



Office of the
Conflict of Interest and
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Maloney Report

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Mario Dion

Conflict of Interest and
Ethics Commissioner

Maloney Report

made under the *CONFLICT OF INTEREST CODE FOR MEMBERS OF THE HOUSE OF COMMONS*

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PREFACE

Under the *Conflict of Interest Code for Members of the House of Commons* (Code), which constitutes Appendix I of the *Standing Orders of the House of Commons*, an inquiry 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 their 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 their obligations under the Code, the Commissioner may conduct an inquiry on his own initiative to determine whether the Member has complied with their 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* (Code) into the conduct of Mr. James Maloney, Member of Parliament for Etobicoke–Lakeshore.

I sought to determine whether Mr. Maloney contravened subsection 20(1) of the Code. Under subsection 20(1), Members must fully disclose their private interests and those of their family members to the Commissioner as the first step in their initial compliance process after they are elected. Paragraph 20(1)(i) requires them to do so within 60 days after notice of their election to the House of Commons is published in the *Canada Gazette*.

Shortly after notice of Mr. Maloney's October 2019 re-election appeared in the *Canada Gazette* on November 8, 2019, the Office advised Mr. Maloney of his obligation to file a Disclosure Statement and provide all required supporting documents by January 7, 2020.

Mr. Maloney submitted a Disclosure Statement but it was missing some information, which he was given until February 7 to provide. Although he sent some additional information by that new deadline, his initial disclosure was still incomplete and remained so despite repeated communications from the Office.

By April 27, the Office had not heard from Mr. Maloney for over five weeks and completion of his initial disclosure was now 10 weeks overdue. I notified him of my concerns that he may have failed to comply with his obligation under paragraph 20(1)(i) of the Code and gave him 30 days, until May 27, to respond, which he neglected to do.

Having determined that I had reasonable grounds to believe that Mr. Maloney had not complied with his obligations under the Code, I started an inquiry on June 1, 2020. Despite continued attempts by the Office to contact Mr. Maloney, he only responded on August 5, 2020, after a journalist contacted him regarding his disclosure obligations. His Disclosure Statement was finally deemed complete on September 1, 2020.

My inquiry found that Mr. Maloney had failed to file a complete Disclosure Statement within a reasonable time after his extended deadline for doing so had passed. Complete and timely disclosure allows the Commissioner to advise Members appropriately on what measures are needed to avoid conflicts of interest and supports the Code's purpose of maintaining and enhancing public confidence and trust in the integrity of Members. I concluded that Mr. Maloney contravened paragraph 20(1)(i) of the Code and that no mitigating circumstances applied given the length of the delay.

When a contravention of the Code is found in an inquiry and there are no mitigating circumstances, the Commissioner may recommend that the House of Commons impose appropriate sanctions. Having considered Mr. Maloney's disregard for his post-election obligations under the Code, I recommend that the House require Mr. Maloney to apologize to it for having failed to fulfill his obligations as a Member in the context of his initial compliance process under the Code.

CONCERNS AND PROCESS

[1] Subsection 20(1) of the *Conflict of Interest Code for Members of the House of Commons* (Code) requires that Members file a Disclosure Statement with the Commissioner consisting of a full statement of the private interests listed under subsection 21(1) for themselves and for members of their family, and that they do so within 60 days after the notice of their election to the House of Commons is published in the *Canada Gazette*. This initial disclosure by Members is the first step in their initial compliance process under the Code.

[2] Following his re-election as the Member of Parliament for Etobicoke–Lakeshore, Mr. James Maloney was advised by this Office of his disclosure obligations under the Code. Mr. Maloney first provided an incomplete Disclosure Statement and, several days later, some additional information. However, his initial disclosure was still incomplete and remained so despite repeated communications from the Office with Mr. Maloney over the following weeks.

[3] On April 27, 2020, I wrote to Mr. Maloney pursuant to subsection 27(4) of the Code to notify him of my concerns that he may be failing to fulfill his obligations under subsection 20(1) of the Code. I invited him to respond within 30 days, after which I would decide whether to commence an inquiry.

