

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**

Canadian Food Inspection Agency

Case Report  
February 2017



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The Honourable George J. Furey, Q.C.  
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 Canadian Food Inspection 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 blue ink that reads "Friday". The signature is written in a cursive, flowing style.

Joe Friday  
Public Sector Integrity Commissioner  
OTTAWA, February 2017



The Honourable Geoff Regan, P.C., 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 Canadian Food Inspection 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 blue ink that reads "Friday". The signature is written in a cursive style with a large, prominent 'F'.

Joe Friday  
Public Sector Integrity Commissioner  
OTTAWA, February 2017



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## Foreword

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), presents the results of an investigation into the management of serious complaints of harassment at the Canadian Food Inspection Agency (CFIA).

This is the second case report where the findings of wrongdoing were based on information obtained during the course of another investigation by my Office and not from an individual making a protected disclosure. In this case, the investigation related to the conduct of the Vice-President of Human Resources at CFIA as well as the conduct of the President of the CFIA that, in my opinion, could potentially constitute wrongdoing under the Act. It was therefore in the public interest to commence a separate investigation.

Having the power to investigate wrongdoing 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 matters and bring them to light, in a goal of ensuring a federal public sector that operates with integrity for all Canadians.

Furthermore, given the current government's priority on mental health in the workplace, this report can serve to highlight the importance of ensuring a healthy and respectful workplace as a key element in any mental health strategy. All employees, regardless of their level and function in any organization, deserve and must be treated with respect.

Joe Friday, Public Sector Integrity Commissioner



## Mandate

The Office of the Public Sector Integrity Commissioner of Canada contributes to strengthening accountability and increases oversight of government operations by providing:

- public servants and members of the public with an independent and confidential process for receiving and investigating disclosures of wrongdoing in, or relating to, the federal public sector, and by reporting founded cases to Parliament and making recommendations to chief executives on corrective measures; and
- public servants and former public servants with a mechanism for handling complaints of reprisal for the purpose of coming to a resolution including referring cases to the Public Servants Disclosure Protection Tribunal.

The Office is an independent organization that was created in 2007 to implement 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 existence of wrongdoing to the attention of the organization's chief executive and to make recommendations for corrective action.

*The Act was created to provide a confidential whistleblowing mechanism in the federal public sector. The disclosure regime established under this Act is meant not only to identify wrongdoing when it occurs, and to take corrective action to ensure the wrongdoing stops, but also to act as a general deterrent throughout the federal public sector. This is why legislation requires that founded cases of wrongdoing be reported to Parliament. This is a powerful tool of transparency and public accountability.*

## About 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 Dr. Bruce Archibald, who was then President of the Canadian Food Inspection Agency (CFIA or Agency) and Mr. Gérard Étienne, who was then Vice-President of Human Resources at CFIA.

On March 16, 2016, after a detailed analysis of the information provided, I initiated an investigation to determine whether Dr. Archibald and Mr. Étienne committed wrongdoing pursuant to paragraph 8(c) of the Act. The investigation was in regard to whether senior management circumvented or breached the approved CFIA *Policy on Harassment Prevention and Resolution*, in the management of three serious harassment complaints filed by employees against a Senior Executive who reported to Dr. Archibald. Furthermore, the investigation considered whether senior management denied access to a legitimate means of raising concerns regarding harassment in the workplace and misled employees about their rights in this regard as well as their understanding of how the Agency responded to their legitimate expectations with respect to these complaints.

Dr. Archibald retired during the course of this investigation, and Mr. Étienne was promoted to Vice-President of Operations in the spring of 2015.

## Results of the Investigation

**Dr. Archibald in his capacity as President, and Mr. Étienne in his capacity as Vice-President of Human Resources, committed gross mismanagement, a wrongdoing as defined under the Act, when they failed to take appropriate and required action to deal fairly and thoroughly with three serious harassment complaints filed against a Senior Executive, who reported directly to Dr. Archibald.**

The information obtained during the investigation demonstrates, on a balance of probabilities, that Dr. Archibald and Mr. Étienne purposefully circumvented the CFIA harassment complaint process by:

- improperly involving the Senior Executive, the alleged harasser, prior to and during the initial assessment of the harassment complaints and thereby undermining the review process; and
- deciding to not investigate the three complaints, in less than three days, and without any written analysis, even though these complaints revealed serious allegations of harassment and abusive behaviour.

