and despite my own wish, as well, to deal with the examination expeditiously, that I could not resume my examination of Mr. Wright until the conclusion of Senator Duffy's criminal proceedings, since it involved the same subject-matter.

More than two years later, on June 2, 2016, after the appeal period had expired for Senator Duffy's acquittal of the charges relating to the payment of \$90,172.24, I informed Mr. Wright that I was resuming the examination that I had commenced on May 21, 2013. I asked him to provide me with any additional information or documentation by June 30, 2016. Mr. Wright, through his counsel, requested additional time and I granted him an extension.



I received additional documents from Mr. Wright on July 13, 2016 and on August 2, 2016, and additional representations from him on August 26, 2016.

On January 20, 2017, I informed Mr. Wright that I would no longer be pursuing the concerns that I had raised under sections 8 and 21 of the Act, and that I was now limiting my examination to subsection 6(1) and section 9 of the Act. In that letter, I specified that the focus of my examination on section 9 of the Act centred on Mr. Wright's dealings with Senator Irving Gerstein, then Chair of the Conservative Fund Canada.

In response to the alleged contravention of section 9 of the Act, Mr. Wright provided me, on February 15, 2017, with two sworn affidavits, one from Mr. Wright, the other from former Chief of Staff, Mr. Ray Novak.

On March 23, 2017, Mr. Wright provided me with additional submissions in respect of both allegations.

Usually, a second interview is held with the subject of an examination after all of the evidence has been collected. Because Mr. Wright was the only individual required to testify and because all the documentary evidence was gathered from him or from public sources, a second interview was not required. I offered, however, to meet with Mr. Wright if he wished to make any further representations before I finalized the factual portion of my examination.

In keeping with the practice I have established, Mr. Wright and his counsel were given an opportunity to comment on a draft of the factual sections of this report (Concerns, Process, Findings of Fact and Mr. Wright's Position) before it was finalized. These comments have been taken into account in finalizing this report.

FINDINGS OF FACT

There was extensive media coverage relating to the subject matter of this examination and the actions of those involved. As well, these related matters were described in detail in the judgment that the Honourable Justice Charles H. Vaillancourt of the Ontario Court of Justice issued on April 21, 2016, in the criminal proceedings that were instituted against Senator Duffy.

The focus of this examination, under the *Conflict of Interest Act* (Act), is on the facts necessary to make a determination of whether Mr. Wright has contravened subsection 6(1) or section 9 of the Act.

I have relied primarily on the testimony of Mr. Wright on June 5, 2013; on his sworn affidavit dated February 14, 2017; and on his written submissions dated May 28, 2013, June 12, 2013, July 13, 2016, August 2, 2016, August 26, 2016, and March 23, 2017, along with the documents he provided.

Background

Mr. Wright was appointed to serve as a senior adviser to then Prime Minister, Stephen Harper, on November 8, 2010, at which time Mr. Wright became a reporting public office holder subject to the Act. He was appointed Chief of Staff to the Prime Minister on January 1, 2011.

Senator Duffy was appointed to represent Prince Edward Island in 2008, although he had been living in the National Capital Region since the 1970s. In an email from Senator Duffy to Senator David Tkachuk, then Chair of the Senate Standing Committee on Internal Economy, Budgets and Administration, Senator Duffy explained that he was told, following his swearing-in in 2009, that he was entitled to claim living expenses for his residence in the National Capital Region. Senator Duffy had been routinely claiming these secondary residence expenses, as well as *per diems* for meals, since 2009.

On December 3, 2012, media reports relating to living expenses that Senator Duffy had claimed began to appear. Soon after this, the Senate Standing Committee on Internal Economy, Budgets and Administration asked that the living expense claims for secondary residences of three senators, including Senator Duffy, be investigated internally.

Mr. Wright's Involvement

Mr. Wright testified that he had learned, from a news article published on February 5, 2013, that Senator Duffy requested a Prince Edward Island health card through a back door on an accelerated basis. Mr. Wright stated that this indicated to him, for the first time, that



Senator Duffy lacked confidence in the propriety of his own secondary residence expense claims and was preparing to defend them. Mr. Wright wrote that this was the first time he thought this might be an issue.

Mr. Wright indicated in his written submissions that, as media coverage grew, he, as Prime Minister Harper's Chief of Staff, committed to trying to understand the facts. He wrote that on February 6, 2013, after a conversation with Senator Tkachuk, he determined that the expenses that Senator Duffy had claimed would not be defensible.

