



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

Laurentian Pilotage Authority

Case Report

October 2012

Office of the Public Sector
Integrity Commissioner
of Canada



Commissariat à l'intégrité
du secteur public
du Canada

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For copies of the Report or other Office of the Public Sector Integrity Commissioner of Canada publications, contact:

Office of the Public Sector Integrity Commissioner of Canada

60 Queen Street, 7th Floor

Ottawa, ON K1P 5Y7

Tel.: 613-941-6400

Toll free: 1-866-941-6400

Fax: 613-941-6535

Email: psic-ispcc@psic-ispcc.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 of Canada's 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 finding of wrongdoing and the recommendation made to the Chairperson, Board of Directors, Laurentian Pilotage Authority.

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, October 2012

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, 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 finding of wrongdoing and the recommendation made to the Chairperson, Board of Directors, Laurentian Pilotage Authority.

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, October 2012

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Foreword

I present you with the second case report of founded wrongdoing that is being 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 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 type of founded wrongdoing outlined in this second case report serves well to demonstrate the varying types of cases that my Office handles at any given time. This is due in large part to the broad definition of wrongdoing that is set out in the *Act* and the diversified nature of the public sector that it is meant to oversee.

This report speaks to the actions of two senior officials who, by their own admission, contravened a regulation in order to meet the objects of an *Act*.

It also confirms that a contravention of any *Act* of Parliament or of any regulations made under any such *Act* does constitute wrongdoing. Respect for the law is a fundamental obligation of all public servants, and any failure to do so must be identified and addressed. In this way, respect for and compliance with the law will be encouraged, and contravention of the law will be discouraged.

This finding demonstrates my Office's commitment to serving the public interest by reporting every case of wrongdoing that it finds, regardless of the magnitude of the actions, the context of the contravention or the consequences of the wrongdoing.

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 disclosures of wrongdoing brought forward to my Office.

The Disclosures

In April 2011, my Office received two disclosures of wrongdoing against two senior officials of the Laurentian Pilotage Authority (LPA). The disclosers alleged that the senior officials committed wrongdoing as defined by paragraphs 8(a), (c), (d) and (f) of the *Act*, namely: a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act; a gross mismanagement in the public sector; an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment; and, knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

In March 2011, the LPA hired an apprentice pilot who was subsequently issued the applicable Class D permit, as per section 26.1 of the *Laurentian Pilotage Authority Regulations* (the "*Regulations*"). The disclosers provided further information in July 2011, stating that the LPA hired and issued a Class D permit to a second apprentice pilot in June 2011. Section 26.1 of the *Regulations* states that a candidate must meet the following criteria to obtain a Class D permit for District No. 1-1 (Port of Montreal):

26.1 To obtain a Class D apprentice pilot permit for District No. 1-1, an applicant shall

(a) successfully complete a language test given by the Authority that demonstrates that the applicant is able to carry out the duties of an apprentice effectively in English and French;

(b) undergo a medical examination within the 90 days before the day on which the Class D apprentice pilot permit is issued and meet the health qualifications prescribed in the *General Pilotage Regulations*;

(c) be the holder of a certificate of competency not lower than master, local voyage issued under the *Canada Shipping Act* or Master, Near Coastal;

(d) have served as master of a ship that is over 70 m in length or over 2 000 tons gross tonnage for at least 18 months during the 60 months before the day on which the application is made;

(e) have experience navigating in ice; and

(f) obtain a mark of at least 70% on a written test given by the Board of Examiners on general knowledge of near coastal navigation, including knowledge of ship handling, navigational instruments, chartwork, meteorology and ice navigation on the St. Lawrence River.

According to the disclosers, the two apprentice pilots did not meet all the requirements in accordance with the *Regulations*. Specifically, it was alleged that the apprentice pilots did not meet paragraphs 26.1(d) and (f) of the *Regulations*.

