



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

Human Resources and Skills Development Canada

Case Report

March 2012

Office of the Public Sector
Integrity Commissioner
of Canada



Commissariat à l'intégrité
du secteur public
du Canada

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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 of Canada's first Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing, 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 recommendations made to the chief executive; the Commissioner's opinion as to whether the chief executive's response to the report is satisfactory; and the chief executive's written comments.

Yours sincerely,

Mario Dion
Public Sector Integrity Commissioner
OTTAWA, March 2012

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

Dear Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner of Canada's first Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing, 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 recommendations made to the chief executive; the Commissioner's opinion as to whether the chief executive's response to the report is satisfactory; and the chief executive's written comments.

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Mario Dion
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Foreword

With the tabling of this report of wrongdoing to Parliament, I would like to take this opportunity to share some thoughts regarding the role the ***Public Servants Disclosure Protection Act***, S.C., 2005, c. 46 (the *Act*) plays in supporting and maintaining the integrity and credibility of the federal public sector.

In accepting the honour of being appointed as Public Sector Integrity Commissioner in December, I brought to this position my sincere and long-held belief in the honesty and commitment of public servants to carry out their important duties with integrity and professionalism. When wrongdoing or reprisal is committed, public servants expect and demand that these actions be dealt with independently and swiftly, reflecting their dedication and pride in serving Canadians.

The *Act* was created to provide a confidential whistle blowing 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 deterrent. Founded cases of wrongdoing are required by the *Act* to be reported to Parliament, which is a powerful tool of transparency and public accountability.

The definition of wrongdoing in the *Act* is broad and I am convinced that as the work of my Office continues, future case reports will touch on a wide range of different types of wrongdoing activities that range in scope and severity, all of which fall within my mandate to respond to and report.

I also believe that reporting findings of wrongdoing serves to increase awareness of the expectations of Parliament, and indeed of Canadians, regarding the integrity of our federal government institutions.

This first report speaks to the actions of a regional manager, as well as some deficiencies that permitted the wrongdoing to occur. I strongly encourage all public sector employees to read this report to understand the importance of respecting all legislation, policies, procedures and guidelines in the course of their day-to-day work and to always conduct themselves in an ethical manner consistent with their duties and with the expectations of the public they serve.

I believe that the vast majority of public sector employees conduct themselves with honesty and integrity in their daily operations. However, it is always useful to be reminded of these fundamental values and how to avoid the wrongdoing such as those detailed in this report.

Mario Dion, Public Sector Integrity Commissioner

Mandate

The Office of the Public Sector Integrity Commissioner of Canada is an independent body 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).

Investigations into disclosures are for the purpose of bringing 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 22, 2010, my Office received a protected disclosure of wrongdoing that encompassed numerous allegations in relation to the actions of the Manager of four offices of Human Resources and Skills Development Canada (the Department). The discloser reported that several employees in the Western Canada and Territories Region (W-T Region) of the Department had serious concerns regarding the actions of their Manager. The information submitted to my Office included anecdotal and physical evidence.

At the time of the disclosure, the Manager had been a regional manager for more than nine years. Although staff had concerns regarding the Manager's behaviour for some time, they expressed fear for their jobs if they came forward to complain to the Department or participated in an investigation. The discloser stated that many of the staff were frightened of the Manager who they described as an autocrat and a bully who threatened reprisal against employees who questioned the Manager. There was fear that in the small communities in which employees resided that retaliation might spread outside the office and affect their family members.

My Office provides a confidential process to address allegations of wrongdoing. As such, the employees felt it was appropriate to have their concerns investigated under the *Act*. However, even with the confidentiality associated with the disclosure process, many employees who participated did so with fear and ongoing trepidation.

After a detailed analysis of the information initially provided, the investigation was commenced on April 8, 2010 into the following allegations, as defined under section 8 of the *Act*:

- (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;
- (f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

The discloser also alleged serious breaches of the *Values and Ethics Code for the Public Service* under section 8 (e). It was determined that these alleged breaches could be more effectively investigated as wrongdoings under paragraphs 8(a), (b), (c) and (f) mentioned above. There were also allegations relating to staffing irregularities which were severed from the investigation and referred to the Public Service Commission, which conducted its own investigation. However, my Office decided to consider findings of staffing irregularities as part of its evaluation of the allegation of "gross mismanagement".