[4] Having received no response to my letter of April 27, 2020, I wrote again to Mr. Maloney on June 1, 2020, to inform him that I had reasonable grounds to believe he had not complied with his obligations under the Code and that, on that basis, I was commencing an inquiry. I also asked the Member to respond in writing to the allegation.

[5] I held an interview with Mr. Maloney on September 22, 2020, and received one document the next day in fulfillment of an undertaking made by the Member during this interview.

[6] Mr. Maloney was provided with an opportunity to review and comment on a draft of the factual portions of this report (Concerns and Process, Facts, and Mr. Maloney's Position) before it was finalized.

FACTS

[7] On October 21, 2019, Mr. Maloney was re-elected as the Member of Parliament for Etobicoke–Lakeshore. Notice of his election was published in the *Canada Gazette* on November 8, 2019.

[8] On November 13, 2019, the Office sent, on my behalf, a letter to Mr. Maloney identical to the letters sent to all other newly elected or re-elected Members at the start of their mandate. This letter informed Mr. Maloney of his obligations under the Code, including his obligation to file a Disclosure Statement and provide all required supporting documents by January 7, 2020.

[9] Because no Disclosure Statement had been received from Mr. Maloney by this deadline, the Office sent him a reminder email on January 9, 2020, to which he responded on the same day to indicate that he would submit his disclosure the following week.

[10] In accordance with its practice following a general election, the Office began publishing the *Members' Compliance Status Report* on its website. This report identifies which stage each Member has reached in the initial compliance process. At that time, the report was updated on a weekly basis and, with each update, the Office sent an email to all Members who were not in compliance with their initial disclosure obligations, asking them to submit the required information without delay. Mr. Maloney received such emails on January 16 and 22, 2020.

[11] Mr. Maloney travelled from his riding to Ottawa in time for the start of the parliamentary session on January 20, 2020. After business hours on January 23, 2020, a package containing Mr. Maloney's Disclosure Statement form and copies of financial statements was hand delivered to the Office. The form was signed and dated January 14, 2020. Staff in the Office received the documents and sent the Member an acknowledgement of receipt on January 24, 2020. In reviewing the documents on the same day, staff in the Office noted that the form had not been fully completed and asked Mr. Maloney to provide the missing information, emailing back to him, to both his generic Member of Parliament address and his personal address, a scanned copy of all the documents he had provided.

[12] Later that day, Mr. Maloney called the Office to raise serious concerns with the way the Office had handled the confidential information he had provided. Mr. Maloney explained that his Disclosure Statement should not have been sent to the generic Member of Parliament address, to which his parliamentary and constituency staff have access. Additionally, given that the documents had been hand delivered in hard copy, they should not have then been sent back to him electronically. Finally, in his view, the weekly emails referring to the *Members' Compliance Status Report* should not be sent with all recipients visible to others but rather as a blind carbon copy to each recipient.

[13] During the call of January 24, 2020, the Office acknowledged the error regarding its handling of Mr. Maloney's confidential information and offered an apology.

[14] To follow up on the telephone conversation, on January 27, 2020, the Office sent an email to Mr. Maloney in which it reiterated its apology for having mishandled the Member's confidential information. The Office also explained the measures taken in order to avoid a recurrence, as well as a change of practice to be implemented with respect to the weekly email as a result of their conversation. Finally, the email listed each item of information to be provided by Mr. Maloney in order to complete his initial disclosure and granted an extension to February 7 for submitting the information.

[15] Mr. Maloney responded by email on February 6, 2020, providing some additional information. He also indicated in his email that he was not satisfied with the Office's apology for a "serious breach of privacy" and that he would have expected a call from the Commissioner.

[16] The Office responded by email the next day, confirming that it was taking the breach very seriously and taking steps to prevent such occurrences going forward. The Office also acknowledged receipt of the new information submitted and, noting that the Member's disclosure was not yet complete, listed five items of information that were still missing.

[17] Two weeks after his extension had expired, Mr. Maloney began receiving again the Office's weekly emails to Members not yet in compliance, which, under the new practice, were now sent to each recipient as a blind carbon copy. Mr. Maloney received two such emails, on February 19 and 26, 2020.