## Overview of the Investigation

The investigation, led by Christian Santarossa and Alain Joanisse of my Office, was initiated on March 16, 2016. The investigators collected and assessed evidence, including but not limited to, records of emails, relevant files linked to the allegations, as well as witness testimony of 33 individuals.

In keeping with our obligations under the Act, my Office provided CFIA and both Dr. Archibald and Mr. Étienne a copy of a preliminary investigation report (PIR) on August 17, 2016, and gave them full and ample opportunity to comment on the allegations and preliminary results. They both denied committing any wrongdoing explaining that their informal response to the complaints was adequate.

A copy was shared with the Clerk of the Privy Council, Michael Wernick, as is our practice whenever the wrongdoing concerns a governor in council appointee.

In making 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 both Dr. Archibald and Mr. Étienne.

## Summary of Findings

### ***Gross mismanagement: wrongdoing as defined under paragraph 8(c) of the Act***

Dr. Archibald in his capacity as President, and Mr. Étienne in his capacity as Vice-President of Human Resources, committed gross mismanagement when they failed to take appropriate action to deal fairly and thoroughly with three serious harassment complaints made against a Senior Executive who reported to Dr. Archibald.

The factors that this Office takes into consideration when determining whether an act of gross mismanagement has occurred include:

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

Witnesses explained that from December 2014 to January 2015, they were contacted by HR officials to meet with Mr. Étienne about their concerns regarding the Senior Executive’s behaviour. During these meetings, Mr. Étienne and HR personnel informed employees that they could file formal harassment complaints to have their concerns addressed. The information that they conveyed to Mr. Étienne and to another HR official when they met with them was the same as they subsequently provided in their formal harassment complaints.

In addition to these complaints, on February 12, 2015, four executives of the CFIA (at the EX-01 and EX-02 levels) submitted to Mr. Étienne a memorandum outlining their serious concerns about the same Senior Executive’s behaviour. This memorandum included annexes written by each of the executives in which they described their individual experience with the Senior Executive and what they had witnessed in the workplace.

The evidence demonstrates several concerns regarding the manner in which these employees’ harassment complaints were subsequently managed by senior management. The following timeline illustrates the key elements and dates relevant to this matter, beginning at the end of January 2015, after Mr. Étienne met with all potential complainants:

Dates	Events
Friday, January 30, 2015	Mr. Étienne and Executive Vice-President (EVP) meet with Dr. Archibald to brief him on employees’ concerns about the Senior Executive and potential harassment complaints.
Monday to Tuesday, February 2 to 3, 2015	Labour Relations Officer and Mr. Étienne meet with potential complainants.
Tuesday to Friday, February 3 to 6, 2015	Harassment complaints are filed by three complainants.  Mr. Étienne, EVP and Labour Relations Officer begin work on an “action plan” to address the harassment complaints.
Thursday, February 5, 2015	EVP and Labour Relations Officer meet with the Senior Executive to inform the individual of the incoming complaints and to advise that person not to retaliate against employees. Further meetings on this matter are subsequently held with the Senior Executive.
Monday, February 9, 2015	Mr. Étienne meets with the Senior Executive to “touch base”.

Monday to Wednesday, February 9 to 11, 2015	Brief meetings between Mr. Étienne, Labour Relations Officer and Complaints Analyst to discuss complaints.  Mr. Étienne decides to proceed with an “action plan” that will include a workplace assessment to deal with the harassment complaints, instead of an investigation.
Thursday, February 12, 2015	Four executives submit a memorandum regarding issues about the Senior Executive’s behaviour.  N.B. this approach had in fact been suggested to them by Mr. Étienne.
Friday, February 13, 2015	Mr. Étienne again meets with the Senior Executive to “touch base”.
Monday, February 16, 2015	Meeting with the Senior Executive to explain that there will not be an investigation into the complaints but that an action plan will be developed to address the employees’ concerns.
Thursday, February 19, 2015	Mr. Étienne and a Labour Relations Officer meet with the Senior Executive to discuss the action plan designed to address employees’ concerns.

