

Office of the Public Sector  
Integrity Commissioner  
of Canada




Commissariat à l'intégrité  
du secteur public  
du Canada

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

Blue Water Bridge Canada

Case Report  
June 2013



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©Minister of Public Works and Government Services Canada 2013  
Cat. No.: PG4-7/2013E-PDF  
ISBN: 978-1-100-22329-2

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 Blue Water Bridge Canada, 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*.

Yours sincerely,

A handwritten signature in black ink that reads "Mario Dion". The signature is written in a cursive style with a large, stylized "D" in the last name.

Mario Dion  
Public Sector Integrity Commissioner  
OTTAWA, June 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 Blue Water Bridge Canada, 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*.

Yours sincerely,

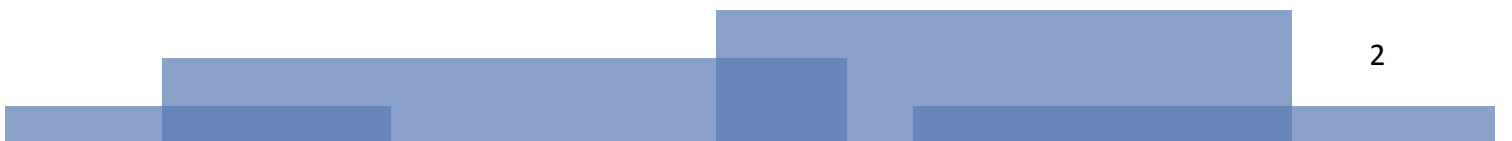
A handwritten signature in black ink that reads "Mario Dion". The signature is written in a cursive style with a large, looped initial "M".

Mario Dion  
Public Sector Integrity Commissioner  
OTTAWA, June 2013



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## Foreword

I 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 the *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.

This case report finds a misuse of public funds and a serious breach of a code of conduct by the Chief Executive Officer of a Crown corporation in Ontario. My Office has been working hard to raise awareness of what we do and how we do it. The fact that public servants in the regions trust the Office and are coming forward with disclosures of wrongdoing is encouraging.

Whether a public servant makes a disclosure to my Office, their supervisor, or the senior officer responsible for receiving disclosures of wrongdoing in their organization, it is evident that the *Act* is an important mechanism by which we can maintain trust within the entire federal public sector.

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 February 21, 2012, my Office received a protected disclosure of wrongdoing against Mr. Charles Chrapko, who at the time was President and Chief Executive Officer (CEO) of Blue Water Bridge Canada (BWBC).

BWBC is a federal parent Crown corporation, as defined in the *Financial Administration Act*. It is accountable for the construction and operation of two bridges, located between Point Edward/Sarnia, Ontario and Port Huron, Michigan, in addition to being responsible for equipping and maintaining facilities for the interviewing, examination and detention of persons and goods by Canadian customs officers. Between 2007 and 2012 inclusively, BWBC averaged \$22,175,000 in annual revenues. Mr. Chrapko was appointed BWBC's CEO on November 24, 2006.

The discloser(s) alleged that Mr. Chrapko provided two excessive severance packages, in 2008 and again in 2011, to two BWBC managers who were married at the time.

It was therefore alleged that Mr. Chrapko's decisions, with respect to the above, constituted wrongdoing as defined at paragraphs 8(b), (c) and (e) of the *Act*: namely, a misuse of public funds, a gross mismanagement and a serious breach of a code of conduct.

In July 2012, after a detailed analysis of the information provided, I initiated an investigation to determine whether Mr. Chrapko committed wrongdoing as defined by these paragraphs.

## Results of the Investigation

The investigation found that:

- **Mr. Chrapko misused public funds and seriously breached *The Blue Water Bridge Authority Code of Ethics and Conduct for Members of Supervision* by:**
  - Awarding two excessive severance payouts to two BWBC managers totaling more than \$650,000.
- **The information gathered during this investigation did not substantiate the allegation that Mr. Chrapko's decisions constituted a gross mismanagement.**

## Overview of the Investigation

The investigation, led by Stéfanie Dumas of my Office, was initiated on July 31, 2012.