[18] On March 3, 2020, I wrote to the Honourable Mark Holland, Chief Government Whip, seeking his assistance in implementing section 20 of the Code with respect to six Members, including Mr. Maloney.

[19] On March 18, 2020, I wrote to ask Mr. Maloney and four other Members, with a copy to the Chief Government Whip, to provide by March 20, 2020, either the required information that was still missing or an explanation for why they had not yet submitted this information.

[20] Mr. Maloney responded immediately to this email, indicating his displeasure in relation to the Office's response to the breach of confidentiality of his personal information and that he had provided the information already but would provide it again. Later that day, staff in the Office emailed him the same list of five items of missing information that had been sent to him on February 7, 2020. The Office received no information or other response from Mr. Maloney further to this communication.

[21] During the following weeks, in consideration of the unprecedented situation developing across the country at the time and Members' essential role in the government's work to respond to the COVID-19 pandemic, I suspended further follow-up action with respect to Members' initial compliance processes.

[22] During his interview, Mr. Maloney stated that, from mid-March 2020 onwards, he and his staff were receiving a particularly high volume of requests for assistance from constituents related to various aspects of the growing health crisis, including travel issues and access to the government's support programs for individuals and businesses. Mr. Maloney noted that responding to these requests was his only priority at that time and that everything else was set aside.

[23] On April 27, 2020, given that the Office had not received any communications from Mr. Maloney in over five weeks and completion of his initial disclosure was now 10 weeks overdue, I decided to resume my attempts to contact him with respect to his obligations. I wrote to Mr. Maloney to notify him pursuant to subsection 27(4) of the Code of my concerns that he may have failed to comply with his obligation under paragraph 20(1)(i) of the Code to file a full statement disclosing his private interests and those of his spouse.

[24] In the letter, I indicated that under subsection 27(4) of the Code, he was afforded 30 days from the date of my letter to provide me with a response to my concerns. I also asked him to provide any relevant factual information and his views on whether he believed he contravened his obligations under paragraph 20(1)(i) of the Code. I received no representations, written or otherwise, from Mr. Maloney in response to my concerns.

[25] The Office communicated with staff at the Member's parliamentary office on May 21, 2020, to confirm that the Member had indeed received the letter. The following day, the Office also resent the letter to Mr. Maloney's personal email address. The 30-day response period expired on May 27, 2020, without a response having been received from Mr. Maloney.

[26] I wrote to Mr. Maloney on June 1, 2020, to inform him of my determination that I had reasonable grounds to believe that he had not complied with his obligations under the Code and that, pursuant to subsection 27(4) of the Code, I was commencing an inquiry. I also reiterated to Mr. Maloney my request for written representations by asking that he provide me, no later than June 22, 2020, with all relevant factual information and any comments he may wish to make on the matter.

[27] The Office communicated again with staff at the Member's parliamentary office on June 9, 2020, in order to ensure the Member had received this new letter. The Office was assured by Mr. Maloney's staff member that it would be done.

[28] In the absence of a response from Mr. Maloney to my letter of June 1, 2020, I wrote again on June 25, 2020, asking that he make himself available to attend an interview by videoconference on July 15 or 16, 2020, for approximately one hour. In this letter, I also reminded Mr. Maloney of his obligation under paragraph 27(8) of the Code to cooperate with respect to an inquiry under the Code.

[29] Since no response had yet been received, on July 10, 2020, staff in the Office sent Mr. Maloney a second copy of my letter dated June 25, 2020. Mr. Maloney did not respond to my request for an interview.

[30] The *Members' Compliance Status Report* published on August 5, 2020, identified Mr. Maloney as the only Member who had yet to complete the first step in the initial compliance process under the Code, namely the submission of a duly completed Disclosure Statement.

[31] The same day, Mr. Maloney called the Office to ask what information was missing in order to complete his initial disclosure and to obtain clarifications on the inquiry process. He provided the Office with additional information by email the next day.

[32] During his interview, Mr. Maloney explained that a journalist had contacted him on August 5, 2020, asking him why the *Members' Compliance Status Report* on the Office's website indicated that he had not yet submitted his Disclosure Statement.