The actions depicted above in the timeline, along with the absence of any written rationale for not investigating the three serious harassment complaints made against the Senior Executive, reasonably leads me to believe that either the outcome or resolution of the harassment complaints was in fact pre-determined or that senior management was extremely careless in dealing with the complaints. It must be reiterated that as early as February 3, 2015, an “action plan” was being developed to address the problems reported to HR and to Mr. Étienne, as the complaints were being received and before could be fully analyzed.

Furthermore, there is no reasonable explanation for the meetings that the Senior Executive had with Mr. Étienne and even a Labour Relations Officer who took part in the review of the complaints. Mr. Étienne met with the Senior Executive on February 9 and 13, in his words, “to touch base”, at the time when the complaints were being reviewed by Mr. Étienne’s team. In response to the PIR, Mr. Étienne stated that he regularly met with the Senior Executive and that these meetings had nothing to do with the harassment complaints. However, Mr. Étienne was not able to specify what these meetings were about.

Both Dr. Archibald and Mr. Étienne commented in response to the PIR that it was appropriate for senior management to discuss the employees' concerns over harassment with the Senior Executive and to even inform this person of the incoming harassment complaints before they were filed. They described this approach as being consistent with the early and informal resolution objectives of the CFIA *Policy on the Prevention and Resolution of Harassment in the Workplace* (CFIA Harassment Policy). Both Dr. Archibald and Mr. Étienne stated that the CFIA Harassment Policy in fact stipulates that managers should act promptly to stop a possible case of harassment.

If the purpose of meeting with the Senior Executive was to stop the alleged inappropriate behaviour in a prompt manner, then Mr. Étienne should have met with the Senior Executive much earlier, in December 2014, when Mr. Étienne started receiving information that suggested improper behaviour on the Senior Executive's part. Instead, senior management met with the Senior Executive when they knew that complaints were about to be made against this person. Senior management explained that they informed the Senior Executive of the complaints purportedly to warn this person not to engage in potential retaliation activities. Why they felt compelled to speak to the Senior Executive about not retaliating against employees is of concern. This explanation is at best questionable, considering that Mr. Étienne and others had yet to receive, review and analyze the formal complaints. These communications create a reasonable perception of partiality in the process and an apprehension of bias in favour of the Senior Executive.

Another element that leads me to believe that the outcome of the complaints was pre-determined or that extreme carelessness was shown, and which most certainly leads me to a finding of gross mismanagement, is the manner in which the complaints were reviewed. It is critical to underscore that although Mr. Étienne had met, in person, many of the complainants and that it was he who had invited them to file formal complaints, after just three days of discussing them through "brief" meetings with labour relations analysts, Mr. Étienne accepted their recommendation that *none* of the allegations in any of the three complaints met the definition of harassment. Furthermore, Mr. Étienne did not question this recommendation, nor did he ask for any rationale or written analysis. Mr. Étienne stated that he never read the harassment complaints and that he relied on the advice of the analysts to make his decision. Also notable, is that the memorandum he received on or about February 12, 2015, prepared by four executives and which outlined similar concerns with the Senior Executive's behaviour, did not move him to reconsider his decision not to investigate the complaints.

During the investigation, we were informed that the analysts tasked with reviewing these complaints only noted their personal observations in the margins of the documents, rather than prepare a formal memorandum or written recommendation. In his response to the PIR, Mr. Étienne stated that a written analysis is not necessary, although desirable. Where three formal harassment complaints against a senior member of management are made, and this, following

discussions that Mr. Étienne had with employees about their concerns with this person's management style and behaviour, I have no difficulty concluding that a much greater degree of scrutiny and due diligence should have been exercised in this case.