As required under the *Act*, BWBC readily provided access to the necessary facilities and the information requested during the course of the investigation.

Following the initial collection and analysis of information, including an interview between the investigator and Mr. Chrapko on September 19, 2012, I determined that there could be sufficient grounds to make a finding of wrongdoing that could adversely affect Mr. Chrapko.

Therefore, on December 21, 2012, my Office provided Mr. Chrapko the preliminary findings for his 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.

At the time of the completion of the preliminary findings, I was of the view that the Clerk of the Privy Council should also be given an opportunity to comment because the allegations concerned BWBC's chief executive, a Governor in Council appointee, and so a copy of these findings was provided to Mr. Wayne Wouters. I also considered it necessary to notify the Minister of Transport, Infrastructure and Communities (the Minister), the Honourable Denis Lebel, of the preliminary findings, as provided in section 37 of the *Act*.

Mr. Chrapko responded to the preliminary findings on January 17, 2013, and provided follow-up information, as requested by the investigator, on February 21, 2013. Mr. Chrapko also informed me, in writing, of his decision to resign from BWBC effective March 15, 2013.

In arriving at my findings, I have given due consideration to all of the information received throughout the course of this investigation.

## Summary of Findings

### ***Misuse of Public Funds***

On two occasions, Mr. Chrapko was found to have misused public funds by providing two excessive severance packages.

“Misuse of public funds” includes expenditures that are made without proper authorization or that are illegal, unlawful or contrary to applicable legislation, regulations, policies and procedures. Purchases that are wastefully unnecessary and that are not in keeping with the business or operational needs of the organization also constitute a misuse of public funds.

*Finding of the first excessive severance package (Human Resources (HR) Manager)*

After a founded harassment complaint against the HR Manager, it was determined that the HR Manager’s employment had to be terminated. The CEO and the BWBC Board of Directors (the Board) agreed to treat the departure as a retirement. In his submission to my Office dated January 17, 2013, Mr. Chrapko stated that “the Board was adamant that [the HR Manager’s] 31 years of service to our organization did not warrant ‘termination with cause,’ but rather ‘termination without cause,’ and the maximum possible severance package.”

The HR Manager’s severance package totaled \$366,000; which comprised 36 months of continued salary and benefits.

BWBC did not have a severance policy in place in 2008 and the HR Manager’s severance package was not in accordance with the BWBC Termination of Employment policy because she did not meet the minimum age requirement to receive the retiree benefit package. Not only did she receive the retiree benefits, she also received a salary continuance of 36 months.

Mr. Chrapko indicated that generous severance awards were acceptable at BWBC at the time of the HR Manager’s departure. He stated that the HR Manager had threatened to sue BWBC as she had knowledge of how other former BWBC employees had been compensated in the past. The investigator noted that the circumstances of the departures of the three former employees specifically identified were not comparable to the circumstances surrounding the HR Manager’s departure.

In addition, Mr. Chrapko presented my Office with a “business case” which favoured BWBC agreeing to offer the HR Manager 12 months of severance in addition to what has been initially offered, in order to minimize the possible risk associated with potentially losing the Project Manager, who was married to the HR Manager, in light of the Project Manager’s role in a major capital project at BWBC. Part of Mr. Chrapko’s “business case” was his assessment of the Project Manager’s anticipated value to BWBC which he estimated was between \$700,000 and \$7,000,000.

With respect to the Board’s involvement in the severance decision, it can be reasonably considered, based on the evidence, that the Board members did not oppose it. Nonetheless, Mr. Chrapko, as CEO, was ultimately responsible for the management of BWBC’s financial

resources; therefore, the Board's tacit endorsement was deemed immaterial with respect to the allegation of a misuse of public funds.

There may have been some requirement to compensate the HR Manager for her years of service at BWBC. However, there was no requirement to award 36 months of salary and benefits using public funds. Considering all the circumstances and facts surrounding the HR Manager's departure, I have concluded that Mr. Chrapko contravened paragraph 8(b) of the Act when he awarded the HR Manager an excessive severance package in 2008.

