

PREFACE

An inquiry under the *Conflict of Interest Code for Members of the House of Commons* (Code) may be initiated at the request of a Member of the House of Commons, by resolution of the House of Commons or on the initiative of the Conflict of Interest and Ethics Commissioner.

Where the Commissioner has concerns that a Member of the House of Commons has not complied with his or her obligations under the Code, the Commissioner is required to give that Member written notice of his concerns and afford that Member 30 days to respond. If, after giving the Member 30 days to respond, the Commissioner has reasonable grounds to believe that the Member has not complied with his or her obligations under the Code, the Commissioner may conduct an inquiry on his own initiative to determine whether the Member has complied with his or her obligations under the Code.

Following the completion of an inquiry, a report is to be provided to the Speaker of the House of Commons, who presents it to the House of Commons when it next sits. The report is made available to the public once it is tabled or, if the House is not then sitting, upon its receipt by the Speaker.

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EXECUTIVE SUMMARY

This report presents the findings of my inquiry under the *Conflict of Interest Code for Members of the House of Commons* into the conduct of Mrs. Stephanie Kusie, Member of Parliament for Calgary Midnapore, in connection with public comments concerning a request for an inquiry about another Member of Parliament that she made to my Office.

On March 29, 2018, I received a letter from Mrs. Kusie asking me to conduct an inquiry into the conduct of Mr. Raj Grewal, Member of Parliament for Brampton East. That same day, I learned that an article referring to the letter had been published on the *National Post's* website. Mrs. Kusie's letter was also posted on her website and Facebook account on March 29. The next day, a link to the *National Post* article was posted on her Twitter account.

Subsection 27(2.1) of the Code prohibits a Member who has requested an inquiry from making any public comments relating to the inquiry until the Commissioner confirms that the Member who is the subject of the inquiry has received a copy of the complaint or 14 days have elapsed from the date of receipt of the request by the Commissioner, whichever is earlier.

The evidence showed that even though it was the Office of the Leader of the Opposition who sent a copy of her letter requesting an inquiry to the *National Post*, Mrs. Kusie did make public comments on her website and Facebook and Twitter accounts about the request before I confirmed that Mr. Grewal had received a copy of it and before the required 14 days had elapsed since I received it. I therefore found that Mrs. Kusie contravened subsection 27(2.1) of the Code.

The evidence showed that the Office of the Leader of the Opposition encouraged Mrs. Kusie, a recently elected Member, to post about her request on social media once it had been made public. In commenting publicly on her request for an inquiry in contravention of subsection 27(2.1) of the Code, Mrs. Kusie was acting on advice that she received from staff at the Office of the Leader of the Opposition and her non-compliance was an error in judgment made in good faith. I therefore recommended that no sanction be imposed.

CONCERNS AND PROCESS

On March 29, 2018, I received a letter from Mrs. Stephanie Kusie, Member of Parliament for Calgary Midnapore, requesting that I conduct an inquiry into the conduct of Mr. Raj Grewal, Member of Parliament for Brampton East.

That same day, I was informed by my Office that an article referring to that letter had been published on the *National Post's* website.

Still on March 29, Mrs. Kusie's letter was posted on her website and a link to that item on her website was posted on her Facebook account. The following day, a link to the *National Post* article was posted on her Twitter account.

On April 5, 2018, I wrote to Mrs. Kusie to notify her of my concern that she may have contravened subsection 27(2.1) of the Code in relation to the public comments she had made to the *National Post* as well as on her website and Facebook and Twitter accounts concerning her request for an inquiry into an alleged contravention of the Code by Mr. Grewal.

Subsection 27(2.1) of the Code prohibits a Member who requests that an inquiry be conducted from making public comments relating to the inquiry until either the Commissioner confirms that the Member who is the subject of the inquiry has received a copy of the complaint or 14 days have elapsed following receipt of the request by the Commissioner.