Results of the Investigation

The investigation found that:

- **The Manager contravened the *Financial Administration Act*, R.S.C., 1985, c. F-11, by failing to have properly exercised delegated financial authorities under that Act.**
- **The Manager misused, on several occasions, public funds and assets by:**
 - approving inappropriate purchases such as personal massages;
 - purchasing equipment such as flat screen televisions that were not used;
 - paying for lunches for employees;
 - claiming for monetary travel benefits when the Manager had not travelled;
 - claiming for personal vehicle mileage when the Manager used a departmental vehicle; and
 - using government equipment to conduct personal business.
- **The Manager's actions and omissions constituted gross mismanagement through the failure to:**
 - follow Treasury Board directives;
 - follow departmental policies and procedures;
 - respect the principle of fairness in a staffing action;
 - ensure the privacy of staff and clients;
 - respect the fundamental rights of staff;
 - protect the security of information; and
 - treat staff with the respect and consideration that are embodied in the values and ethics of the Department.
- **The allegation that the Manager knowingly directed or counselled others to commit a wrongdoing was not substantiated.**

Details of these wrongdoings are provided later in this report.

Other Findings

The results of the investigation revealed several deficiencies on the part of the Department. Although these deficiencies did not amount to wrongdoing as defined under the *Act*, they permitted the Manager to personally engage in wrongdoing undetected for several years and until the start of the investigation into this disclosure. Although the Manager claimed that there was little guidance provided by senior management, it was determined that the Department did have policies and procedures in place that provided clear and proper direction to the Manager. For example, it was determined that the Department sent the Manager updates and links to Departmental and Treasury Board policies. However, in the region in which the Manager worked, there was insufficient oversight to ensure that these policies were being followed. As such, the investigative process revealed the following deficiencies, which I have brought to the attention of the Chief Executive responsible for the Department:

- The oversight of travel claims was problematic and questionable. Approved travel claims were found to be missing substantiating documentation, resulting in ss. 1.5.1(c) (i) and (e) of the Treasury Board Travel Directive having been contravened.
- The Department had inconsistent cost recovery practices for the personal use of mobile wireless devices (BlackBerry).
- The Department had not implemented sufficient checks of regional accounting practices to ensure adherence to the *Financial Administration Act*.
- The Department had not implemented sufficient checks to ensure that proper asset control procedures were being followed and that departmental inventory control policies were being adhered to by the Manager.
- The Department failed to ensure that staff in the region in which the Manager worked complied with departmental security policies and procedures with respect to the handling and storage of sensitive information.

Overview of the Investigation

An investigation team from my Office led by a Senior Investigator was responsible for the coordination of all investigative efforts. The investigation focused on the last six years of the Manager's tenure. Site visits and interviews were conducted, and documentary evidence was examined.

Upon our request and in light of certain allegations, an audit was conducted by the departmental Internal Audit Services in collaboration with the investigation team. As required

under the *Act*, the Department readily provided the necessary facilities, required information and full access to their offices.

It was determined that the initial evidence collected supported many of the allegations. In keeping with our obligations under the *Act* to provide full and ample opportunity to respond to allegations of wrongdoing, the investigation team provided the Manager and the Department with a detailed Review of Investigative Facts. They were allotted sufficient time to provide comments to the allegations and any other matter of concern arising from the investigation.

During the course of the investigation, the Department retained an external audit firm to perform a forensic accounting of the four offices. The results of that audit were taken into consideration by the investigative team.

A second Review of Investigative Facts was provided in September 2011 to the Department and to the Manager for a second opportunity to comment on the evidence.

In arriving at my findings, I have given due consideration to all of the information received throughout the course of this investigation, including the Department's and the Manager's responses to the reviews of investigative facts.

Summary of Findings

1. *Contravention of an Act of Parliament*

The Manager contravened the *Financial Administration Act* by failing to properly execute delegated financial authorities. The *Financial Administration Act* sets out a number of obligations and duties, the breach of which is clearly prohibited. These include the obligation to keep accounts in prescribed form; to provide supporting documentation; to ensure adequate internal controls and audits; and to ensure that payments made out of the Consolidated Revenue Fund are authorized.

