



Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing

Canadian Human Rights Tribunal

Case Report

April 2013

Office of the Public Sector
Integrity Commissioner
of Canada



Commissariat à l'intégrité
du secteur public
du Canada

The generic masculine has been used in this report to protect the identity of those concerned.

The Report is available on our Web site at: www.psic-ispc.gc.ca

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The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner's Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Canadian Human Rights Tribunal, which is to be laid before the Senate in accordance with the provisions of subsection 38 (3.3) of the *Public Servants Disclosure Protection Act*.

The report contains the findings of wrongdoing; the recommendation made to the chief executive; my opinion as to whether the chief executive's response to the recommendation is satisfactory; and the chief executive's written comments.

Yours sincerely,



Mario Dion
Public Sector Integrity Commissioner
OTTAWA, April 2013

The Honourable Andrew Scheer, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner's Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Canadian Human Rights Tribunal, which is to be laid before the House of Commons in accordance with the provisions of subsection 38 (3.3) of the *Public Servants Disclosure Protection Act*.

The report contains the findings of wrongdoing; the recommendation made to the chief executive; my opinion as to whether the chief executive's response to the recommendation is satisfactory; and the chief executive's written comments.

Yours sincerely,



Mario Dion
Public Sector Integrity Commissioner
OTTAWA, April 2013

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Foreword

I am pleased to present you with this case report of founded wrongdoing, which I have tabled in Parliament as provided for in the *Public Servants Disclosure Protection Act* (the Act).

The *Act* was created to provide a confidential whistleblowing mechanism in the public sector to respond to the need to address and prevent cases of wrongdoing. The disclosure regime established under this *Act* is meant not only to stop these actions from continuing and to take corrective action, but also to act as a general deterrent throughout the federal public sector. This is the reason why founded cases of wrongdoing are required by the *Act* to be reported to Parliament, which is a powerful tool of transparency and public accountability.

Canadians expect that I exercise my role as Public Sector Integrity Commissioner with the highest degree of objectivity and honesty. When this case was first brought to my Office, I decided to recuse myself as the decision-maker due to the potential perception of conflict of interest, as I had previous professional interactions with the alleged wrongdoer. As such, Mr. Joe Friday, Deputy Commissioner acted as the decision-maker in this case, from the decision to launch an investigation to the finding of wrongdoing, as detailed in this report.

In this case report, I have identified Ms. Shirish P. Chotalia, Q.C., former Chairperson of the Canadian Human Rights Tribunal, as the person who committed the wrongdoing. This is the first case report where I have named the individual responsible for the wrongdoing. I have done so because the allegations concerned the personal conduct and behaviour of the Chairperson while she held office. Furthermore, the name of the Chairperson of the Canadian Human Rights Tribunal is information that is publicly available.

I would like to commend the courage of those who chose to approach my Office to make a disclosure of wrongdoing, witnesses and the executives of the Canadian Human Rights Tribunal who were key to the investigation. All public sector employees, regardless of their position or rank in their organization deserve to be treated with respect and to be led with integrity.

Mario Dion, Public Sector Integrity Commissioner

Mandate

The Office of the Public Sector Integrity Commissioner of Canada is an independent organization created in 2007 to establish a safe and confidential mechanism for public servants or members of the public to disclose wrongdoing in, or relating to, the federal public sector. Specifically, my Office has the mandate to investigate disclosures of alleged wrongdoing and complaints of reprisal in the public sector.

Section 8 of the *Public Servants Disclosure Protection Act*, S.C., 2005, c.46 (the *Act*) defines wrongdoing as:

- (a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;
- (b) a misuse of public funds or a public asset;
- (c) a gross mismanagement in the public sector;
- (d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- (e) a serious breach of a code of conduct established under section 5 or 6; and
- (f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

The purpose of investigations into disclosures is, according to the *Act*, to bring the findings of wrongdoing to the attention of the organization's chief executive and to make recommendations for corrective action.

Under subsection 38 (3.3) of the *Act*, I must report to Parliament founded cases of wrongdoing within sixty days after the conclusion of my investigation. This Case Report addresses one such investigation and the findings related to the disclosure of wrongdoing brought forward to my Office.

The Disclosure

On May 4, 2011, my Office received a protected disclosure of wrongdoing against Ms. Shirish P. Chotalia, Q.C., Chairperson of the Canadian Human Rights Tribunal (CHRT).

Ms. Chotalia was appointed Chairperson of the CHRT effective November 2, 2009. Prior to her appointment, Ms. Chotalia practiced law in the areas of immigration, human rights and employment litigation. She was a Commissioner with the Alberta Human Rights Commission from 1989 to 1993, an adjudicator with the Canadian Human Rights Tribunal from 1999 to 2005 and served as an elected Bencher, Law Society of Alberta, from 2008 until her appointment to the CHRT.