On February 7, 2013, Mr. Wright wrote in an email from his government email address to his colleagues in the Prime Minister's Office (PMO) that he had spoken to Senator Duffy, Senator Tkachuk, and Senator Marjory LeBreton, all Conservative appointments, and wrote that what Senator Duffy did was wrong in principle and that, he had to be disciplined or had to repay the amounts claimed, or both. Mr. Wright added in that email that "there was ambiguity [in the residency rules] so [they] will be clarified and he [Senator Duffy] will not claim the amount going forward."

In his written submissions, Mr. Wright indicated that he was simply trying to "manage a political issue" and see that the money that he believed had been unfairly claimed by Senator Duffy was paid back. Mr. Wright wrote that he also believed that Senator Duffy should, as a matter of politics and principle and not based on any legal considerations, repay the living expenses he claimed. Mr. Wright told me that the PMO believed Senator Duffy's expense claims were just wrong as a matter of principle, and wrong as a matter of politics.

Mr. Wright explained that, by seeking to remedy the fact that Senator Duffy had received money for expenses that he should not have claimed despite being technically entitled to it, he believed he was serving the Government and the Prime Minister, not serving the private interests of Senator Duffy. He added that his duties as Chief of Staff included managing situations that could embarrass the Government.

On February 8, 2013, the Senate announced that it had given the Deloitte accounting firm the mandate to conduct an independent examination of the expense claims and related documentation of three senators, including Senator Duffy. That examination covered the period from April 1, 2011, to September 30, 2012.

Mr. Wright testified, during his interview with me, that on February 11, 2013, Senator Duffy, after first defending his living expense claims in the National Capital Region, ultimately agreed that he would repay all amounts previously received and would stop making such claims going forward. Mr. Wright indicated in an email sent from his PMO address to

colleagues in the PMO that Senator Duffy would repay the amounts on the condition that admitting that his primary residence was in the National Capital Region did not disqualify him from being a senator for Prince Edward Island.

In that email, Mr. Wright also asked, referring to the Conservative Senate leadership: “Can the leadership PLEASE coordinate every move with us before taking ANY steps.” Mr. Wright wrote to colleagues in the PMO that he did this because of actions taken by Conservative senators that had made the situation more difficult. Mr. Wright had been informed in an earlier email from the Manager of Parliamentary Affairs in the PMO that two senators had asked the Senate Standing Committee on Internal Economy, Budgets and Administration that the process be sped up. He had also been made aware, in that same email, of a motion being prepared by Senator LeBreton that sought a definition of residency and sought to have new rules drafted requiring senators to provide proof of residency.

In his written submissions, Mr. Wright recalled that, on February 13, 2013, when he noticed Senator Duffy speaking with the Prime Minister, he joined the conversation. Mr. Wright wrote that Senator Duffy was arguing that he should not have to repay the living expenses because the rules were unclear and his primary residence really was in Prince Edward Island. Mr. Wright argued that, irrespective of the technical interpretation of the rules, Senator Duffy should repay all of the amounts claimed. Mr. Wright said that the Prime Minister listened to both of them and then concluded the conversation by saying that Senator Duffy should repay the claimed amounts because he did not actually incur out-of-pocket expenses when he was living in the National Capital Region.

Mr. Wright testified that Senator Tkachuk contacted him on February 20, 2013, and proposed the following solution to the situation: if Senator Duffy were to send a letter to Deloitte, on a without prejudice basis, admitting that he made a mistake in his claims and asking what amount should be repaid, then the Steering Committee of the Senate Standing Committee on Internal Economy, Budgets and Administration would stop the Deloitte examination in relation to Senator Duffy. Mr. Wright later wrote that he understood that Senator Tkachuk had previously presented this proposal directly to Senator Duffy.

Development of Scenario for Repayment

In his written submissions, Mr. Wright indicated that he “seized upon” Senator Tkachuk’s initiative and resolved to implement this course of action. That same day, February 20, 2013, his office prepared a memorandum for further action, including media lines. In a subsequent follow-up email to several senior political staffers in the PMO, Mr. Wright outlined several key points related to the repayment scenario:



- The PMO should suggest to Senator Duffy that he would publicly acknowledge having made an error resulting from “ambiguities in the rules and forms.”
- The PMO “would defend his Constitutional residency qualification categorically and never acquiesce to the contrary suggestion.”
- The media lines should be careful to note that there was no “wrongdoing” on Senator Duffy’s part. Rather, the statement was edited by Mr. Wright to focus on the “historical lack of clarity in the rules and forms” and to state that the secondary residence allowance “will no longer be claimed going forward.”
- A series of questions and answers were prepared by Mr. Wright in order to make Senator Duffy “feel comfortable that he will not be stepping on a ledge if he repays.”