In my letter of April 5, 2018, I explained to Mrs. Kusie that the Code afforded her 30 days to respond to my concerns, after which I would decide whether an inquiry was warranted.

On May 2, 2018, I received a letter from Mrs. Kusie dated April 23, 2018, in response to the concerns raised.

I wrote to Mrs. Kusie on May 9, 2018, to inform her that, having carefully considered all the information before me including her written representations, I had reasonable grounds to believe that she had not complied with her obligations under the Code and that pursuant to subsection 27(4) of the Code, I was commencing an inquiry.

On June 12, 2018, I conducted a first interview with Mrs. Kusie. I conducted additional interviews with witnesses and received additional documents from those witnesses in August and October 2018.

At the end of my fact-finding process, I determined that a second interview with Mrs. Kusie was not required. I offered, however, to meet with Mrs. Kusie if she wished to make any further representations before I finalized my report. In keeping with the established practice of my Office, Mrs. Kusie was given an opportunity to review and comment on a draft of the factual portions of this report (Concerns and Process, Findings of Fact and Mrs. Kusie's Position) before they were finalized.

FINDINGS OF FACT

Mrs. Kusie was elected as the Member of Parliament for Calgary Midnapore in a by-election held on April 3, 2017, and thus became subject to the *Conflict of Interest Code for Members of the House of Commons*.

The purpose of this inquiry was to determine whether Mrs. Kusie failed to comply with her obligations under the Code when she made public comments concerning her request for an inquiry into an alleged contravention of the Code by Mr. Grewal prior to my confirming that he had received a copy of the complaint.

Concerns raised with the Office of the Leader of the Opposition

Mrs. Kusie testified that she gathered information relating to Mr. Grewal's activities and submitted this information to the Office of the Leader of the Opposition (OLO) for review. Her original intention in submitting the documentation was to inform the OLO of the alleged activities and to assist in the creation of Question Period materials or media releases. Mrs. Kusie also added that, in submitting the information to the OLO, she did not believe she would have thought of an ethics inquiry. She recalled that the OLO had mentioned that there were other instances where the approach taken by the OLO had been to send a letter to my Office requesting an inquiry.

In her interview, Mrs. Kusie indicated that she submitted the information to the OLO and that they determined that the allegations had legitimacy. The OLO then made the decision to draft the letter.

Letter requesting an inquiry

Mrs. Kusie's parliamentary assistant confirmed that an undated draft letter was prepared by the Communications team in the OLO and submitted to Mrs. Kusie's office for signature on March 29, 2018, at 10:07 a.m. This was corroborated in an email exchange between the OLO and Mrs. Kusie's office. According to documents received by my Office, Mrs. Kusie approved the letter requesting an inquiry at 10:30 a.m. At the OLO's request, her electronic signature was affixed to the still undated letter, which was forwarded by email to the OLO at 10:45 a.m.

Mrs. Kusie's parliamentary assistant communicated by email with Mrs. Kusie's constituency office at 10:48 a.m. to forward to them the same signed but undated copy of the letter, letting them know the letter would be submitted that day. In the email, she wrote "we should post something about it as well." She emailed them again at 10:55 a.m. to forward a new copy of the letter, still undated but now on MP letterhead. Mrs. Kusie's parliamentary assistant testified that staff in the constituency office was responsible for maintaining Mrs. Kusie's website and Facebook account.

According to an email dated March 29, 2018, at 12:45 p.m., the Senior Communications Officer in the OLO submitted a copy of Mrs. Kusie's letter requesting an inquiry to Ms. Marie-Danielle

Smith, a reporter for the *National Post*. In her interview, the Senior Communications Officer testified that the letter had been released at the direction of the Director of Media Relations and Issues Management in the OLO. In a subsequent exchange of emails, the last of which was sent at 12:48 p.m., the Senior Communications Officer confirmed to Ms. Smith that, although there was no date on Mrs. Kusie's letter, she had submitted it to my Office already on that day.