The investigation team found:

- The Manager falsified travel claims by submitting unsupported expenses for accommodation, meals and incidentals.
- The Manager made claims for reimbursement for the use of a personal vehicle when in fact no reimbursable expenses were incurred.

- The Manager failed, in many instances to ensure proper financial coding and recording practices. For example: coding massage chairs, gift baskets and hospitality-related expenditures as “Office Supplies”.
- The Manager, in addition to improperly coding hospitality-related expenditures, breached Treasury Board and departmental policies and guidelines with respect to hospitality by not obtaining pre-authorization for expenditures and not maintaining proper supporting documentation.
- The Manager paid casual staff from petty cash without any evidence that a record of a tax receipt was issued.
- The Manager claimed restaurant expenses under the Department’s *Pride and Recognition* program when in fact such expenses were not allowed under that program. In addition, no supporting documentation or details about the events were submitted nor were there records of tax receipts being issued for these benefits.

2. Misuse of Public Funds and Assets

On several occasions, the Manager was found to have misused public funds and assets.

“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 Department also constitute a misuse of public funds.

“Misuse of public assets” includes making inappropriate or unauthorized personal use of government property, and also includes a failure to safeguard such assets.

The investigation team found:

- The Manager purchased non work-related merchandise with public funds, including items supplied by a private business in which the Manager had an interest.
- In 2009, the Manager purchased two LCD High Definition televisions which were never used and which were found in the Manager’s residence. In 2010, the Manager then ordered three more televisions, one of which was not located in the offices when the investigation team conducted an inventory of assets.
- The Manager encouraged and approved purchases of non work-related items with government funds from the Manager’s own personal business. These items included: water bottles, massagers and magnets for magnetic therapy used by the

Manager to balance the employee's magnetic fields. According to witnesses, the water bottles reportedly cost \$80.00 a unit.

- The Manager purchased massage chairs that were largely unused, with one stored in a men's washroom at one of the satellite offices.
- The Manager approved personal massages for staff which were also coded as "Office Supplies" and claimed that these were in support of the Department's *Wellness Program*. The Department confirmed that the purchase of these goods or personal services fell outside the spending parameters and spirit of the Wellness Program and were not appropriate.
- The Manager failed to keep or ensure that a proper inventory of government assets was kept. In addition, the Manager failed to properly place asset stickers on items such as portable printers, DVD and Blu-ray players, radio/CD players, digital cameras and calculators.
- The Manager also operated a fitness franchise and took a government printer and two pieces of office furniture to that franchise.
- The Manager used government issued equipment such as a computer and BlackBerry to conduct private business matters, contrary to the Treasury Board Policy on the Use of Electronic Networks and the Department's policy in regard to wireless mobile devices.
- The manager used an employee's government acquisition credit card and signed the employee's name without her knowledge or consent. These actions contravened the Department's Acquisition Card Policy.
- The Manager used almost exclusively a Government of Canada vehicle that was intended for business use by all employees at the office which was often kept at the Manager's residence on week-ends. This prevented employees from utilizing the vehicle for legitimate business purposes and at times necessitating the rental of vehicles. The Manager also travelled with non-authorized persons in the vehicle. These constituted contraventions of Treasury Board policies, departmental policies and the Regional Fleet Guidelines Handbook.

3. **Gross mismanagement**

I have determined that the breadth, severity and frequency of the Manager's wrongdoing are such as to constitute "gross mismanagement" in the public sector.

The term "gross mismanagement" is not defined in the *Act*. The factors that my Office considers in investigating an allegation of gross mismanagement under s. 8(c) of the *Act* include:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than *de minimus* 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; and
- the systemic nature of the wrongdoing.

In determining whether the misconduct of the Manager is serious enough as to be deemed gross mismanagement, the following factors have been taken into account in this situation:

- the deliberate nature of the actions;
- the frequency of the problem behaviour;
- that the person who engaged in the wrongdoing was a manager responsible for four offices;
- the impact of the wrongdoing on the wellness of other employees;
- the sufficiency of the management response; and
- the impact of the wrongdoing on the public interest and trust in the public service.