Mr. Wright wrote in his letter of May 28, 2013, that when he contacted Senator Duffy later on February 20, 2013, to discuss Senator Tkachuk’s proposal, Senator Duffy said that he did not have the funds to pay the money back. He also wrote that he told Senator Duffy that he would “look into whether we could help with that” and that, on the same day, he contacted Senator Irving Gerstein, then Chair of the Conservative Fund Canada¹, to see whether Senator Duffy’s approximately \$32,000 housing allowance as well as his legal fees could be covered by the Fund. Mr. Wright added in his letter that, a week earlier, Senator Gerstein had, in vague terms, asked whether he could be of any assistance in dealing with the “Senator Duffy matter.”

Mr. Wright wrote that on February 21, 2013, Senator Duffy committed to pay back his housing allowance and to not defend his right to that allowance in public or before the Steering Committee of the Senate Standing Committee on Internal Economy, Budgets and Administration. Mr. Wright added that he then informed Senator Duffy that the amount to be repaid would be covered.

Later on the same evening, Mr. Wright received an email, forwarded to him from counsel in the PMO, setting out additional conditions from Senator Duffy’s lawyer that had not previously been discussed by Mr. Wright and Senator Duffy. That email stated that Senator Duffy would not have to pay back the housing allowance in the National Capital Region himself, and that his legal fees would also be covered. Mr. Wright responded from his government email address by inserting his comments in brackets following each point. He agreed to these conditions on the

¹ The Conservative Fund Canada is a corporation under the *Canada Not-for-profit Corporations Act*. It is the chief agent of the Conservative Party of Canada under the *Canada Elections Act* and, under section 425 of that Act, is responsible for the financial transactions of the Conservative Party.



assumption that Senator Duffy would make a statement and keep his communications within the bounds that had previously been discussed with him.

The conditions set by Senator Duffy's lawyer are set out below in regular type and Mr. Wright's responses are set out in *italics*:

- 1- The Internal Economy Committee will confirm that Senator Duffy has been withdrawn from the Deloitte review

this is what will happen because the only subject matter that Deloitte is reviewing with respect to Sen. Duffy will have become moot, and that understanding is a commitment I will receive from Sens. LeBreton, Tkachuk, and Stewart-Olsen

and it will assure him that his expenses are fully in order to date and will not be subject of any further activity or review by the Committee, the Senate, or any other party.

I think we can say that the Steering Committee will determine that the secondary residence issue will be closed by the act of repaying what has previously been received and not receiving any further payments unless Sen. Duffy's living arrangements change in a way that permit him to receive the payments. I do not think it could say anything about any other expenses as no one has ever raised an issue with respect to them. Only the Senate Committee could make such a commitment, and they cannot reasonably do that.

If any member of the Committee makes any statement, it will ensure that such statement is consistent with the agreed media lines.

this is precisely the position we will take with Sen. LeBreton and the Conservative Senators on the Steering Committee as the media lines will be accurate and we only want these Senators providing accurate comments.

- 2- There will also be a written acknowledgement that Senator Duffy meets and has always met all requirements necessary to sit as the Senator from PEI.

I have been specific with Sen. Duffy that a "senior government source" will make a statement on the day of his statement to the effect that there is no doubt he is qualified to sit as a Senator from PEI. The PM will also give this answer i[f] asked, as will other authorized spokespeople for the Government. That is because it is true. There will not be a written acknowledgement.



- 3- As his apparent ineligibility for the housing allowance stems from his time on the road on behalf of the [Conservative] [P]arty, there will be an arrangement to keep him whole on the repayment. His legal fees will also be reimbursed.

I do not know the amount of the legal fees and their reasonableness, so that has to be disclosed forthwith. Without acknowledging the accuracy of the premise of this item, the Party is open to keeping Sen. Duffy whole since it is clear that any overpayments were innocently received. I have a call into the Party to confirm this as I think that the Senator has a right to have it confirmed.

- 4- If the Senate rules or travel policy are rewritten to permit Senator Duffy to claim a housing allowance in the future he will be free to do so as at that point in time.

The Senator should be free to receive any future allowance or reimbursement to which he is clearly entitled by the rules of the Senate. Where there is any possible ambiguity, he should seek advice in advance from the relevant Senate authorities.

- 5- The PMO will take all reasonable efforts to ensure that members of the Conservative caucus, if they speak on this matter, do so in a fashion that is consistent with the agreed media lines.

Agree, this is our view since the agreed media lines are accurate and we do not wish people to make inaccurate statements.