The CHRT has a statutory mandate to apply the *Canadian Human Rights Act*. Created by Parliament in 1977, the Tribunal is the only entity that may legally decide whether a person or organization has engaged in a discriminatory practice under that Act.

The discloser(s) alleged that Ms. Chotalia created a dysfunctional workplace for employees and members of the CHRT and jeopardized the CHRT's ability to fulfill its mandate. It was alleged that she harassed and abused staff and members of the CHRT through intimidating and aggressive behaviour, made inappropriate comments and disregarded advice from staff and from the CHRT's Shared Human Resources Services (SHRS).

Furthermore, the discloser(s) alleged that Ms. Chotalia committed irregularities in up to four staffing processes at the CHRT, thereby contravening the *Public Service Employment Act*.

Finally, the discloser(s) alleged that Ms. Chotalia failed to follow government information management security policies, specifically the Operational Security Standard: Management of Information Technology Security.

It was therefore alleged that Ms. Chotalia's actions, as described above, constituted wrongdoing as defined at paragraphs 8(a) and (c) of the *Act*: namely, a contravention of an Act of Parliament or a regulation and gross mismanagement.

Immediately upon reception of the disclosure, and in order to maintain the integrity and impartiality of any decision made in this case, I recused myself and delegated the decision-making authorities to my Deputy Commissioner, Mr. Joe Friday, as I had previous professional interactions with Ms. Chotalia.

After a detailed analysis of the information provided, the Deputy Commissioner initiated an investigation to determine whether Ms. Chotalia committed wrongdoings as defined by paragraphs 8(a) and (c) of the Act by:

- grossly mismanaging her organization by abusing and harassing her staff, disregarding advice from her staff and SHRS and failing to follow Information Technology (IT) policies which included interfering in a police investigation on a hacking incident; and
- contravening the *Public Service Employment Act* in the four staffing processes.

Results of the Investigation

The investigation found that:

- **Ms. Chotalia committed gross mismanagement in the public sector by:**
 - harassing and abusing staff and members of the CHRT through intimidating and aggressive behaviour and making inappropriate comments;
 - disregarding advice from her staff and from the SHRS of the CHRT; and
 - creating a dysfunctional workplace for employees and members of the CHRT that potentially jeopardized the ability of the CHRT to fulfill its mandate.
- **The allegations that Ms. Chotalia failed to abide by the Government policies on Security and IT and interfered in a police investigation on a hacking incident were not substantiated.**
- **The investigation into allegations that Ms. Chotalia contravened the *Public Service Employment Act* in the appointment of staff by circumventing the principles of fairness and in the case of one appointment, the linguistic profile for the position, was ceased under paragraph 24(1)(a) of the Act prior to making a finding because the subject-matter of these allegations is currently under investigation by the Public Service Commission (PSC) and falls within the mandate of the PSC.**

Overview of the Investigation

The investigation, led by Christian Santarossa of my Office, was initiated on November 30, 2011. In January 2012, the investigator began collecting documentary evidence, including records of emails and electronic messages, staffing files and other CHRT records. My Office also retained the services of a consulting firm with technical and specialized knowledge in matters of staffing to examine 11 hiring processes at the CHRT to identify any irregularities.

In accordance with the requirements of the Act, the CHRT and its personnel readily provided the necessary facilities, required information and full access to their offices. In total, 26 witnesses were interviewed by the investigator.

My Office obtained and considered reports of other harassment complaint investigations against Ms. Chotalia that were conducted in 2011. The CHRT had ordered that investigations be conducted into three harassment complaints from employees against Ms. Chotalia. Those reports concluded that the allegations of harassment towards two employees were substantiated.

The investigator considered a report concerning a preliminary fact-finding exercise carried out at the request of the Privy Council Office, into general allegations that, early in her tenure, Ms. Chotalia's behaviour towards employees was abusive and intimidating. Although the information contained in this report was preliminary in nature and contained no findings, it was nonetheless consistent with the information gathered during the course of my Office's investigation.

In the course of the investigation, and after the initial collection and analysis of the evidence, the Deputy Commissioner determined that there could be sufficient grounds to make a finding of wrongdoing that could adversely affect Ms. Chotalia. Therefore, on August 29, 2012, my Office provided Ms. Chotalia the preliminary findings for her comments in keeping with my obligations under subsection 27(3) of the Act to provide full and ample opportunity to persons who may be adversely affected to respond to allegations of wrongdoing. Ms. Chotalia did not respond to the letter of preliminary findings. At the time of the completion of the preliminary findings, my Office believed that the Clerk of the Privy Council should also be given an opportunity to comment because the allegations concerned the head of the CHRT who was a Governor in Council appointee, and so such opportunity was also provided to the Clerk of the Privy Council, Mr. Wayne Wouters.

