



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
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Fergus Report

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Mario Dion

Conflict of Interest and
Ethics Commissioner

Fergus Report

made under the *CONFLICT OF INTEREST ACT*

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PREFACE

This report is submitted pursuant to the *Conflict of Interest Act* (Act) S.C. 2006, c.9, s.2.

The Conflict of Interest and Ethics Commissioner may conduct an examination under the Act at the request of a member of the Senate or House of Commons or, as is the case with this examination, on his own initiative.

When an examination is conducted on the Commissioner's own initiative, unless the examination is discontinued, the Commissioner is required to provide a report to the Prime Minister setting out the relevant facts of the case as well as the Commissioner's analysis and conclusions in relation to the examination. At the same time that the report is provided to the Prime Minister, a copy of the report is also provided to the public office holder or former public office holder who is the subject of the report, and the report is made available to the public.

01 SUMMARY

02 CONCERNS AND PROCESS

03 FACTS

06 MR. FERGUS' POSITION

07 ANALYSIS AND CONCLUSION

SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) of the conduct of the Honourable Greg Fergus, Parliamentary Secretary to the Prime Minister and to the President of the Treasury Board, and Member of Parliament for Hull—Aylmer, with respect to a letter of support relating to an application for a new broadcasting licence to the Canadian Radio-television and Telecommunications Commission (CRTC).

In June 2020, Natyf Inc. applied to the CRTC for its broadcast service Natyf TV to be granted mandatory distribution as part of the digital basic service across the province of Quebec. On June 2, 2021, Mr. Ronald Félix, a director of Natyf Inc., requested a letter from Mr. Fergus in support of its application. According to Mr. Fergus, Mr. Félix, as a Black Canadian, approached him in part due to his role as Chair of the Parliamentary Black Caucus, since the application concerned a television station that targets a diverse and inclusive Francophone audience.

On June 28, 2021, Mr. Fergus' staff provided Mr. Félix with a letter signed by Mr. Fergus in his capacity as Member of Parliament. In a public notice dated September 21, 2022, the CRTC invited comments on Natyf Inc.'s application, and on September 28, 2022, Natyf Inc. submitted the letter signed by Mr. Fergus to the CRTC.

In this examination, I sought to determine whether Mr. Fergus had contravened section 9 of the Act, which prohibits public office holders from using their position to seek to influence a decision of another person so as to improperly further another person's private interests.

Given that the letter of support was intended to influence the decision of the CRTC so as to further the private interests of Natyf Inc., I had to determine whether those interests were furthered improperly.

The Office has established several times before—in compliance orders, in a past examination report and in a guideline published on its website—that ministers and parliamentary secretaries should not write letters of support to quasi-judicial tribunals like the CRTC, given their governmental roles and the influence they possess. The role of parliamentary secretaries and the principle of non-intervention in quasi-judicial decisions are also outlined in the Prime Minister's *Open and Accountable Government* guideline.

On this basis, I found that it was improper for Mr. Fergus to write a letter of support for Natyf Inc. in its pursuit of a broadcasting licence. Even though the letter was written on Mr. Fergus' Member of Parliament letterhead, his role as Parliamentary Secretary simply cannot be disregarded.

Consequently, I found that Mr. Fergus contravened section 9 of the Act.

CONCERNS AND PROCESS

[1] On October 3, 2022, I received an email from a member of the media regarding a letter of support from the Honourable Greg Fergus, Parliamentary Secretary to the Prime Minister and to the President of the Treasury Board, and Member of Parliament for Hull–Aylmer.

[2] The letter in question, which was dated June 28, 2021 and signed by Mr. Fergus in his capacity as Member of Parliament, lent support to Natyf Inc., which was seeking to be granted from the Canadian Radio-television and Telecommunications Commission (CRTC) mandatory distribution on the digital basic service for its television service Natyf TV. At the time, Mr. Fergus was Parliamentary Secretary to the Prime Minister, to the President of the Treasury Board and to the Minister of Digital Government. The letter was submitted to the CRTC on September 28, 2022.

