

Office of the Public Sector
Integrity Commissioner
of Canada



Commissariat à l'intégrité
du secteur public
du Canada

**Findings of the Office of the Public Sector
Integrity Commissioner in the
Matter of an Investigation
into Allegations of Wrongdoing**

Parole Board of Canada

Case Report
January 2014



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

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

Ce document est également disponible en français.

©Minister of Public Works and Government Services Canada 2014
Cat. No.: PG4-9/2014E-PDF
ISBN: 978-1-100-23115-0

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 Allegations of Wrongdoing at the Parole Board of 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*.

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, January 2014

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 Allegations of Wrongdoing at the Parole Board of 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*.

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, January 2014

Table of Contents

Foreword.....	2
Mandate.....	3
Mandate of the Investigation	4
About the Organization	4
Results of the Investigation	5
Overview of the Investigation.....	5
Summary of Findings.....	6
Contravention of an Act of Parliament	6
Serious breach of a code of conduct.....	6
Conclusion.....	8
Recommendations and the Parole Board’s Response.....	9

Foreword

I present you with this case report of founded wrongdoing, which I have tabled in Parliament as required by the *Public Servants Disclosure Protection Act*, S.C., 2005, c.46 (the *Act*).

The *Act* was created to provide a confidential whistleblowing mechanism in the federal 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 signal the need for 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 marks a first in the history of my Office where the allegations we investigated were the result of information obtained by the investigators during the course of another investigation by my Office of a disclosure, which was later deemed to be unfounded, and not from an individual making a protected disclosure. This information concerned the conduct of a Regional Vice-Chairperson at the Parole Board of Canada (Parole Board) from 2010 to 2012 that, in this Office's opinion, potentially constituted wrongdoing under the *Act*, and therefore, it was in the public interest to commence a separate investigation.

Having been the Chairperson of the Parole Board from 2006 to 2009, I recused myself as the decision-maker from the onset due to the potential perception of conflict of interest. Mr. Joe Friday, Deputy Commissioner, acted as decision-maker in this case, from the decision to launch an investigation to making the finding of wrongdoing.

Having the power to investigate wrongdoings as a result of information gathered during the course of another investigation is an important authority that I have under the *Act*, which in this instance, allowed my Office to pursue these serious allegations and bring them to light. It is through these reports of founded wrongdoing that organizations can learn and ensure a federal public sector that operates with integrity for all Canadians.

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, the Office has the mandate to investigate disclosures of alleged wrongdoing and complaints of reprisal brought forward under the *Public Servants Disclosure Protection Act* (the *Act*).

Section 8 of 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 an investigation. This Case Report addresses one such investigation and the findings related to the allegations of wrongdoing brought forward to my Office.

Mandate of the Investigation

During the course of another investigation conducted by my Office, the investigators obtained information indicating that a wrongdoing may have been committed by the then Regional Vice-Chairperson (RVC) of the Ontario/Nunavut region of the Parole Board of Canada (Parole Board), Mr. Frederick Tufnell. A Vice-Chairperson of a regional division is responsible to the Chairperson for the professional conduct, training, and quality of decision-making of Board members assigned to that division. While Mr. Tufnell remains a Board Member of the Parole Board, his designation as RVC was terminated on September 24, 2013.

On April 11, 2013, the information obtained by the investigators was analyzed to determine whether an investigation should be launched with respect to Mr. Tufnell's alleged conduct. On June 26, 2013, after a detailed analysis of the information provided, Mr. Joe Friday, Deputy Commissioner, initiated an investigation to determine whether Mr. Tufnell committed wrongdoing pursuant to:

- paragraphs 8(a) and (e) of the *Act* by contravening the *Corrections and Conditional Release Act* (the *CCRA*) and committing a serious breach of the Parole Board's *Code of Professional Conduct* by interfering in a Parole Board decision, despite the appearance of a conflict of interest and bias; and
- paragraphs 8(d) and (e) of the *Act* by committing an act that created a substantial and specific danger to the life, health or safety of persons and committing a serious breach of the Parole Board's *Code of Professional Conduct* as it related to his conduct towards female employees at the Parole Board.

About the Organization

The Parole Board falls within the Public Safety portfolio. It consists of an independent administrative Tribunal that has exclusive jurisdiction and absolute discretion under the *CCRA* to grant, deny, cancel, terminate or revoke day parole and full parole. The Parole Board is also responsible for making decisions to order, refuse to order and revoke record suspensions under the *Criminal Records Act* and to make clemency recommendations.

Results of the Investigation

The investigation found that:

- **Mr. Tufnell contravened subsection 155(2) of the CCRA, which states that “A member of the Board may not participate in a review of a case in circumstances where a reasonable apprehension of bias may result from the participation of that member”, by:**
 - Placing himself in a conflict of interest situation when he requested that a second review be conducted and directed that a new decision be taken in a particular file, despite the fact that one had already been rendered during the course of an independent decision-making process. Mr. Tufnell had previously advised management of the Parole Board that he could not “vote” on this particular file, for reason of bias. While Mr. Tufnell may not have voted on it, his involvement in the file nevertheless resulted in a breach of subsection 155(2) of the CCRA, given the apprehension of bias that would likely result from it.