Although Ms. Chotalia initially agreed to be interviewed by the investigator, she cancelled the first interview scheduled on April 27, 2012 and indicated she was unable to participate in the investigation. Subsequently, my Office made every effort possible to afford Ms. Chotalia an opportunity to participate in the investigation and to present her version of events to respond to the allegations under investigation. Ms. Chotalia never responded to any of our further requests to participate and comment. Given the quantity and quality of the evidence obtained in the course of this investigation, the Deputy Commissioner determined that the investigation would be concluded and that a finding of wrongdoing could fairly and justifiably be made.

Ms. Chotalia resigned in November 2012, prior to the conclusion of this investigation.

Summary of Findings

Gross mismanagement

The expression “gross mismanagement” is not defined in the *Act*. The factors that my Office considers in investigating an allegation of gross mismanagement under paragraph 8(c) of the *Act* include:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than *de minimis* wrongdoing or negligence;
- management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- the deliberate nature of the wrongdoing; and
- the systemic nature of the wrongdoing.

In determining that the conduct and actions of Ms. Chotalia were serious enough to constitute gross mismanagement, the following factors were taken into account:

- the deliberate nature of the wrongdoing;
- the frequency of the wrongdoing;
- the serious impact of the wrongdoing on the wellness of her employees and fellow members of the CHRT;
- that the misconduct is completely incompatible with the trust that the Government of Canada placed in her as Chairperson of the CHRT; and
- the serious impact of the wrongdoing on the public interest and trust in Ms. Chotalia and of the CHRT itself, which has the mandate to uphold the *Canadian Human Rights Act*.

The investigation found that Ms. Chotalia committed gross mismanagement by harassing and behaving abusively toward eight employees of the CHRT; systematically disregarding advice from her executive team as well as from the CHRT’s SHRS; and, repeatedly making improper and inappropriate remarks in the workplace.

- Harassment and abuse of authority
 - Ms. Chotalia repeatedly harassed employees at all levels by referring to them in derogatory terms, by questioning their competencies in the presence of their colleagues and by spreading misinformation about them in the workplace. Ms. Chotalia, during meetings and in the presence of other employees, behaved in a way that was belittling and humiliating toward individuals. She frequently raised individuals’ personal health issues, the topic of a previous disagreement and

unjustifiably blamed them for errors. In some cases, individuals were brought to tears as a result of her public humiliations.

- Ms. Chotalia also subjected certain employees to aggressive interrogations, causing severe anxiety.
- Ms. Chotalia similarly harassed and abused certain appointed members of the CHRT, who are appointed by the Governor in Council to, among other duties, preside over hearings at the CHRT.
- Ms. Chotalia frequently yelled insults and directed defamatory comments at a member, questioning his competencies and bringing up issues about this person's health and capacity to work in the presence of other employees. Ms. Chotalia also attempted to prevent this member from interacting with employees of the CHRT and to control the member's personal relationships with former colleagues, including judges and police officers, by forbidding the member to meet with them unless she was present.
- Ms. Chotalia further harassed another member, criticizing him for talking to employees and for defending an employee in a workplace harassment situation. Ms. Chotalia put inappropriate pressure on the same member to render a decision and would frequently make belittling comments to the member, such as calling him "immature" and a "child."
- Evidence and witness testimony demonstrated that Ms. Chotalia, without valid reason, ordered staff to spy on an employee while at work and to report that employee's movements and actions to her. She repeatedly attempted to terminate an employee without justifiable reason and tried to pursue disciplinary action against an employee after they had left the CHRT.
- The evidence also demonstrated that Ms. Chotalia unjustifiably maintained a secret file on an employee, entitled "Insubordination of (Name and Title Withheld)", even though the employee had never been advised of any problems.
- Ms. Chotalia retaliated against employees at all levels who either did not accept her wishes or defended others against her verbal abuse.
- Ms. Chotalia regularly made unreasonable requests of individuals that were not in keeping with their duties, such as working outside regular work hours, being available around the clock by Blackberry without additional compensation, and in one case, requiring an individual to carry a set of keys to the office around their neck despite the fact that this person complained that this caused discomfort and pain. She also asked individuals to come to work when on sick leave and to work while on holidays.