Email exchanges between the office of the Prime Minister and that of Senator Duffy's lawyer confirmed that Senator Duffy accepted Mr. Wright's responses to Senator Duffy's conditions. Mr. Wright testified in court that he believed that they were the conditions of an "arrangement" between himself and Senator Duffy.

Mr. Wright wrote that on February 22, 2013, Senator Gerstein confirmed to Mr. Wright that the Conservative Fund Canada would cover the \$32,000 housing allowance in the National Capital Region claimed by Senator Duffy as well as his legal fees.

Later that day, Senator Duffy agreed to the scenario. Documentary evidence shows that Senator Duffy had raised objections with the PMO and with the Conservative leadership in the Senate in the preceding days. Despite these objections, Senator Duffy made a public statement on television during which he admitted to having made a mistake by claiming a living allowance, and said that he would pay back the money and that he would not claim a housing allowance going forward.

The Repayment

Initial media reports suggested that Senator Duffy's housing allowance in the National Capital Region totalled more than \$33,000. According to these reports, that figure only included the housing allowance claims for his secondary residence.

Documentary evidence showed that Senator Duffy sent Senator Tkachuk, then Chair of the Senate Standing Committee on Internal Economy, Budgets and Administration, a request to determine "the amount that must be repaid in order to settle this matter in full." Mr. Wright testified that he asked that the repayment be calculated based on the highest possible amount that Senator Duffy might have claimed.

Email exchanges within the PMO showed that on February 26, 2013, the Clerk of the Senate Standing Committee on Internal Economy, Budgets and Administration informed Senator Tkachuk that Senator Duffy had claimed a *per diem* meal allowance in addition to his housing allowance, and that the final tally was approximately \$80,000. Mr. Wright mentioned in an email exchange with colleagues in the PMO, after receiving this information, that he was "beyond furious." He indicated in the email, however, that it would all be repaid.

Mr. Wright told me that he thought it was "outrageous" that Senator Duffy would claim a subsidy for meals in his own home. Mr. Wright stated that he felt that the Conservative Fund Canada would also see it as outrageous. Mr. Wright indicated that when it was later confirmed that the amount to be repaid was in excess of \$90,000 (\$80,000 plus interest), he "thought it was in the public interest to repay these funds" and that he "still thought it was in our political interests to settle the matter and get it resolved and move on."

Mr. Wright testified that on March 1, 2013, he informed Senator Gerstein that he would be paying for the amount himself and that he then received confirmation from Senator Gerstein that the Conservative Fund Canada would not have reimbursed Senator Duffy this higher figure.

Mr. Wright wrote that he took steps to arrange for the transfer of the money to the office of Senator Duffy's lawyer on March 22, 2013. A bank draft was hand-delivered to the office of Senator Duffy's lawyer on March 26, 2013, on the express condition that an equivalent amount of money be submitted to the Receiver General for Canada that same day, from Senator Duffy's personal bank account, to pay back the \$90,172.24 in expense claims.

In May 2013, Deloitte ultimately determined that only \$1,050.60 was subject to repayment by Senator Duffy to the Receiver General for Canada.



Mr. Wright's Duties While Chief of Staff to the Prime Minister

In his written submissions, Mr. Wright described in great detail, and by citing several academic sources, his official role as Chief of Staff to the Prime Minister and his responsibilities over the PMO. His many functions and duties within the PMO were to help advance the Government's agenda in both Houses of Parliament. These included "caucus relations," "parliamentary affairs," and "issues management." Referring to those academic sources, Mr. Wright added that the PMO was expected to operate in a manner that was "politically oriented."

In an affidavit, Mr. Wright described a partisan role that he exercised with the Conservative Party of Canada as being additional to the Chief of Staff role. Mr. Wright described his partisan role as involving interacting with various officials of the Conservative Party, and attending meetings as the representative of the Leader of the Conservative Party of Canada. He wrote that all significant Party decisions, including financial decisions involving the Conservative Fund Canada, were not to be made without consulting with him and, in most cases, without his approval. Mr. Wright stated that these partisan interactions were separate from his official interactions in his capacity as Chief of Staff. Mr. Wright's successor as Chief of Staff, Mr. Ray Novak, affirmed in an affidavit that he performed a similar dual role.

Mr. Wright noted in his affidavit that both his official Chief of Staff role and his unofficial partisan role had political dimensions. He added that the resolution of Senator Duffy's expenses "served the political purposes of both the Government and the Conservative Party."