In addition, the investigation team found that the following instances constituted gross mismanagement:

- The Manager selected a close family friend who was living in the Manager's home to fill a position in a satellite office over 200 km away when there was a qualified candidate already residing in close proximity to that office. As a result, unnecessary expenses were incurred and the Manager did not respect the principle of fairness in a staffing action.
- An investigation conducted by the Public Service Commission in regard to this staffing action found that the manager: "...committed improper conduct with her involvement with the appointment process..." "This improper conduct affected the selection of (name withheld) from the pool."

- Under the pretense of operational requirements, the investigation team found that the child of the Manager was provided with opportunities to collect significant overtime and incurred costs that included mileage, meals and incidentals, private accommodation allowance and overtime claims. The Manager's conduct was found to have been unreasonable and unacceptable.
- The investigation team found considerable anecdotal evidence that the Manager wrongfully disclosed individuals' personal information to other employees relating to matters such as health and disciplinary proceedings.
- The Manager failed to follow the Department and Government of Canada standards in regard to security of information. The Manager failed to keep secure sensitive government documents that were collected during the course of business. For example, information marked "Protected B", such as medical leave forms, employee test results and Client/Worker Benefit Calculations, were not secured in accordance with the standards.
- The Manager created a work environment rife with fear. Many staff told our investigators that the Manager yelled at them and used offensive language.
- The Manager breached the Treasury Board Policy on the Use of Electronic Networks and compromised the accountability of the financial entry process by using the passwords and access codes of employees who worked in different offices to make financial entries without their knowledge or consent.

Conclusion

Based on the foregoing, I have concluded that the Manager committed several wrongdoings as defined under section 8 (a), (b), and (c) of the Act, namely contraventions of the *Financial Administration Act*, misuse of public funds and public assets, and gross mismanagement.

The results of the investigation also revealed several deficiencies on the part of the Department regarding the lack of oversight mechanisms to ensure that departmental and Treasury Board policies and procedures were respected in that region.

In accordance with section 22(h) of the Act, I have made recommendations to the chief executive concerning the measures to be taken to correct the wrongdoing. I am satisfied with the chief executive's response to my recommendations and with the measures taken to date by the Department to address the wrongdoing identified in this report. My recommendations and the Department's response follow.

Recommendations and Department's Responses

As a result of my findings and pursuant to my authority under section 22(h) of the Act, the following recommendations were made to the Department. The issues on which the recommendations are based were all previously discussed in the *Reviews of Investigative Facts* and the Department has already taken measures to address the majority of them.

- 1. It is recommended that the Department implement tighter financial controls and oversight of financial expenditures in regional offices to ensure compliance with the *Financial Administration Act*.**

The Department responded that the issues of concern in this investigation arose in a localized area within a specific region and that it acted proactively to initiate corrective actions in the Western Canada and Territories Region (W-T Region), including:

The implementation of new organizational structures, adopted by the W-T Region in June 2010 to improve leadership and oversight;

The creation of a regional Financial Management Committee to improve management oversight;

The implementation of regional training in several areas including acquisition cards and hospitality; and

The implementation of multiple improvements to several business practices, including:

- acquisition cards;*
- travel;*
- procurement;*
- delegation of authority;*
- financial controls related to sections 33 and 34 of the *Financial Administration Act*;*
- physical and information technology access;*
- computer security;*
- hospitality;*
- information management with regard to filing; and*
- financial management.*

- 2. It is recommended that the Department undertake a security review of the offices that were under the Manager's control, to ensure that government assets and information are protected in accordance with policies and procedures.**

The Department reported that it undertook a security review of the offices and took the necessary steps to ensure that government security standards are met. The investigation team confirmed with the Department that it now meets the requirements of the Treasury Board Policy on Government Security.

- 3. It is recommended that the Department initiate action to retrieve all government assets from the Manager.**

The Department reported that it has retrieved all government assets from the Manager, including the televisions and other items kept at the Manager's residence and place of business.

- 4. It is recommended that the Department use its Corporate Management System to account accurately for all physical assets in the four offices in question.**

The Department reported that it has inventoried assets in the offices in question and has entered the required information in the Departmental corporate management system.

