



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

Canada Border Services Agency

Case Report

March 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-ispcc.gc.ca

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©Minister of Public Works and Government Services Canada 2013
Cat. No.: PG4-5/2013E-PDF
ISBN: 978-1-100-21868-7

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 Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Canada Border Services Agency, 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; my opinion as to whether the chief executive's response to the recommendations is satisfactory; and the chief executive's written comments.

Yours sincerely,

A handwritten signature in black ink that reads "Mario Dion". The signature is written in a cursive, flowing style.

Mario Dion
Public Sector Integrity Commissioner
OTTAWA, March 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 of Canada's Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Canada Border Services Agency, 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; my opinion as to whether the chief executive's response to the recommendations is satisfactory; and the chief executive's written comments.

Yours sincerely,

A handwritten signature in black ink that reads "Mario Dion". The signature is written in a cursive, flowing style.

Mario Dion
Public Sector Integrity Commissioner
OTTAWA, March 2013

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Foreword

I am pleased to present you with this case report of founded wrongdoing 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.

In this my fourth Case Report, I make a second finding of wrongdoing based on a serious breach of a code of conduct. In this matter, there was sufficient evidence to demonstrate that the conduct of one Border Services Officer of the Canada Border Services Agency (CBSA) resulted in a serious breach of the Agency's *Code of Conduct* and the *Values and Ethics Code for the Public Service*.

I expect this finding to serve as reminder to CBSA employees of the importance of respecting the codes of conduct of the Agency and the public sector. In addition, I expect that all federal public sector employees will be reminded of the value placed on fully respecting any code of conduct in place in their respective institutions.

Canadians expect each public sector employee to conduct themselves in a manner that respects public sector values ethically and with integrity.

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).

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 11, 2012, my Office received a protected disclosure of wrongdoing containing numerous allegations in relation to the conduct of two Border Services Officers (Officers) and senior management of the Canada Border Services Agency (CBSA) at the Pigeon River point of entry located near Thunder Bay, Ontario.

After a careful review and detailed analysis of the information provided by the discloser, my Office initiated an investigation to determine whether:

- senior management committed wrongdoing as defined by paragraphs 8(c) and (d) of the *Act*, namely gross mismanagement and an act or omission that created a substantial and specific danger to the life, health or safety of persons, by grossly mismanaging a workplace conflict which created a situation that adversely affected employees' health;
- the two Officers committed wrongdoing as defined by paragraph 8(e) of the *Act*, namely a serious breach of a code of conduct, by threatening to renounce their enforcement responsibilities and tamper with evidence when asked to conduct examinations of persons associated with local organized crime; and
- one of the two Officers also committed wrongdoing as defined by paragraphs 8(b) and (e) of the *Act*, namely a misuse of public funds and assets and a serious breach of a code of conduct, by:
 - using his corporate AMEX card for personal reasons and subsequently paying the balance using funds from a workplace hockey pool that he was entrusted with; and
 - using his CBSA-issued identification badge as a means to evade the law.

About the Organization

The *Canada Border Services Agency Act* establishes the CBSA, which was created by Order in Council on December 12, 2003. Under this Act, the CBSA is responsible for providing integrated border services that support national security priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all requirements under the program legislation.

Results of the Investigation

The investigation found that:

- **One Officer committed wrongdoing by seriously breaching the CBSA's *Code of Conduct* and the *Values and Ethics Code for the Public Service*¹ by:**
 - not conducting secondary examinations on individuals that had "look-outs" (surveillance reports) issued against them, thus renouncing his enforcement responsibilities and failing to fulfill one of his core duties;
 - identifying himself as a Border Services Officer to police officers during a police operation that resulted in the arrest of two of his acquaintances; and
 - affiliating himself with known organized crime figures in Thunder Bay who operate throughout Canada and are international in scope, which rendered him unable to perform his duties in an objective manner and could potentially harm the CBSA's reputation.

The information gathered during this investigation did not substantiate the following allegations:

- **that senior management grossly mismanaged a workplace conflict, which created a situation that adversely affected employees' health.**
- **that the other Border Services Officer seriously breached a code of conduct by threatening to renounce his enforcement responsibilities and tamper with evidence if asked to conduct examinations of persons associated with local organized crime.**
- **that the Officer identified as a wrongdoer above, misused public funds and assets by using his corporate AMEX card for personal reasons and subsequently paying the balance using funds from a workplace hockey pool that he was entrusted with.**

¹ Replaced by the *Values and Ethics Code for the Public Sector* on April 2, 2012.

Overview of the Investigation

The investigation, led by Christian Santarossa and supported by Jenny-Lee Harrison of my Office, was initiated on September 5, 2012.

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

In keeping with our obligations under the *Act*, the alleged wrongdoer and the President of the CBSA were provided with a detailed Preliminary Investigation Report on November 9, 2012 and given the opportunity to provide comments on the preliminary findings and any other matter of concern arising from the investigation.

In arriving at my findings, I have given due consideration to all of the information received throughout the course of this investigation, including comments on the preliminary findings provided by the Officer and Mr. Luc Portelance, President of the CBSA.

Summary of Findings

Serious breach of a code of conduct

In determining whether an action or omission comprises a “serious” breach of a code of conduct, 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 applicable code(s) of conduct is systemic or endemic;
- there is a repetitive nature to the breaches of the applicable code(s) of conduct or they have occurred over a significant period of time;
- there is a significant degree of willfulness or recklessness related to the breach of the applicable code(s) of conduct.