On March 29, 2018, at 12:51 p.m., I received by email a signed and dated copy of Mrs. Kusie's letter requesting that I conduct an inquiry into the conduct of Mr. Grewal.

Mrs. Kusie's parliamentary assistant stated that the OLO had asked her to be informed when the letter was sent to my Office. In an email dated March 29, 2018, at 12:52 p.m., Mrs. Kusie's parliamentary assistant did so by forwarding to the Senior Communications Officer a copy of the letter that was sent to my Office along with my Office's acknowledgement of receipt of that letter.

Comments published regarding the request for an inquiry

Mrs. Kusie's parliamentary assistant told me that in a phone call with staff from the OLO, she was informed that an article in the *National Post* would be published, and that once this had occurred, Mrs. Kusie would be free and encouraged to post about her request on her social media accounts.

Mrs. Kusie told me that she recalled being informed that there would potentially be a news story about her request, but that she was not made aware of the fact that the letter would be released to the *National Post*. Mrs. Kusie also told me that the OLO encouraged her and her office to post about the request on social media. Mrs. Kusie could not recall whether this encouragement occurred before or after the letter had been released by the OLO to the *National Post*.

An article originally published in the *National Post* on March 28, 2018, entitled "NDP Asks Ethics Commissioner to Open an Investigation into Liberal MP over India Trip" was updated on March 29, 2018, at 1:04 p.m., with the new title "Conservatives Join NDP in Asking Ethics Commissioner to Open an Investigation into Liberal MP over India Trip," and referenced Mrs. Kusie's request for an inquiry.

Later that day on March 29, 2018, at 2:17 p.m., a signed but undated copy of Mrs. Kusie's letter requesting an inquiry was posted on her website at www.stephaniekusiemp.ca. Then, at 3:41 p.m., a link to the letter on her website was posted on her Facebook account, where she stated: "Here is my letter to the Conflict of Interest and Ethics Commissioner regarding Liberal MP Raj Grewal."

On March 30, 2018, a link to the *National Post* article was tweeted from Mrs. Kusie's Twitter account, "@StephanieKusie," where Mrs. Kusie's request for an inquiry was referred to again.

In her interview, Mrs. Kusie confirmed that the member of her staff responsible for social media had posted the direct link to the letter on her website and Facebook account. She also recalled posting the tweet herself.

During her interview, Mrs. Kusie confirmed that the Twitter and Facebook accounts as well as the website that were used in these instances are the social media tools that she uses in relation to her role as a Member of the House of Commons.

Mrs. Kusie confirmed during her interview that she did not make any other public comment in relation to this request.

Update to the *National Post* article and apology in the House of Commons

On April 5, 2018, after I wrote to Mrs. Kusie to inform her of my concern that she may have breached subsection 27(2.1) of the Code, Mrs. Kusie's parliamentary assistant shared my letter with the OLO to request assistance in how to respond.

The documentary evidence shows that a discussion was held between Mrs. Kusie's parliamentary assistant and the OLO, during which the OLO proposed that they would get the *National Post* to correct the article so that it no longer state that Mrs. Kusie had shared the letter requesting an inquiry with the *National Post*. The OLO also proposed that they work with Mrs. Kusie to draft a point of order that she could raise in the House of Commons once it resumed.

Following that discussion, Mrs. Kusie's parliamentary assistant wrote to Mrs. Kusie to inform her of the suggested way forward. Additionally, in her email, Mrs. Kusie's parliamentary assistant pointed out that staff in the OLO did not think that the Commissioner's concerns were "a big deal," had noted that other Members had been "similarly reprimanded" and had sought to obtain approval to "leak out the letter [Mrs. Kusie] received confirming that the Ethics Commissioner is indeed investigating Grewal." In that same email, Mrs. Kusie's parliamentary assistant also highlighted that the advice they had received from the OLO had been to post on social media rather than to wait for confirmation by the Commissioner that Mr. Grewal had received a copy of the request for an inquiry.