Mr. Wright agreed that some of the actions he took to resolve Senator Duffy's controversial expense claims did fall within his official capacity as Chief of Staff, and wrote that those included:

- Communications with and instructions to employees of the PMO, Senator Duffy's lawyer and a public relations adviser;
- Direct and indirect communications with senators and their staff;
- Reviewing policies, reports, drafts and documents and commenting on them;
- Providing policy, strategic, communication and issue management advice to the Government.

Mr. Wright also stated in his affidavit that he used either his Conservative Party email address or his personal email address, as well as his personal BlackBerry, when conducting partisan activities. He added that these were separate and apart from his government email address and government-issued BlackBerry, which were not used for partisan purposes.



MR. WRIGHT'S POSITION

Mr. Wright provided me with detailed submissions on the alleged contraventions of subsection 6(1) and section 9 of the *Conflict of Interest Act* (Act).

From the outset, Mr. Wright recognized that he had made errors in judgment in connection with this matter, but he maintained, in his numerous submissions, that these errors did not constitute a contravention of the Act. He explained that his intention was always to advance what he sincerely believed to be in the interest of the Government, the Prime Minister and the public, and that it was not his objective to further Senator Duffy's personal or private interest, and certainly never his own.

Mr. Wright admitted in his letter dated May 28, 2013, that his actions relevant to this matter, other than securing or providing the funds to Senator Duffy, occurred in his official capacity. According to Mr. Wright, when he provided Senator Duffy with \$90,172.24, he was not acting in his official capacity since this action was not part of his duties as Chief of Staff.

He also wrote that his employment duties did not encompass making personal gifts and that his payment was never requested or suggested by any other public office holder and was certainly not expected by his employer or office. He indicated that, since he was not obligated by his employer to do what he did, he acted outside his official capacity in what was purely a private act, and he therefore did not contravene the Act.

Mr. Wright also wrote to me in his letter dated May 28, 2013, that, contrary to what was reported in the media in February 2013, Senator Duffy is not, and never was, a friend of his and that he did not agree to absolve him from blame. He considered Senator Duffy to be a work associate and his relationship to him was no different from his relationship with any other member of the Conservative caucus. He also wrote that he was not related to Senator Duffy.

With respect to the allegation relating to subsection 6(1) of the Act, Mr. Wright provided a number of specific arguments, set out below, as to why, in his view, he did not contravene that provision.

The position of Mr. Wright is that the payment of the \$90,172.24 to Senator Duffy cannot be interpreted as a decision within the meaning of subsection 6(1) of the Act. Mr. Wright argued that this would render the term "decision" meaningless. He submitted that the legislation requires that making a decision involves more than merely taking an action.



Mr. Wright submitted that, in accordance with the rules of interpretation for bilingual statutes, the English and French texts of subsection 6(1) must be examined together and that subsection 6(1) must also be examined in light of section 4 of the Act, which sets out the definition of a conflict of interest.

It is Mr. Wright's position that for subsection 6(1) to apply, it is insufficient that a decision be "related" to an official power, duty or function because only the English text reflects that possibility and that the decision must be part of the actual exercise of an official power, duty or function. This interpretation, according to Mr. Wright, is necessary because it is the common element of the French and English versions of subsection 6(1) of the Act. Mr. Wright also submitted that in the absence of the word "related" in section 4, the conflict of interest only arises when the public office holder actually exercises an official power, duty or function.

Mr. Wright also took the position that the opportunity to further a private interest would have been because he had the financial means to make the payment, and did not arise as a result of the exercise of his official powers, duties or functions.

As well, Mr. Wright's position was that more than a passive result or an unintended consequence is required. He stated that Senator Duffy's interests were not furthered because there was no effort on Mr. Wright's part to affect those interests.

Throughout the matter, Mr. Wright maintained the position that Senator Duffy might technically have been entitled to claim the expenses, but that morally and politically he should not have done so.

Mr. Wright's position was also that since Senator Duffy did not owe that money, the repayment did not constitute a benefit for the Senator and that therefore Mr. Wright would not have furthered Senator Duffy's private interests. In any event, according to Mr. Wright, even if Senator Duffy's private interests were furthered, it was not improper. The argument was that a finding of an impropriety requires some irregularity in the form of a breach of a rule or a policy or preferential treatment. It requires more than the vague sense that the conduct was wrong or that there was a motivation to further a private interest.

Mr. Wright further submitted that, at the time of making the payment, since there were compelling arguments to the effect that Senator Duffy had no repayment obligation, Mr. Wright could not have known and could not reasonably be expected to know that he was furthering the private interests of Senator Duffy. More specifically, Mr. Wright submitted that he could not know or reasonably be expected to know something that was not in fact true.