- 5. It is recommended that the Department conduct onsite inventories in all regional offices to ensure that the physical assets on site in each office are accounted for and recorded in the Corporate Management System.**

The Department reported that it conducted a review of "key management controls" for Service Canada centers across all regions and that it has implemented tighter inventory controls.

The Department has initiated full inventories in all regions, which will encompass approximately 426 locations across Canada (4 regions and NHQ). To date, this exercise is approximately 45% completed, with a physical listing of all inventory, attractive assets (ex. TVs) and assets (value \$10,000 or greater) conducted in all 123 sites in the Department's Western Canada and Territories Region (W-T Region) and as well as 79 locations in our Atlantic Region. The early results from the W-T Region portion of the national exercise have not identified any major discrepancies thus far. A similar exercise will soon start in the Quebec and Ontario Regions. It is expected that all regional physical inventories will be completed by October 2012.

Innovation, Information and Technology Branch (IITB) collects information on IT and Telecom assets on a regular basis. IITB has worked with the Chief Financial Officer Branch to organize its inventory listings in a manner which is consistent with the regional inventory exercise. This will facilitate asset control and asset validation exercises.

Working with the department's asset management community, and with support from Internal Audit Services Branch, Investment, Asset, and Procurement Management is initiating an asset management action plan, which includes a review of current

department policy and associated monitoring frameworks. This will include developing a risk based framework that will require third party verification or assets.

IASB undertook a review, from December 2010 to March 2011, to provide management with assurance on the core controls in place in the Service Canada Centres. The key management controls refer to controls implemented by management to mitigate risks in the areas of financial management, asset management, and human resources management. As it pertains to this recommendation, the review included the areas of inventory management and fleet management.

This review was initiated in part to determine if the issues raised in the PSIC investigation were systemic or specific to the four local offices in Northern Manitoba. The findings revealed that the issues raised were not systemic but were specific to the four local offices in Northern Manitoba that were part of the PSIC investigation.

In response to the findings of the review, a National Working Group (NWG) was established in November 2011. The NWG is looking at each of the areas identified in the Review and examining each Region's current process with the aim of developing one process, across all regions that incorporates best practices. The NWG will finalize the action plan on the areas of inconsistency by the end of March 2012.

- 6. It is recommended that the Department review its policies and procedures for the use of mobile wireless devices and repayment of costs related to their personal use. It is also recommended that the department implement oversight mechanisms to ensure that cost recovery is achieved.**

The Department reported that it has initiated cost recovery with respect to the personal use of wireless devices by the Manager.

The Department has a Mobile Device Policy Directive (Policy) that has been in place since 2004 and was amended in 2005 to add the personal use component. The Policy requires that users reimburse the Department on a monthly basis for the personal calls that exceed \$5.00 in total in a given month. Monthly, the Department distributes call detail records to each user. Users are requested to identify personal calls and reimburse the Department according to the Policy. In 2009-10 and 2010-11, the Department recovered \$10,664.84 and \$12,059.62, respectively, from employees for personal use of wireless devices.

A process for greater management oversight of the use of wireless devices is being put in place by the Department.

Additional comments provided by the Department

The Department reported taking a number of additional actions in order to address these findings of wrongdoing, including:

- *The establishment of a Vacancy Management Transition Committee to review all indeterminate staffing actions and relocation requests against accepted policies. The Committee must review and approve term appointments of 4 months or greater, casual appointments, and deployment requests;*
- *The organization of a “workplace wellness staff meeting” in December 2010 for the employees of all four offices to which the investigation relates;*
- *The implementation of communication channels to support the staff on an ongoing basis:*
 - *the Executive Head Service Management (EHSM) along with the Citizen Services Branch Executive Director, the Area Director, and the Service Manager met personally with staff at all four offices;*
 - *the Area Director holds weekly contact with each office;*
 - *the Citizen Services Branch Area Director and the Executive Director visit regularly in-person in the northern offices;*
- *The Department reported that it continues to implement its Values and Ethics Program. According to the Department, employees are routinely being reminded of their obligations under the Values and Ethics Code for the Public Service; and*
- *Regular reminders are sent to all employees from the Senior Disclosure Officer and the Office of Values and Ethics respecting the Public Servants Disclosure Protection Act.*