*Finding of the second excessive severance package (Project Manager)*

Mr. Chrapko also provided another manager, who was married to the HR Manager at the time, with an excessive severance package.

In August 2011, in the absence of a severance policy, Mr. Chrapko proposed that the Project Manager receive 36 months of severance following the individual's retirement announcement in July 2011. Mr. Chrapko justified 24 of the 36 months to the Board by referencing an expired BWBC Voluntary Separation Plan (2009 VSP). The other 12 months were presented as a "thank you". It was noted, however, that this individual was paid in excess of the 2009 VSP, which was adopted as a strategic means to reduce labour costs in 2009. Mr. Chrapko justified the surplus in the amount of overtime that the Project Manager never claimed.

Following a discussion with the Board, the 36-month offer was changed to 24 months of severance plus a one-year unattended retainer as enticement for the Project Manager to return to BWBC in a new position. This unattended retainer allowed the Project Manager the flexibility of working at leisure, from the office or from home, while being paid for full-time work, for one year, with the possibility of extending the arrangement annually. The Project Manager returned to work in this new position in September 2011, with no break in service. Conversely, the positions that were vacated through the 2009 VSP were not subsequently filled.

In October 2011, an individual filed a sexual harassment complaint against the Project Manager. The Project Manager retired a second time from BWBC in December 2011 prior to the sexual harassment investigation findings.

The Project Manager's severance package totaled \$292,000; which comprised 24 months (104 weeks) of continued salary and benefits. The amount deemed excessive in this package is \$211,000 for 75 out of 104 weeks of continued salary and benefits this individual received in 2011 that went above what was considered standard at the time in the public sector (one week of wages for every year of service).

Mr. Chrapko's rationale for awarding the Project Manager a generous severance package was that this individual allegedly saved BWBC millions of dollars throughout the years. Firstly, this may well have been the case; however, the Project Manager was compensated to perform the duties of the job, and one of the main responsibilities was to keep projects on budget and on time. The Project Manager was also compensated through yearly merit increases; effectively receiving a 72 percent pay increase over ten years. In addition, this individual's enhanced workload and responsibilities at the start of a major capital project were also acknowledged by BWBC through merit increases in both July 2007 (8.00%) and December 2007 (7.78%).

In the absence of any supporting documentary evidence from Mr. Chrapko, a determination cannot be conclusively made as to the amount of savings the Project Manager brought to BWBC, even if it were relevant to consider this. Mr. Chrapko appeared to have obtained most of his justifications regarding the Project Manager's accomplishments from the Project Manager directly. Consequently, I could not conclude, as Mr. Chrapko did, that his decision to award the two severance packages (to the HR Manager and the Project Manager) has "resulted in a net benefit for the public" and that the "two severance packages were investments that saved BWBC millions of dollars in construction costs."

I also noted that Mr. Chrapko's severance proposal in August 2011 was inconsistent with Transport Canada guidance received on the issue, as evidenced by correspondence sent by the Minister to BWBC in January 2012:

*As has been previously stated, severance accumulation for retirement and resignation is a benefit seldom found in the private sector and the Government is eliminating this type of payment. Crown corporations were asked to make sure their corporate severance policies are in line with government objectives, a position which was communicated to BWBC in May and June 2011. I would strongly suggest that Blue Water Bridge Canada adopt a clear policy on severance arrangements...*

The Auditor General of Canada also characterized the two severance payouts as "excessive and not demonstrative of appropriate management of financial resources and stewardship of funds" in November 2011. Mr. Chrapko explained that Auditor General of Canada officials did not have the benefit of the business factors that were also considered in the decisions; however, I noted that Mr. Chrapko had the opportunity to present his "business case" to these officials and did not do so. Further, Mr. Chrapko admitted to not consulting BWBC's Chief Financial Officer to calculate the cost or impact of the Project Manager's severance package to BWBC.