During our investigation, the analysts tasked with reviewing the harassment complaints in question had considerable difficulty in articulating how the allegations reported in the complaints, including yelling and making inappropriate comments, could not meet the definition of harassment under the CFIA Harassment Policy. One analyst conceded that while such allegations could constitute harassment, that it was *"their [the analysts'] responsibility to consider the overall workplace rather than individual harassment complaints"*. Dr. Archibald echoed this sentiment in his response to the PIR, saying that our investigation failed to recognize the "balance" that must be achieved in the workplace between the concerns raised by the complainants and other employees in the same workplace.

While the overall wellness of the workplace is a valid consideration, it must be said that investigating serious allegations of harassment is a key factor in ensuring a harassment-free and respectful workplace. The analysts' explanation, and that of Dr. Archibald, does not satisfactorily take into account the rights of employees to have their complaints investigated, or potentially dealt with through mediation, in accordance with the CFIA Harassment Policy.

Mr. Étienne may disagree on whether any of the information contained in the complaints met the definition of harassment, and he may claim that he simply followed the recommendation of his employees, but that does not diminish his responsibility and accountability as Vice-President of Human Resources. In essence, Mr. Étienne did not give these complaints the due diligence that they required. In this sense, Mr. Étienne failed not only the complainants who counted on him, but also his organization.

Our investigation also revealed a discrepancy between the information that Mr. Étienne claims to have conveyed to the complainants and their consent to proceeding by way of an action plan instead of an investigation, and the complainants' version of events. Mr. Étienne stated that the complainants were consulted about the action plan and that they agreed with this approach, however, this statement was not supported by the complainants. The lack of clarity on the complainants' agreement with the action plan is particularly concerning, since Mr. Étienne informed the EVP that the complainants were in fact in agreement with the suggested approach.

The investigation demonstrates that Mr. Étienne was primarily responsible for the mishandling of the harassment complaints. As Vice-President of Human Resources, he should have ensured that a fair and complete process be followed. This would have reasonably entailed: not prematurely involving the Senior Executive prior to receiving complaints and during their review, completing a full written analysis of the complaints and ensuring better consultation

and communication with the complainants. All of this would have required more than the three days and the three brief meetings that it took the CFIA to devise a way to avoid an investigation.

When Dr. Archibald was briefed about the employees' concerns with the Senior Executive's behaviour and informed of the incoming harassment complaints, he asked to be kept at arm's length from the issues, because he could be called upon later to act as decision-maker in the harassment complaints. While Dr. Archibald's initial reaction to keep himself at arm's length from the substantive issues may appear to have been reasonable, it is his absence of oversight of the process that is highly problematic.

Although Dr. Archibald received, from the briefings offered by Mr. Étienne, limited information about the complaints, nonetheless, significant responsibility for the gross mismanagement of the three harassment complaints rests with him, as President and Deputy Head of the organization and the Senior Executive's direct supervisor. The CFIA Harassment Policy specifically states that the "ultimate responsibility and authority for applying this policy rests with the President of the CFIA." The Policy further states that "harassment in the workplace is unacceptable and will not be tolerated". In addition, the CFIA Code of Conduct states that "the CFIA promotes a zero-tolerance level of harassment in the work environment".

While it may have been reasonable for Dr. Archibald to initially take some distance from the substance of the complaints, keeping himself at arm's length did not absolve the former President of his overall responsibility to ensure that due diligence be shown to the process and to the complainants. Clearly, the President failed to question the rigour and soundness of the process adopted by Mr. Étienne. Dr. Archibald's choices in a situation that concerned his direct report exacerbated greatly the mismanagement of the three harassment complaints. Furthermore, information obtained during the investigation suggests that Dr. Archibald had direct knowledge of similar concerns that had been raised against the Senior Executive in the past at another organization. While this knowledge was not necessarily relevant to determining whether the allegations of harassment at CFIA against the Senior Executive were true, it should have signalled to Dr. Archibald the importance of a thorough review of the complaints.