- Furthermore, Ms. Chotalia did not respect the Treasury Board *Policy on Prevention and Resolution of Harassment* that states that managers have a duty to intervene and prevent harassment in the workplace when approached by an employee who believes they have been harassed.
- Improper conduct and remarks
 - The evidence demonstrated that Ms. Chotalia improperly conducted herself in front of her staff by regularly making inappropriate remarks in the workplace. Ms. Chotalia frequently talked about the difficulties of her position and complained about how hard she was working, insinuating that others were not working as hard as she was. Furthermore, she regularly called and emailed some employees late at night, early in the morning and on the weekend on non-essential and questionable matters.
 - During the earthquake in Ottawa in the summer of 2010, Ms. Chotalia ordered her employees, through her assistant, to remain inside the building and did not take any measures to address employees' concerns in regard to a possible evacuation of the building after the earthquake. Ms. Chotalia instead proceeded with her own swearing-in ceremony that she had organized that afternoon despite the safety requirements and staff concerns.
 - Ms. Chotalia spoke about not trusting her employees and frequently accused some of stealing items from her, such as documents or binders, when she was unable to locate them. Many witnesses stated that she regularly lost these items. She also claimed that the information and technology group was spying on her and reading her emails.
 - Ms. Chotalia also made discriminatory remarks about two employees involved in a personal relationship. She commented that it was inappropriate for individuals to engage in a personal relationship and work in the same organization.
 - Many witnesses confirmed that Ms. Chotalia spoke to them of a conspiracy against her to explain my Office's investigation. Ms. Chotalia also expressed this sentiment to the investigator at the beginning of this investigation and told him that this was happening because "*I was chosen by a Conservative government, I am a brown woman from Alberta and the unions want to remove me*". This investigation did not reveal any evidence that could support Ms. Chotalia's theory.

- Disregarded advice from staff and SHRS
 - The evidence demonstrated that Ms. Chotalia disregarded essential advice from her staff and from the SHRS that potentially jeopardized the workplace environment and the CHRT's ability to carry out its mandate.
 - Ms. Chotalia regularly ordered employees to carry out tasks that were contrary to her executives' advice based on government policy. In response to the objections raised by her executive team, she would often express ignorance of their previous advice or feign indifference by not responding or by smirking.
 - In one instance, Ms. Chotalia ordered her staff not to cancel a trip to Vancouver for a mediation session, even though the parties had come to an earlier agreement. Regardless, Ms. Chotalia still ordered her staff to request that the parties be present at the scheduled mediation. Although the CHRT was not able to contact the parties, Ms. Chotalia flew to Vancouver nonetheless from where she then transferred onto a San Diego bound flight for a previously planned personal trip.
 - Ms. Chotalia regularly disregarded advice from the SHRS concerning the handling of grievances and possible mediation to resolve workplace conflicts. Ms. Chotalia's failure to deal with these conflicts led to a complaint by three unions to the Minister of Justice.
 - Ms. Chotalia often made unrealistic requests to the SHRS, sometimes at unreasonable hours, such as wanting to de-unionize the employees of the CHRT or to hire a casual employee within hours. In response to the explanation as to why her requests could not be met, she commented that she was entitled to have those requests followed, as she was a deputy head.

Conclusion

The information gathered during this investigation revealed that Ms. Chotalia committed wrongdoing as defined at paragraph 8(c) of the *Act* when she regularly and repeatedly harassed and abused employees and members of the CHRT, demonstrated improper behaviour, made inappropriate remarks in the workplace and disregarded essential advice from her staff and from the CHRT's SHRS providers.

Commissioner's Recommendation and the CHRT's response

The Deputy Commissioner's findings of wrongdoing are directed solely against Ms. Chotalia; nonetheless, there remains an obligation on the part of all concerned to ensure the wellbeing of employees and the efficient operations of the CHRT.

As such, my recommendation is based on the Deputy Commissioner's findings and is intended to help those employees and members of the CHRT who were aggrieved or otherwise affected by the misconduct of the former Chairperson. I am satisfied with the Acting Chairperson's response to my recommendation.

It is recommended that the Chair of the CHRT, in consultation with employees and the bargaining agents, assess the need for a workplace wellness initiative and the implementation of related means to support the staff that was subjected to the abuse by the former Chairperson to ensure a healthy workplace.

The Acting Chairperson commented that he agreed with this recommendation.

My Office did not investigate the process by which Ms. Chotalia was selected for the position of Chairperson, nor did we examine the appointment process generally for office holders in the federal public sector. Senior leaders can have a profound impact on those reporting to them and on the public trust in public servants and institutions. Therefore, I wish to highlight the importance of the government using tools to systematically assess information about prospective appointees' behaviours and attitudes toward subordinates before making any appointment of a deputy head or chief executive in the federal public sector.