Mr. Wright added that, by helping to resolve Senator Duffy's situation, he was defending the Government's political interests, not Senator Duffy's personal ones. He concluded that he did not contravene the Act since "political interests are not private interests within the meaning of the Act."

With respect to the allegation under section 9 of the Act, Mr. Wright reiterated the distinction between his official role as Chief of Staff and that of his "partisan role" as a member of the Conservative Party of Canada and the Conservative Fund Canada.

It is Mr. Wright's position that it was in the context of a partisan role that Mr. Wright engaged Senator Gerstein, the Chair of the Conservative Fund Canada, on a possible reimbursement by the Conservative Fund Canada of Senator Duffy's expenses. In Mr. Wright's view, a payment to Senator Duffy by the Conservative Fund Canada would have been no different from any other discretionary payment made to Party members.

Mr. Wright also submitted that, generally speaking, the Act was never intended to apply to a public office holder's participation in a political party's decision making and that, more specifically, section 9 does not apply to the influence that political public office holders may have on decisions made by political parties.

Mr. Wright further submitted that decisions of political parties are not covered by section 9 of the Act because they are not persons and that the Conservative Fund Canada acts only in the capacity of chief agent of the Conservative Party of Canada.





ANALYSIS AND CONCLUSION

Analysis

In relation to subsection 6(1) of the *Conflict of Interest Act* (Act), I must determine whether Mr. Wright, as Chief of Staff to the Prime Minister, made a decision or participated in making a decision in the exercise of an official power, duty or function and knew or reasonably should have known that, in making the decision, he was in a conflict of interest.

In relation to section 9 of the Act, I must determine whether Mr. Wright used his position as Chief of Staff to seek to influence the decisions of Senator Irving Gerstein and the Conservative Fund Canada so as to improperly further Senator Mike Duffy's private interests.

Subsection 6(1) of the Act

Subsection 6(1) of the Act reads as follows:

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

6. (1) Il est interdit à tout titulaire de charge publique de prendre une décision ou de participer à la prise d'une décision dans l'exercice de sa charge s'il sait ou devrait raisonnablement savoir que, en prenant cette décision, il pourrait se trouver en situation de conflit d'intérêts.

Section 4 of the Act sets out the circumstances in which a public office holder is in a conflict of interest within the meaning of the Act. It reads as follows:

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

4. Pour l'application de la présente loi, un titulaire de charge publique se trouve en situation de conflit d'intérêts lorsqu'il exerce un pouvoir officiel ou une fonction officielle qui lui fournit la possibilité de favoriser son intérêt personnel ou celui d'un parent ou d'un ami ou de favoriser de façon irrégulière celui de toute autre personne.

It is Mr. Wright's submission that the transfer of funds to Senator Duffy did not involve a decision. Mr. Wright argued that he did not actually make a decision in the matter, but that he simply took certain actions.



Mr. Wright further submitted that, in the alternative, if there were a decision, the decision was not made in the exercise of an official power, duty or function (“*prise [...] dans l’exercice de sa charge*”), and would therefore not fall within the scope of subsection 6(1) of the Act.

I will deal first with the submission that the decision was not made in the exercise of an official power, duty or function.

The transfer of funds between Mr. Wright and Senator Duffy cannot be examined in isolation—I must look at the broader context in which the funds were transferred to determine whether Mr. Wright was exercising an official power, duty or function.

On February 11, 2013, Mr. Wright took control of the political issue as the Prime Minister’s Chief of Staff when he asked his staff to make sure that the Conservative leadership in the Senate coordinated with the Prime Minister’s Office (PMO) before any action was taken in relation to Senator Duffy’s claims. All of the relevant emails relating to that matter were sent from Mr. Wright’s professional email address as Chief of Staff, including the ones relating to the ultimate payment of \$90,172.24.

If Mr. Wright had not been the Prime Minister’s Chief of Staff, he would not have been made aware of all the implications of this matter. Nor would Mr. Wright have told Senator Duffy that he would look for a solution to the latter’s alleged lack of funds and he certainly would not have imposed any conditions on the money with which Senator Duffy’s living expenses were reimbursed. In fact, Mr. Wright might not have been involved in the matter at all.

Mr. Wright’s testimony and the documentary evidence that has been gathered show that Mr. Wright was involved in a series of negotiations aimed at resolving the political issue that had been created by Senator Duffy’s living expense claims by establishing a repayment scenario. The repayment was one component of this scenario. All the steps of the scenario were managed and approved by Mr. Wright. He was the decision maker for all of these steps, including the final transfer of funds to Senator Duffy.