At 3:59 p.m. on April 5, 2018, the *National Post* article was updated to read as follows:

*In a letter sent to Dion, **which a Conservative staffer shared with the Post**, Kusie said Grewal's conduct was "improper" and "certainly flies in the face of the principles of the Conflict of Interest Code."* [Emphasis added]

Mrs. Kusie's parliamentary assistant testified that she drafted the initial apology and that the OLO helped her in finalizing it. On April 19, 2018, Mrs. Kusie rose on a point of order in the House of Commons and stated the following:

Mr. Speaker, on a point of order, I rise regarding the preliminary review of the member for Brampton East by the Ethics Commissioner. As members may know, it was my letter to Mario Dion that started the inquiry into the member's actions. Once the preliminary review was public knowledge through media reports, I confirmed through social media that I had submitted the original complaint to the Ethics Commissioner.

As you know, Mr. Speaker, in June 2015, a new section was added to the Conflict of Interest Code that requires MPs to avoid publicly commenting on complaints before the individual who is the subject of the complaint has been informed. The commissioner has since informed me that I should have waited before I commented on the matter publicly.

I can assure you and the House, Mr. Speaker, that the error was totally inadvertent, because I believed that I was free to comment once the information became public. I understand now that I should have waited until receiving formal confirmation from Mr. Dion. Therefore, I want to apologize unreservedly to the Ethics Commissioner, the House, and to you yourself, Mr. Speaker.

During their testimony, Mrs. Kusie and her parliamentary assistant both told me that, in their earlier interactions with the OLO, they had never been informed of past incidents involving other Members but instead were encouraged to post on social media.

I note that a similar apology was made by the Honourable Andrew Scheer on January 31, 2017, following public comments made to journalists concerning a request for an inquiry into the conduct of the Right Honourable Justin Trudeau. Mrs. Kusie's assistant testified that the Director of Media Relations and Issues Management in the OLO had mentioned that apology to her when discussing Mrs. Kusie's potential apology.

MRS. KUSIE'S POSITION

In a letter dated May 15, 2018, Mrs. Kusie wrote that neither she nor any of the staff in her office released the letter to the *National Post*. Mrs. Kusie added that while she had confirmed on social media that she submitted a request for an inquiry to my Office, based on the advice she received from the OLO, she believed that once the request was in the public domain, she would be able to make public comments relating to it. In her view, the error was totally inadvertent and in large part due to this belief and her ignorance of the rules.

ANALYSIS AND CONCLUSION

In this inquiry, I had to determine whether Mrs. Kusie, as a Member of the House of Commons, contravened subsection 27(2.1) of the Code given that, within one day of having requested an inquiry into an alleged contravention of the Code by Mr. Grewal and prior to receiving my confirmation that Mr. Grewal had received the complaint, her request was referred to in a *National Post* article and in publications made on her website and on her Facebook and Twitter accounts.

Subsection 27(2.1) prevents Members of the House of Commons from commenting publicly about a request for inquiry prior to receiving confirmation from my Office that the Member who is the subject of the complaint has received it, or before 14 days have elapsed. It reads as follows:

27. (2.1) The Member who requested that an inquiry be conducted shall make no public comments relating to the inquiry until the Commissioner confirms that the subject of the inquiry has received a copy of the complaint or 14 days have elapsed following the receipt of the request by the Commissioner, whichever is earlier.

Analysis

Subsection 27(2.1) has been in force since October 20, 2015. In June 2015, the House of Commons concurred in the *Thirty-Ninth Report* of the Standing Committee on Procedure and House Affairs (PROC), agreeing to the Committee's recommended changes to the Code. Part of those recommendations included the addition of subsection 27(2.1) to the Code.

In my view, the language and intent of subsection 27(2.1) of the Code is unambiguous and clearly prohibits the Member requesting an inquiry from making public comments unless certain conditions have been met. As stated in two of my previous reports, the *Angus Report I* and the *Angus Report II*, the Member issuing a public notification or confirmation that a request for an inquiry has been made is a public comment.