- **Mr. Tufnell seriously breached the Parole Board’s Code of Professional Conduct by:**
 - Demonstrating inappropriate behaviour and actions towards female employees in the workplace over an extended period of time;
 - Criticizing some Parole Board members to outside parties; and
 - Making unauthorized disclosures of information to individuals who were not authorized to receive it.

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

- **That Mr. Tufnell’s actions created a substantial and specific danger to the life, health or safety of persons.**

Overview of the Investigation

The investigation, led by Jenny-Lee Harrison and Christian Santarossa of my Office, was initiated on June 26, 2013. The investigators collected evidence, including but not limited to, records of emails, relevant files linked to the allegations, as well as witness testimony from nine individuals. As required under the *Public Servants Disclosure Protection Act*, the Parole Board readily provided access to the necessary facilities and the information requested during the course of the investigation.

In keeping with our obligations under the *Act*, my Office provided both Mr. Tufnell and the Chairperson of the Parole Board with a copy of a preliminary investigation report on October 8, 2013, and gave them full and ample opportunity to comment on the allegations and preliminary results.

In arriving at these findings, the Deputy Commissioner has given due consideration to all of the information received throughout the course of this investigation, including comments on the preliminary findings provided by Mr. Tufnell and the Chairperson of the Parole Board.

Summary of Findings

Contravention of an Act of Parliament

Subsection 155(2) of the *CCRA* states that “*A member of the Board may not participate in a review of a case in circumstances where a reasonable apprehension of bias may result from the participation of that member.*”

The investigation found that:

- Mr. Tufnell informed management in 2009 that he could not, for reason of bias, “*ever vote*” on this particular file.
- Mr. Tufnell’s position on the file was shared by email on numerous occasions since January 2012. Mr. Tufnell was fully aware that he could not vote, and as such could not, presumably, be involved in the file in any way, given the apprehension of bias that would likely result. Nevertheless, he requested a second review and directed that a new decision be taken, despite the fact that one had already been rendered during the course of an independent decision- making process.
- The evidence demonstrated that Mr. Tufnell took advantage of a specific situation, in April 2012, when other Board Members approached him with questions on the particular file, following which he ordered that a review to be conducted and that a new decision be rendered. In the end, Mr. Tufnell obtained the decision he believed should have originally been rendered.

Serious breach of a code of conduct

The factors this Office takes into consideration when determining whether an action or omission comprises a “serious” breach of a code of conduct include:

- 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; and
- there is a significant degree of wilfulness or recklessness related to the breach of the applicable code(s) of conduct.

The Parole Board's *Code of Professional Conduct* states that "In the discharge of their official duties and at all other times, members shall conduct themselves in a manner that promotes respect for the law and public confidence in the fairness, impartiality and professionalism of the National Parole Board, and that reflects the high standards of character and demeanour required of those charged with the administration of justice."

The investigation found that:

- Mr. Tufnell's physical, verbal and written actions corroborate a pattern of behaviour, more specifically with female staff. Such actions include putting his hands on their knees while talking to them, spending what was described as "too much" time in a subordinate's cubicle, running his hands on their backs, arms, nape of the neck and hair, and making flirtatious and offensive jokes in the workplace.
- Other examples include providing back massages to female staff in the workplace, and allowing another female staff member to rub his feet at a Parole Board forum. Mr. Tufnell justified these actions by claiming that two staff members were experiencing discomfort and were told that he gave the "best" massages, and that the other female staff member was not giving him a foot massage, but rather that she could "read people" by analyzing their feet, similar to that of a palm reading.
- Some witnesses indicated being too intimidated by Mr. Tufnell to file a formal complaint, and also indicated being concerned about the potential impact filing such a complaint may have on their careers.
- Mr. Tufnell acknowledged being demonstrative when speaking with individuals, but stated that there were no intentions behind his actions. Nevertheless, his behaviour as a Board Member and later as a RVC did not promote professionalism as required by the Parole Board's *Code of Professional Conduct*. A person in Mr. Tufnell's position knew or ought to have known that such behaviour was inappropriate in the workplace. Additionally, since such behaviour was displayed over an extended period of time, his actions were more than isolated mistakes and instances of a lack

of judgment. It is reasonable to believe that Mr. Tufnell's behaviour and actions, which were in the open for all to see, would have created an uncomfortable work environment for most individuals.