[3] On October 5, 2022, I wrote to Mr. Fergus to inform him that I was commencing an examination on my own initiative under subsection 45(1) of the *Conflict of Interest Act* (Act) regarding the letter of support submitted to the CRTC, an administrative tribunal. I informed Mr. Fergus that I had reason to believe that he may have contravened his obligations under section 9 of the Act, which prohibits public office holders from using their position to seek to influence a decision of another person so as to improperly further another person's private interests.

[4] On October 28, 2022, Mr. Fergus provided the Office with supporting documentation, and on November 17, 2022, I received from Mr. Fergus a detailed response to the matters I had raised in my letter dated October 5, 2022. On December 13, 2022, I wrote to Mr. Fergus asking him to submit an affidavit, in lieu of an interview, attesting to the statements made in the November 17, 2022 submission and to provide supplemental information, which I received on December 21, 2022.

[5] In accordance with the Office's established practice, Mr. Fergus was given the opportunity to comment on a draft of the factual sections of this report (Concerns and Process, Facts, and Mr. Fergus' Position) before they were finalized.

FACTS

Background

[6] Mr. Fergus was first elected as the Member of Parliament for Hull–Aylmer in 2015. Over the last three Parliaments, he was appointed Parliamentary Secretary to the Minister of Innovation, Science and Economic Development, to three Treasury Board Presidents, to the Minister of Digital Government and to the Prime Minister.

The circumstances that led to the letter of support

[7] According to its website, Natyf Inc. operates a Francophone television network, Natyf TV, focused on promoting the diversity of Canadians born here or elsewhere. Its registered office is located in Montreal, Quebec.

[8] In June 2020, Natyf Inc. filed an application with the CRTC for their discretionary service Natyf TV to be granted mandatory distribution as part of the digital basic service across the province of Quebec. In their application, Natyf Inc. emphasized that mandatory distribution is vital for the operation of their services as a means of reaching underserved racialized communities as well as bringing about the emergence of a new generation of Francophone creators to launch their careers in the French-language market.

[9] The CRTC is an administrative tribunal that regulates and supervises broadcasting and telecommunications. The CRTC's role is to implement the laws and regulations set by parliamentarians who create legislation and departments that set policies. According to the CRTC's *Departmental Plan 2022-2023*, "[the organization] has the quasi-judicial powers of a superior court with respect to the production and examination of evidence and the enforcement of its decisions. As an administrative tribunal, it operates at arm's length from the federal government."

[10] Mr. Fergus knew one of the directors of Natyf Inc., Mr. Ronald Félix, who lives in the National Capital Region. Mr. Fergus stated he met Mr. Félix as a result of his work as the Member of Parliament for Hull–Aylmer and Chair of the Parliamentary Black Caucus. Mr. Félix also confirmed that he met Mr. Fergus while at various government and community-organized events. He described his relationship with Mr. Fergus as professional in nature.

[11] On June 2, 2021, Mr. Fergus and Mr. Félix met, at Mr. Félix's request, to discuss Natyf Inc.'s application with the CRTC and to request a letter of support.

[12] Mr. Fergus stated that Mr. Félix's request for a letter of support was made in part due to Mr. Fergus' role as Chair of the Parliamentary Black Caucus, since the application was for a television station that targets a diverse and inclusive Francophone audience. As a Black Canadian, Mr. Félix is considered a stakeholder of the Parliamentary Black Caucus.

[13] Established in 2015, the Parliamentary Black Caucus is composed of parliamentarians from the Senate and the House of Commons who are either Black Canadians or allies of Black Canadians. According to Mr. Fergus, it is designed to ensure that Canadians of African descent are able to see themselves in Canada's parliamentary institutions, to educate all parliamentarians and engage with them about issues of importance to the Black community, and to provide a safe space to discuss such issues.

[14] Mr. Fergus held the role of Chair of the Parliamentary Black Caucus from December 2015 until May 2022. According to Mr. Fergus, while the role is an informal one, the Chair coordinates meetings between parliamentarians, shares information and provides a safe and respectful entry point to parliamentarians for Black Canadian stakeholders. Furthermore, the Parliamentary Black Caucus provides Black Canadians, including Black Canadian business owners, with the opportunity to engage with parliamentarians on issues of importance to their community.