After a detailed analysis of the information provided by the disclosers between April and July 2011, my Office started an investigation on August 4, 2011, led by Jenny-Lee Harrison. The investigation was launched to determine whether the senior officials committed wrongdoing as defined by paragraphs 8(a), (c), (d) and (f) of the *Act* when they issued Class D permits to two apprentice pilots who, according to the disclosers, did not meet the required criteria.

Results of the Investigation

The LPA is a Crown corporation as defined in the *Financial Administration Act*. It was established on February 1, 1972, under the *Pilotage Act* which defines the objects of an Authority as follows:

18. The objects of an Authority are to establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region set out in respect of the Authority in the schedule.

Specifically, the mandate of the LPA is to:

- operate, maintain and manage, in the interest of navigation safety, an efficient pilotage service in Canadian waters for the Laurentian Region; and,
- continue to charge equitable, reasonable pilotage tariffs that reflect the Authority's need to generate revenue that, in conjunction with income from other sources, will enable it to finance its operations autonomously.

The investigation found that:

- **The senior officials, by their own admission, contravened the *Regulations* when they issued Class D permits to two apprentice pilots (the first in March 2011 and the second in June 2011), who did not meet the criteria as required by section 26.1 of the *Regulations*.**
- Specifically, the first apprentice pilot did not meet the criteria prescribed at paragraphs 26.1(d) and (f) of the *Regulations*, whereas the second did not meet the criterion prescribed at paragraph 26.1(d).
- The two senior officials stated that they had to proceed with the issuance of the Class D permits in an effort to meet the LPA's objects, as defined at section 18 of the *Pilotage Act*.

- With existing workforce shortages in the maritime field, the wrongdoers risk-managed the situation in an effort to accomplish the LPA's mandate and deliver the service to its clients, all the while ensuring that navigation safety was not compromised.
- Following unsuccessful recruitment efforts, the LPA evaluated both candidates and found the lack of conformity with the *Regulations* to be marginal. The LPA found both candidates to be competent and chose to issue the apprentice pilot permits, knowing that the apprentices would not be given the responsibility to navigate ships without training given by LPA pilots. Moreover, following the completion of their apprenticeships, an examination jury would attest to the apprentices' competencies prior to issuing pilot licenses to them. The LPA confirmed to my Office that, since September 2011, neither apprentice has been working for the organization.
- **The allegations of a gross mismanagement in the public sector; an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment; and, knowingly directing or counselling a person to commit a wrongdoing, were not substantiated.**

Overview of the Investigation

The investigator from my Office met with both the disclosers, two witnesses, representatives from Transport Canada's Safety and Security Group and the two senior officials. The mandate of the investigation was to determine whether the senior officials committed wrongdoing as defined by paragraphs 8(a), (c), (d) and (f) of the *Act*, when they issued Class D permits to two apprentice pilots who allegedly did not meet the required qualifications, in accordance with the *Regulations*.

During the course of this investigation, my Office received a third disclosure against the LPA which also contained an allegation of wrongdoing under paragraph 8(a) of the *Act*. Since this third allegation was identical to the ones made in the current case, it was not re-examined in a second investigation.

In keeping with our obligations under the *Act*, the alleged wrongdoers as well as the Chairperson of the Board of Directors for the LPA were provided with a letter of preliminary findings and given the opportunity to provide comments; none were provided.

All of the information and evidence received throughout the course of the investigation was given due consideration in arriving at my findings.

Conclusion

The two senior officials, by their own admission, contravened the *Regulations* and thus committed wrongdoing as defined by paragraph 8(a) of the *Act*, when they issued Class D permits to two candidates who did not meet the required criteria.

I have made a recommendation to the Chairperson of the Board of Directors for the LPA in an effort to prevent this wrongdoing from recurring. The Chairperson provided no response to the recommendation.

Recommendation

It is recommended that the LPA conduct an analysis of:

- its mandate and objectives defined in the *Pilotage Act*;
- the *Laurentian Pilotage Authority Regulations*; and
- the current demand for and access to certified pilots.

The results of the analysis should be used by the LPA to take the necessary and appropriate measures to attain all objects of the *Pilotage Act*.