- Mr. Tufnell was an authority figure and as such, had a particular responsibility to exemplify, in his actions and behaviours, the values of the public service in the workplace.
- In addition to the above, between February and April 2012, Mr. Tufnell criticized two Board Members as it pertained to their decision on a particular file to outside parties, and by doing so, indicated believing that their decision was wrong.
- By criticizing the Board Members referred to above, Mr. Tufnell did not conduct himself in a manner that promotes "impartiality and professionalism of the National Parole Board, or in a manner that reflects the high standards of character and demeanour required of those charged with the administration of justice."
- Moreover, Mr. Tufnell intentionally made unauthorized disclosures of protected information on a number of occasions, such as sharing offender statutory release dates and anticipated conditions, to individuals outside the federal government. These individuals did not have the authorized security clearance level to obtain such information, nor did they have a demonstrated need to know. Mr. Tufnell indicated having provided this information to outside parties to assist them in their work and to improve the relationship between them and the Parole Board.
- The Treasury Board Secretariat's *Operational Security Standard on Physical Security* specifically identifies the unauthorized disclosure of protected or classified information as a common threat to all government departments, and states that various events, whether accidental or intentional, can cause such a threat to manifest itself and produce injury. It is reasonable to presume that the Parole Board and its operations may face different threats due to the nature of its operations.

Conclusion

The information gathered during this investigation revealed that Mr. Tufnell committed wrongdoing as defined at paragraphs 8(a) and (e) of the Act by:

- Placing himself in a conflict of interest situation when he requested that a review be undertaken and that a new decision be rendered in a particular Parole Board file;
- Demonstrating inappropriate behaviour and actions in the workplace over an extended period of time;
- Criticizing some colleagues to outside parties; and
- Making unauthorized disclosures of information to individuals who were not authorized to received it.

Recommendations and the Parole Board's Response

In accordance with section 22(h) of the Act, this Office has made recommendations to the Chairperson of the Parole Board concerning the measures to be taken to correct the wrongdoing. I am satisfied with the Chairperson's response to the recommendations and with the measures taken to date by the Parole Board to address the wrongdoing identified in this report. The recommendations and the Parole Board's response follow.

It is recommended that the Chairperson consider whether discipline would be appropriate, in light of Mr. Tufnell's conduct and the applicable provisions of the CCRA.

Pursuant to subsection 155.1(1) of the Corrections and Conditional Release Act (CCRA), I (Harvey Cenaiko, Chairperson of the Parole Board) have recommended to the Minister of Public Safety and Emergency Preparedness that a judicial inquiry be held to determine whether Mr. Frederick Tufnell should be subject to any disciplinary or remedial measures for any reasons set out in any paragraphs 155.2(2)(a) to (d) of the CCRA.

I have recommended to the Minister of Public Safety and Emergency Preparedness that Mr. Frederick Tufnell's designation as the Regional Vice-Chairperson of the Ontario/Nunavut Region of the Parole Board be terminated, which took place by Order of the Governor in Council on September 24, 2013.

It is recommended that the Chairperson reassess Mr. Tufnell's ability to hold a position of trust within the public service by conducting a review of his reliability status, in light of his unauthorized disclosures of information.

I instructed the Board's Departmental Security Officer to investigate the unauthorized disclosures of information and I will forward the investigation's results along with your recommendation to the appropriate officials at the Privy Council Office as they are ultimately responsible to conduct the background check on qualified candidates considered for appointment.

It is recommended that the Chairperson implement a structured process to assess the past workplace behavior of prospective Board Members, prior to declaring them qualified to hold such a position.

I instructed the Board Members Secretariat, the division responsible for Professional Standards, to review the qualification process to improve candidate assessment tools. As part of this review, the Board Member Secretariat is examining the means to enhance the assessment of a candidate's past workplace behavior and their ability to discharge their duties ethically.

It is recommended that the Parole Board establish a mechanism to ensure that its *Code of Professional Conduct* has been provided to and discussed with all new Board Members, and that all Board Members are reminded of their obligations under this code on a regular basis.

All new Board members must undergo nationally approved training which encompasses sessions on professional standards and ethical behavior, including specific sessions on the Code of Professional Conduct. Board members receive a copy of the Code of Professional Conduct which stresses the professionalism, accountability, transparency, and respect of the law expected of individuals who hold positions that require public trust and confidence. The Code of Professional Conduct is also available on the Board's Intranet website so that Board members may consult it at any time.

Board members who are designated as Vice-Chairpersons receive additional training regarding the responsibilities associated with this designation. This training focuses on their responsibilities for adhering to the Code of Professional Conduct as well as ensuring that Board members assigned to their division adhere to the Code.

I instructed the Board Member Secretariat to ensure that each Board member receive, on a yearly basis, adequate information and training concerning the application of the Code of Professional Conduct. The Board Member Secretariat has delivered additional training sessions on professional conduct and is also developing resources to support Board members in ensuring that they adhere to the Code. Additionally, the Board Member Secretariat is available to provide advice, address issues or concerns, and provide information regarding any questions that Board members, including Vice-Chairpersons, may have with respect to professional and ethical conduct on an ongoing basis.