Finally, although Mr. Chrapko involved the Board in this severance decision and obtained its "approval", as CEO, Mr. Chrapko was ultimately responsible for the management of BWBC's financial resources.

There may have been some requirement to compensate the Project Manager for the individual's years of service at BWBC. However, I have concluded that in the absence of a severance policy and any demonstrated sound financial rationales, and contrary to Transport Canada advice, Mr. Chrapko's actions contravened paragraph 8(b) of the *Act* when he awarded the Project Manager an additional 75 weeks of salary and benefits, or \$211,000 in public funds, in 2011. The cost of the one-year unattended retainer was not included in this amount since the Project Manager worked for this benefit starting in September 2011 and the arrangement was annulled when the individual retired for a second and final time in December 2011.

### ***Serious Breach of a Code of Conduct***

In determining whether an action or omission comprises a "serious" breach of a code of conduct under paragraph 8(e) of the *Act*, the following defining elements are taken into consideration:

- the breach represents a significant departure from generally accepted practices within the federal public sector;
- the impact or potential impact of the breach on the organization's employees, clients and the public trust is significant;
- the alleged "wrongdoer" occupies a position that is of a high level of seniority or trust within the organization;
- there are serious errors which are not debatable among reasonable people;
- the breach of the code of conduct is systemic or endemic;
- there is a repetitive nature to the breach(es) of the code of conduct or it/they have occurred over a significant period of time; and
- there is a significant degree of willfulness or recklessness related to the breach of the code of conduct.

The awarding of the two excessive severance payouts to the two managers represents a significant departure from generally accepted practices within the federal public sector compared to what most public sector employees would normally have been entitled to under similar circumstances.

The "business case" presented by Mr. Chrapko, as a justification for both payouts, can be reasonably characterized as unsound and unreasonable (i.e., unsupported and mainly based on the Project Manager's own justifications and perspective). Further, guidance provided by Transport Canada on severance accumulation for retirement and resignation in May and June 2011 was either ignored or misinterpreted by Mr. Chrapko. That being said, I determined that there was a demonstrated degree of willfulness or recklessness on Mr. Chrapko's part in awarding the two excessive severance packages to the two managers.



I also believe that Mr. Chrapko's decision to award the Project Manager an additional 75 weeks, or \$211,000, worth of salary and benefits in 2011 would not conserve or enhance the public's confidence in the integrity/objectivity/impartiality of the public sector, especially in light of ongoing fiscal restraints. Further, there was an impact or a potential impact on BWBC employees, considering that the president of Local 501 of the Public Service Alliance of Canada intervened in the matter and reported on the 2011 excessive severance benefit to the BWBC membership in 2012.

Because Mr. Chrapko was the organization's chief executive, a position of trust, he should be held to a higher standard and ought to have been sensitive to the judicious use of public funds in light of the times, I have therefore concluded that Mr. Chrapko contravened paragraph 8(e) of the *Act* in relation to the exceptions he made when he chose to reward the Project Manager excessively in 2011.

## Conclusion

The information gathered during this investigation revealed that Mr. Chrapko committed wrongdoing as defined at paragraphs 8(b) and (e) of the *Act* when he awarded excessive severance packages to two BWBC managers in 2008 and 2011, totaling more than \$650,000. I did not find that Mr. Chrapko committed a gross mismanagement, pursuant to paragraph 8(c) of the *Act*, with respect to these same two incidents.

## Commissioner's Recommendations

The main shortcoming identified in this case was the lack of severance compensation guidelines at BWBC; however, I learned during the course of this investigation that the Board approved a BWBC Severance Pay Policy in February 2012.

In the circumstances of duly approved severance compensation guidelines, and considering the current efforts by the Treasury Board to participate in negotiations between Crown corporations and their employees, I will not be making any recommendations.

## Additional Comments Provided by Blue Water Bridge Canada

We were not in a position to share this Case Report with BWBC's chief executive for comment as per subsection 38(3.2) of the *Act* as the position is vacant (as per the Privy Council Office website on May 17, 2013).