This interpretation is consistent with other provisions of the Code, namely paragraphs 27(5.1)(i) and (ii), which refer to the mere confirmation that a request for inquiry has been received or a preliminary review or inquiry has been commenced or completed as "public comments." These provisions read as follows:

27. (5.1) The Commissioner shall make no public comments relating to any preliminary review or inquiry except to:

(i) confirm that a request for an inquiry has been received;

(ii) confirm that a preliminary review or inquiry has commenced or been completed;

The evidence gathered in this inquiry shows that Mrs. Kusie was not aware that the OLO intended to release her letter requesting an inquiry to the *National Post*, which was done even before I received the request. As a result, she cannot be held responsible for the release of her letter to the *National Post*.

On the other hand, the evidence clearly shows that public comments concerning the request were made shortly thereafter on Mrs. Kusie's website and Facebook and Twitter accounts. Mrs. Kusie confirmed that the website and Twitter and Facebook accounts that were used in these instances are the social media tools that she uses in relation to her role as a Member of the House of Commons.

These public comments occurred both prior to my confirming that Mr. Grewal had received a copy of the complaint and prior to the required 14 days having elapsed following my receipt of the complaint on March 29, 2018. I am concerned that Mrs. Kusie received information and advice from the OLO encouraging her to make public comments once the OLO had made her request public as this clearly prompted her to contravene a provision of the Code, namely subsection 27(2.1).

The fact that Mrs. Kusie's public comments were made on the same day I received the request did not allow for the reasonable period of 14 days that PROC afforded to the Commissioner to inform the Member concerned about the complaint.

In my view, Mrs. Kusie's public tweet, Facebook post and posting of her request for an inquiry on her website ran contrary to the intent of subsection 27(2.1), as the Member complained against clearly risked hearing about the request from other sources before hearing from my Office.

Conclusion

For the reasons stated above, I have determined that Mrs. Kusie contravened subsection 27(2.1) of the Code concerning the public comments made in relation to her request for an inquiry on her website and Facebook and Twitter accounts.

SANCTION

Pursuant to subsection 28(5) of the Code, where a Member has not complied with the Code, the Commissioner may find that there were mitigating circumstances. The subsection reads as follows:

28. (5) If the Commissioner concludes that a Member has not complied with an obligation under this Code but that the Member took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgment made in good faith, the Commissioner shall so state in the report and may recommend that no sanction be imposed.

While I have determined that Mrs. Kusie has not complied with her obligations under subsection 27(2.1) of the Code, I have concluded for the reasons set out below that the non-compliance was an error in judgment made in good faith.

Mrs. Kusie, a recently elected Member, was acting on the advice she received from the staff at the OLO who encouraged her to make public comments concerning her request. This advice was provided despite the OLO's knowledge of previous experiences with other Members of Parliament concerning the restrictions relating to making public comments on requests as set out in subsection 27(2.1) of the Code.

I further note that in her written representations, during her testimony and before the House of Commons, Mrs. Kusie apologized for having erred in not waiting for confirmation from my Office before personally commenting publicly on her request for an inquiry. I believe in the sincerity of Mrs. Kusie's apology.

I therefore recommend that no sanction be imposed.



Mario Dion

Conflict of Interest and Ethics Commissioner

December 4, 2018

SCHEDULE: LIST OF WITNESSES

The names of all witnesses are listed below according to the organizations to which they belonged at the time of the events that are the subject of this inquiry.

Interviews and Written Submissions

Office of Mrs. Stephanie Kusie, Member of Parliament for Calgary Midnapore

- Ms. Catherine Hingley, Member's Assistant

Office of the Leader of the Opposition

- Ms. Kelsie Corey, Senior Communications Officer

Written Submissions

Office of the Leader of the Opposition

- Mr. Marc-André Leclerc, Acting Chief of Staff, on behalf of the Honourable Andrew Scheer, Leader of the Opposition