The investigation found that:

- **One of the Border Services Officers breached the CBSA's *Code of Conduct* and the *Values and Ethics Code for the Public Service* by not conducting secondary examinations on individuals that had "look-outs" issued against them, thus renouncing his enforcement responsibilities and failing to fulfill one of his core duties.**
 - The CBSA's *Code of Conduct* states that all employees must comply with the *Values and Ethics Code for the Public Service*. The CBSA's *Code of Conduct* also states that employees must never act in a manner that is damaging or potentially damaging to the CBSA. By refusing to conduct examinations on individuals that had "look-outs" issued against them (surveillance reports), the Officer did not fulfill one of his core duties.
 - The Officer's off-duty conduct and affiliation with known organized crime figures was highly inappropriate for a law enforcement officer and had the potential to harm the CBSA's reputation. This conduct rendered the Officer unable to perform his duties in an objective manner, thus potentially breaking the necessary link of trust between him and the CBSA. Considering the importance and sensitivity of the role of an Officer and the mandate of the CBSA, these actions constitute a serious breach of a code of conduct under paragraph 8(e) of the *Act*.
 - During the interview with the investigators, the Officer denied ever refusing to conduct a search on any individual. This denial was contradicted by three witnesses and documentary evidence gathered in the course of the investigation. In particular, the Officer's refusal to conduct a secondary examination was reflected in his performance assessment of 2009-2010, which he had signed.
 - Further, it was registered in a CBSA information system and confirmed by another witness that the Officer cleared a vehicle on a "look-out" without conducting a secondary examination.
 - Very reliable sources, including law enforcement agencies, described one of the individuals that the Officer refused to search as a "Participant" in the "number one criminal organization" in Ontario.
 - During the interview with the investigators, the Officer confirmed that he was a friend of the "Participant" and that he would frequently see him at social events. The overwhelming evidence, including intelligence reports, photos and information from law enforcements agencies, acquired during the course of this investigation, in addition to the Officer's admission on the matter, leaves no doubt about the existence of the close relationship between the Officer and the "Participant".

- The information gathered during the investigation also revealed that the Officer had been warned by one of his supervisors and a colleague about the “Participant” and his activities, and the effect it could have on his ability to do his job, which the Officer disregarded.
- During his interview with the investigators, the Officer stated that since he himself was not involved in any criminal activities, he did not view his relationship with the “Participant” as being an issue.
- **The Officer referred to above identified himself as a CBSA employee as a means to evade the law during a police operation in a local bar, which forms part of the overall finding of a serious breach of a code of conduct.**
 - During the interview with the investigators, the Officer denied ever identifying himself as an Officer at any bar during a police operation.
 - The investigation demonstrated that the Officer was at the local bar referred to above, alongside two known associates of local organized crime. During the incident in question, at which time the associates were arrested, he identified himself as a Border Services Officer to the Thunder Bay Police.
 - My Office received confirmation of the presence and actions of the Officer from high-ranking members of the local police department. A CBSA intelligence officer also stated he had confirmed that the event took place with his liaison at the Thunder Bay Police Department, who declared that the Officer identified himself as a Border Services Officer during the incident, but that he did not show his actual CBSA badge.
 - The CBSA’s *Code of Conduct* states that an employee’s off-duty conduct can become related to work if it harms the Agency’s reputation. It is reasonable to believe that the Officer’s behaviour, as described above, would be perceived as harmful, locally at the very least, to the CBSA’s reputation.

Conclusion

The information gathered during this investigation confirmed that the Border Services Officer committed wrongdoing as defined at paragraph 8(e) of the *Act* by:

- not conducting secondary examinations on individuals that had “look-outs” issued against them, thus renouncing his enforcement responsibilities and failing to fulfill one of his core duties;
- identifying himself as a Border Services Officer to police officers during a police operation that resulted in the arrest of two of his acquaintances; and

- by affiliating himself with known organized crime figures near Thunder Bay who operate throughout Canada and are international in scope, which rendered him unable to perform his duties in an objective manner and could potentially harm the CBSA's reputation.

In accordance with paragraph 22(h) of the *Act*, I have made recommendations to CBSA President Mr. Luc Portelance, concerning the measures to be taken to correct the wrongdoing. I am satisfied with Mr. Portelance's response to my recommendations and with the measures taken to date by the Agency to address the wrongdoing identified in this report. My recommendations and the Agency's response follow.

Recommendations and CBSA's Responses

As a result of my findings and pursuant to my authority under paragraph 22(h) of the *Act*, the following recommendations were made to the CBSA. The issues on which the recommendations are based were previously discussed with the CBSA, and the Agency has already taken measures to address them.

- 1. It is recommended that CBSA take the appropriate action within its authority to address this serious breach of a code of conduct.**

The Agency's Security and Professional Standards Directorate completed its investigation on December 11, 2012. The employee in question has been dismissed.

- 2. It is recommended that CBSA ensure that Border Services Officers' off-duty conduct is in accordance with the CBSA Code of Conduct and that corrective actions be taken when it is not.**

The Agency indicated that it has recently implemented a National Recruitment Strategy that will ensure that new recruits meet a national standard, and in June 2012, began a High Integrity Personnel Security Screening process for all new employees to further mitigate risk. In September 2012, the CBSA launched its revised Code of Conduct that places significant emphasis on the requirement for appropriate conduct for all employees. To reinforce the roles and responsibilities of managers and employees, the CBSA is delivering awareness sessions and workshops on the Code of Conduct across the country.

CBSA takes matters such as these very seriously. Allegations of misconduct by any CBSA employees, whether on or off duty, are referred to the Security and Professional Standards Directorate for investigation.