## Conclusion

In the public sector workplace, harassment complaints must be taken seriously, especially when made against a senior executive occupying a position of significant responsibility and authority over employees. The situation described in this case report involved three serious harassment complaints, yet no due diligence was shown.



I find that Dr. Archibald and Mr. Étienne circumvented established procedures at the CFIA to deal with harassment complaints, and therefore, deprived three employees of the legitimacy of the harassment complaint process. As a result, the complainants' right to have their harassment complaints thoroughly reviewed and adequately dealt with was denied.

The failures in this regard raise serious concerns as to whether the CFIA had the willingness to appropriately address the situation in question. Dr. Archibald and Mr. Étienne did not demonstrate, in this instance, the reasonably required commitment to ensuring a harassment-free and respectful workplace.

In conclusion, the information obtained during the investigation demonstrates, on a balance of probabilities, that Dr. Archibald and Mr. Étienne committed gross mismanagement, a wrongdoing as defined under paragraph 8(c) of the Act. They purposefully circumvented the CFIA harassment complaint process by:

- improperly involving the Senior Executive, the alleged harasser, prior to and during the initial assessment of the harassment complaints and thereby undermining the review process; and
- deciding to not investigate the three complaints, in less than three days, and without any written analysis, even though these complaints revealed serious allegations of harassment and abusive behaviour.

### **Commissioner's Recommendations and Departmental Responses**

In accordance with paragraph 22(h) of the Act, I have made recommendations to the President of the CFIA concerning the measures to be taken to correct the wrongdoing. I am satisfied with the President's responses to the recommendations and with the measures taken to date to address the wrongdoing identified in this report. My recommendations and the responses follow.

**I recommend that the CFIA take appropriate actions to ensure that the concerns raised in the three original harassment complaints in this matter have been fully and fairly considered and responded to, including addressing the needs and interests of anyone affected by the alleged harassment.**

*I [President of the CFIA] accept your recommendation, and have already taken steps to verify that the three harassment complaints will be fully and fairly considered. We are retaining the services of an experienced independent third party to assist the Agency in fulfilling this recommendation.*

**I also recommend that the CFIA review its policies and training on harassment in the workplace to ensure that all employees understand their rights and obligations, and that processes to handle complaints are not only fair and complete, but that they are clearly communicated, understood and respected.**

*I [President of the CFIA] fully agree that all employees should know and understand their rights and obligations as it relates to harassment in the workplace. To ensure we are meeting our responsibility in that regard, the CFIA had an independent third party review our harassment procedures and processes and compare them to best practices within the Federal Public Sector. The review concluded that " ... the CFIA process stands out as a solid effort to deal with a complaint of harassment in a responsible manner, and the CFIA is far more prepared than most Agencies to receive, assess and process complaints of harassment..". Our focus going forward will be to directly address the recommendation that the process to handle complaints be clearly communicated, understood and respected.*

*The CFIA has also developed, and made mandatory for all employees, harassment prevention and awareness training entitled, "Creating a Respectful Workplace: How to Recognize and Resolve Harassment". Training is also included in our Pre-Requisite Employment Program (PREP), and in our supervisory and managerial training. A particular focus in our training will be on rigour in the documentation process.*

*We have also partnered with one of our Bargaining Agents, the Public Service Alliance of Canada, through a joint Harassment Awareness Training Committee, to update and jointly deliver enhanced respectful workplace training to employees.*

**I further recommend that the CFIA determine - as should all federal public sector organizations when managing harassment complaints against senior executives - whether the complaint can be managed fairly and independently within the organization or whether an external independent organization should be engaged to manage the complaint.**

*The CFIA agrees and will examine if it should be standard practice for CFIA to refer all harassment complaints made against senior executives to an independent third party. As noted in response to your first recommendation, the CFIA has engaged an external third party to assist with our review of this matter. We will learn from that experience to determine any required adjustments to our policies and procedures.*