[33] Between August 28 and September 1, 2020, Mr. Maloney worked with his compliance advisor in the Office to clarify certain information and provide a missing financial statement for an account held by his spouse, which he had disclosed during his previous tenure as a Member. He then signed his Disclosure Summary, thus taking the final step in the initial compliance process under the Code, on September 14, 2020.

MR. MALONEY'S POSITION

[34] Mr. Maloney provided no written representations in the context of this inquiry.

[35] During his telephone call of August 5, 2020, with a member of the Office's staff, Mr. Maloney explained that, in his view, he had submitted the required information by providing all relevant financial statements in January and February 2020. He also mentioned that he had requested a call from the Commissioner following the disclosure of his personal information to his parliamentary and constituency staff on January 24, 2020, but this request was ignored.

[36] During his interview of September 22, 2020, Mr. Maloney reiterated that he had provided early on what he believed to be complete information. He had completed the Disclosure Statement form to the best of his abilities and submitted statements for all the accounts he had thought of at the time.

[37] By failing to indicate certain information in his Disclosure Statement form, he had not purposely withheld any information but rather avoided submitting incorrect information because he was unsure under which category certain investments would fall. In any event, he had provided all of the supporting documentation regarding the accounts and he had expected this would be sufficient, at least to start the process.

[38] Regarding the financial statement he provided on September 1, 2020, Mr. Maloney explained that not providing it earlier was an oversight, for which he apologized.

[39] Mr. Maloney also explained that from mid-March through the months of April, May and June, his work as Member of Parliament in response to the COVID-19 pandemic had taken precedence over anything else. With respect to his disclosure obligations under the Code, he thought at the time that he had fulfilled the requirements with the information he had provided and, as a result, he didn't believe that anything urgent needed to be done.

[40] Mr. Maloney further stated that while he had left several communications from the Office unanswered, he had not done so with any ill will or intent to ignore. He did not mean any disrespect to the Commissioner or anyone at the Office, or to the disclosure process under the Code.

ANALYSIS AND CONCLUSION

Analysis

[41] The purpose of this inquiry was to determine whether Mr. Maloney, following his election as the Member of Parliament for Etobicoke–Lakeshore, failed to comply with his obligations under paragraph 20(1)(i) of the Code.

[42] The Code requires Members to make a full, confidential disclosure of their private interests to the Commissioner within 60 days after becoming a Member and again at each annual review. Members must also provide this information to the Office for the members of their family, which include, as per subsection 3(4), their spouse.

[43] Subsection 20(1) of the Code reads as follows:

20. (1) A member shall file with the commissioner a full statement disclosing the member's private interests and the private interests of the members of the member's family within:

- (i) 60 days after the notice of his or her election to the House of Commons is published in the Canada Gazette; and
- (ii) 60 days after the date established by the commissioner for the annual review.

[44] The information that must be disclosed to the Commissioner is specified under subsection 21(1) and includes information about Members' and their family members' assets, liabilities, income and directorships or offices in a corporation, trade or professional association or trade union. To fulfill this requirement, Members fill out a detailed Disclosure Statement form and append all necessary supporting documents, which typically consist of financial statements showing the nature and value of their investments and other holdings.

[45] The provision of this information to the Office constitutes the first step in each Member's initial compliance process. Having received the Member's full disclosure of private interests, the Office then reviews the information disclosed and prepares a summary containing only certain parts of that information as specified by section 24 of the Code. This summary, once signed by the Member, is published in the Office's online registry for public inspection as required by section 23 of the Code.

[46] As I previously wrote in the *Peschisolido Report*, disclosure is essential in allowing the Commissioner to advise Members appropriately on what measures are needed to avoid conflicts of interest. It also directly supports some of the Code's key purposes: to maintain and enhance public confidence and trust in the integrity of Members, to demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests, and to provide a transparent system by which the public may judge this to be the case.