In my view, Mr. Wright was exercising his powers, duties and functions as Chief of Staff to the Prime Minister when he “seized upon” Senator Tkachuk’s proposal on February 20, 2013, to set up a scenario within which Senator Duffy would be reimbursed. He was also exercising his functions as Chief of Staff when he negotiated the additional conditions with Senator Duffy and his lawyer. In fact, Mr. Wright admitted that all of his actions relevant to this matter, other than providing the funds to Senator Duffy, formed part of his issues-management responsibilities.

The repayment, in my view, satisfied one of the conditions of an agreement between the PMO and Senator Duffy for reimbursement of the impugned living expenses. These conditions

included, among others, an admission of error by Senator Duffy, an undertaking by Senator Duffy to repay the expenses claimed and an agreement that Senator Duffy be kept whole. In return, the PMO would defend Senator Duffy's constitutional residency qualification and would prepare scripted media lines for government officials.

Although it is clear that Mr. Wright was under no obligation to provide the funds from his own pocket, the documentary evidence shows that the funds were provided pursuant to an agreement between the PMO and Senator Duffy, an agreement made in the exercise of Mr. Wright's powers, duties or functions. Mr. Wright had assured Senator Duffy that he would be kept whole. Once the final figure was disclosed, Mr. Wright took it upon himself to resolve the issue, using his own funds, in order to implement the agreement. Therefore, the transfer of the funds cannot be separated from the repayment scenario.

I now turn to the submission that there was no decision involved in the transfer of funds from Mr. Wright to Senator Duffy.

The evidence is clear that Mr. Wright transferred \$90,172.24 to Senator Duffy to be used to reimburse the amount claimed and received by Senator Duffy as living expenses.

I have determined that all of the actions taken by Mr. Wright to manage the political issue stemmed from the approval and implementation of the repayment scenario. Mr. Wright's involvement in the reimbursement of Senator Duffy's expenses was squarely within his responsibilities to manage political issues as Chief of Staff for the Prime Minister of Canada. This was a decision made in the exercise of his official powers, duties and functions as Chief of Staff.

Mr. Wright submitted arguments to support the position that I could not interpret subsection 6(1) as covering decisions that were only "related to" the decision he made or participated in. I have found, as explained above, that the decision was made directly in the exercise of an official power, duty or function and did not merely relate to an exercise of an official power, duty or function. It is therefore not necessary to address the complex issue of statutory interpretation as to whether subsection 6(1) covers decisions that are only "related to" decisions made or participated in.

It remains to be determined whether Mr. Wright knew or reasonably should have known that his decision would have placed him in a conflict of interest under subsection 6(1) of the Act. A conflict of interest under section 4 of the Act is defined as occurring when a public office holder furthers the private interest of himself, his relatives or his friends. It also occurs when a public office holder improperly furthers the private interest of another person.



I am satisfied that Mr. Wright did not further his own private interests and that there are no ties of family or friendship between Mr. Wright and Senator Duffy within the meaning of section 4 of the Act. The remaining issue that must be addressed is whether Mr. Wright improperly furthered Senator Duffy's private interests.

Mr. Wright maintained throughout the examination that the transfer of funds to Senator Duffy was a personal gift. Mr. Wright further submitted that Senator Duffy was technically entitled to the expenses for his secondary residence, even though that entitlement was morally indefensible.

The evidence shows that the payment of \$90,172.24 from Mr. Wright was not a personal gift because it came with a number of conditions. Some of those conditions—most notably, an acknowledgement of an error—were contrary to Senator Duffy's position that he should not have to repay because the rules were unclear. These conditions were directly tied to the payment of \$90,172.24 with the objective of making the political issue that Mr. Wright had identified go away.

According to Mr. Wright, there was no private interest involved because no money was owing and he therefore could not reasonably have known that, in transferring the funds to Senator Duffy, he would be placing himself in a conflict of interest. In fact, at the time the funds were transferred, Mr. Wright did not know the outcome of the Deloitte examination as to whether Senator Duffy would have to reimburse his claimed living expenses. As well, Deloitte ultimately concluded that Senator Duffy did owe \$1,050.60.

After the reimbursement agreement that had been coordinated by Mr. Wright was drawn up, Senator Duffy made a public commitment on February 22, 2013, that he would reimburse those amounts and followed up, subsequently, by making the payment with the funds provided by Mr. Wright. The transfer of money by Mr. Wright to Senator Duffy furthered Senator Duffy's private interests, clearly his financial interests in this case, because it removed the need for Senator Duffy to use any of his own assets to do so.