[47] The Code's disclosure requirements are stringent and come at a busy time for a newly elected or returning Member. The Code accounts for this by allowing the Commissioner to extend the applicable deadlines, should the need to do so arise; it even provides at subsection 20(1.1) that the Commissioner must not ordinarily refuse any reasonable request for an extension. However, no exception to the requirements under subsection 20(1) is permitted. A full statement must be filed by every Member, new or returning, each time the Code requires one.

[48] In the case of M. Maloney's initial compliance process following his re-election in October 2019, the Office received no information from the Member until after the 60-day period had expired as of January 7, 2020. Mr. Maloney submitted a first instalment of information on January 24, 2020, and at which time he obtained an extension to February 7, 2020. He then supplemented the information on February 6, within the extended deadline. However, some required information was still missing from Mr. Maloney's Disclosure Statement, and this situation continued for several months despite repeated efforts by staff in the Office and by me to obtain it.

[49] It is not uncommon for Members to take more than 60 days to fulfill their initial disclosure obligations. Following the 2019 general election, many Members only completed this step after having received several reminders. Some Members received a formal letter from me, like the one I sent to Mr. Maloney on April 27, 2020, affording them 30 days to respond to my concerns regarding their obligations under the Code and raising the possibility of an inquiry.

[50] This last-resort measure was effective in all cases but one. By the time Mr. Maloney contacted the Office for the first time in several months, on August 5, 2020, all 337 other Members had submitted a complete Disclosure Statement. It appears from the facts of the case that Mr. Maloney only turned his attention again to his obligations under the Code when he was contacted by a journalist about the matter.

[51] To explain why he failed to follow up in any way on communications from the Office between March 18 and August 5, 2020, Mr. Maloney explained that he believed he had provided complete information in January and February. As a result, while he was aware that the Office was trying to reach him, he did not view the matter as urgent. Instead, he was focused entirely, as a Member of Parliament, on what he could do to help respond to the COVID-19 pandemic and assist those affected.

[52] In keeping with the Office's long-standing practice, I apply the prescribed submission deadlines with as much flexibility and understanding as I can. For obvious reasons, I will not initiate an inquiry every time a deadline is missed; instead, I make every effort to bring Members into compliance with their obligations through other means. However, Members cannot simply set aside their obligations under the Code for a prolonged period without justification.

[53] Mr. Maloney was made aware repeatedly that the Office considered his initial disclosure to be incomplete. As of February 6, 2020, the missing pieces of information were few and listed precisely in an email he acknowledged having received, and yet it took almost seven months for him to finally provide all information requested by the Office. No matter how considerable a challenge the COVID-19 pandemic situation presented, it cannot reasonably justify Mr. Maloney's months-long non-compliance.

Conclusion

[54] In consideration of the above, I have determined that by failing to file a complete Disclosure Statement within a reasonable time after his extended deadline had passed, Mr. Maloney has contravened paragraph 20(1)(i) of the Code.

SANCTION

[55] Having concluded that a Member has not complied with an obligation under the Code, I must consider whether the contravention is mitigated as per subsection 28(5), which 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.

[56] Complete and timely disclosure being such an essential component of the Code, a Member's protracted breach of their disclosure obligations cannot be viewed as trivial. Mr. Maloney was informed that he was not in compliance with his initial disclosure obligations and was advised several times in writing of what information was required. He was thus given ample opportunity to remedy the situation, and yet, not only did he delay completing his disclosure well beyond a reasonable time, he also failed to respond to communications from the Office for months.

[57] Therefore, I conclude that none of the circumstances set out in subsection 28(5) apply to this case.

[58] Pursuant to subsection 28(6) of the Code, where a Member has contravened the Code and none of the circumstances set out in subsection 28(5) apply, I may recommend appropriate sanctions. The provision reads as follows:

28. (6) If the commissioner concludes that a member has not complied with an obligation under this Code, and that none of the circumstances in subsection (5) apply, or is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the commissioner shall so state in the report and may recommend appropriate sanctions.

[59] Having considered the circumstances of the case, I recommend that the House require Mr. Maloney to present it with an apology for having failed to fulfill his obligations as a Member in the context of his initial compliance process under the Code.



Mario Dion

Conflict of Interest and Ethics Commissioner

November 19, 2020