The transfer of money by Mr. Wright to Senator Duffy, with express conditions attached and over Senator Duffy's persistent objections, was serious enough to raise the question of charges being laid against Mr. Wright for giving compensation as prohibited under subsection 16(3) the *Parliament of Canada Act*. Although the issue of illegality was not pursued, I would consider such an act to be undoubtedly improper.

I am therefore of the opinion that, by providing money to Senator Duffy in return for his commitment to meet the conditions set out in the agreement, Mr. Wright was improperly furthering Senator Duffy's private interests within the meaning of section 4 of the Act.

Mr. Wright knew or reasonably should have known that he was in a conflict of interest situation in this matter.

For the reasons stated above, I find that Mr. Wright contravened subsection 6(1) of the Act.

Section 9 of the Act

Section 9 of the Act prohibits public office holders from using their position to seek to influence the decision of another person in order to improperly further the private interests of a third party.

Section 9 reads as follows:

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

9. Il est interdit à tout titulaire de charge publique de se prévaloir de ses fonctions officielles pour tenter d'influencer la décision d'une autre personne dans le but de favoriser son intérêt personnel ou celui d'un parent ou d'un ami ou de favoriser de façon irrégulière celui de toute autre personne.

There are circumstances in which individuals receive payment or compensation from the financial arms of political parties. Examples include payment of legal expenses, stipends, and reimbursement for partisan travel and entertainment expenses. It is not the purpose of this examination to comment on or review the Conservative Fund Canada's decision-making process, nor is it to extend the scope of the Act to political dealings.

This examination centres on the conduct of Mr. Wright and his involvement, as a public office holder subject to the Act, in the reimbursement of living expenses incurred by Senator Duffy. In that regard, I must determine whether Mr. Wright used his position as Chief of Staff to seek to influence Senator Gerstein and the Conservative Fund Canada so as to improperly further Senator Duffy's private interests.

I do not accept Mr. Wright's submission that the Conservative Fund Canada is not a legal person in light of its connection with the Conservative Party of Canada and therefore not subject to the Act. The Conservative Fund Canada is federally incorporated under the *Canada Not-for-profit Corporations Act*. It has the capacity and all the rights, powers and privileges of a natural person.² It is a separate legal personality from the registered party, which is unincorporated. It is clear that the Conservative Fund Canada is a "person" within the meaning of the Act.

² *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, sub. 16(1).



In my analysis under subsection 6(1) of the Act, I found that everything done by Mr. Wright to try to manage the political issue was done in his capacity as Chief of Staff to the Prime Minister of Canada. This would include his interactions with Senator Gerstein and the Conservative Fund Canada to obtain the \$32,000 thought at the time to be the amount needed for Senator Duffy to reimburse the living allowance he had received.

Mr. Wright argued that there was a distinction between his official role as Chief of Staff and his partisan role with the Conservative Party. He argued that his partisan dealings with the Conservative Party of Canada and the Conservative Fund Canada were excluded from his official role as Chief of Staff. I do not agree that this was the case in this matter. The very nature of Mr. Wright's position—particularly as it relates to issues management—makes it impossible to disassociate and to distinguish his official role from his partisan one in relation to the Duffy matter.

Mr. Wright was informed on February 20, 2013, in the midst of ongoing negotiations, that Senator Duffy did not have the funds to repay the outstanding amount. Mr. Wright contacted Senator Gerstein immediately afterwards to inquire whether the Conservative Fund Canada would provide the funds necessary for repayment, as this was part of the repayment scenario agreed upon and approved by Mr. Wright as Chief of Staff.

I am of the opinion that in his communications with Senator Gerstein, Mr. Wright used his position as Chief of Staff to the Prime Minister to seek to influence Senator Gerstein and the Conservative Fund Canada to reimburse Senator Duffy's living expenses.

I have already found that, by providing funds to Senator Duffy in return for his commitment to meet the conditions set out in the agreement, Mr. Wright knew or ought to have known that he was improperly furthering Senator Duffy's private interests. I am of the opinion that similar reasoning applies in the case of Mr. Wright seeking to influence a decision of any person to make payments that had those conditions attached, including Senator Gerstein and the Conservative Fund Canada.

Mr. Wright sought to influence the decision of Senator Gerstein and the Conservative Fund Canada to cover Senator Duffy's living expenses so as to improperly further Senator Duffy's private interests. For these reasons, I find that Mr. Wright has contravened section 9 of the Act.

Conclusion

For the reasons set out above, I find that Mr. Wright contravened subsection 6(1) and section 9 of the Act.