[15] Mr. Fergus stated that, to the best of his knowledge, he did not discuss Natyf Inc. with any other member of the Parliamentary Black Caucus nor has he specifically endorsed any other business in his capacity as Chair of the Parliamentary Black Caucus.

The letter of support

[16] Following his June 2, 2021 meeting with Mr. Fergus, Mr. Félix exchanged several emails in mid-June 2021 with Mr. Fergus' staff on the proposed language for the letter of support.

[17] On June 28, 2021, Mr. Fergus approved and signed the letter, which was prepared on his Member of Parliament letterhead. The letter, which was not addressed to anyone in particular, encouraged the consideration of Natyf Inc.'s application to receive mandatory distribution as part of the digital basic service for Natyf TV. The letter also included the reference number of the application with the CRTC. An electronic copy of the letter was emailed to Mr. Félix by Mr. Fergus' staff on that same day.

[18] Mr. Félix stated that after receiving the letter of support he did not discuss the letter or Natyf Inc.'s application to the CRTC with either Mr. Fergus or his staff.

The submission of Mr. Fergus' letter of support to the CRTC

[19] In a public notice dated September 21, 2022, the CRTC invited comments on Natyf Inc.'s application in advance of a hearing scheduled for January 2023. In a September 23, 2022 email, a representative of Natyf Inc. invited their friends, partners and collaborators to show their support for Natyf TV by providing their name and email address to the CRTC. The representative also invited individuals to submit a letter on behalf of their organization or enterprise detailing their support.

[20] On September 28, 2022, representatives of Natyf Inc. submitted Mr. Fergus' letter of support to the CRTC. Mr. Fergus confirmed that he received an automated message sent to his parliamentary email address from the CRTC that same day. However, he stated he only became aware that the letter of support had been submitted as a result of a media inquiry on October 3, 2022.

[21] Upon being asked about the letter of support by the media outlet, Mr. Fergus immediately communicated with this Office in respect of this matter.

MR. FERGUS' POSITION

[22] In his written statement, Mr. Fergus stated that when he was asked, as the Chair of the Parliamentary Black Caucus, to endorse Natyf Inc.'s application to the CRTC, he did so in part to ensure that Black Canadians see themselves reflected in the institutions of Parliament, to provide a message to other Black Canadians that they have a place where they can come and feel welcome and because he was asked, as a Black parliamentarian, to do so by an individual who is Black.

[23] Mr. Fergus recognized his unintentional error in providing the letter of support to Natyf Inc. and stated from the outset that he is deeply sorry for his action. Mr. Fergus stated that he did not directly and purposefully raise Natyf Inc.'s application with the CRTC itself. Mr. Fergus noted his long and detailed history of consulting and working with this Office, which made his error embarrassing and out of character. Mr. Fergus stated that he is completely aware of his obligations as a Member of Parliament and Parliamentary Secretary and will redouble his efforts to be more diligent in the future to ensure that he meets those obligations.

ANALYSIS AND CONCLUSION

Analysis

[24] In this examination, I must determine whether Mr. Fergus contravened section 9 of the Act by sending a letter of support relating to an application for a new broadcasting licence to the CRTC. As a parliamentary secretary, Mr. Fergus is subject to the substantive rules of the Act.

[25] Section 9 reads as follows:

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

[26] Mr. Fergus stated that he received the request for a letter of support from Mr. Félix, a stakeholder of the Parliamentary Black Caucus, in part due to Mr. Fergus' role as Chair of that group. Mr. Félix described his relationship with Mr. Fergus as professional in nature, having met on different occasions at government and community events. Messrs. Fergus and Félix are neither friends nor relatives.

[27] Mr. Fergus did not address his letter to anyone at the CRTC, nor did he send the letter himself. However, the letter included Natyf Inc.'s reference number with the CRTC. There is no doubt that the letter of support was intended to influence the decision of the CRTC so as to further the private interests of Natyf Inc. I must now determine whether those interests were furthered improperly.

[28] In the *Trudeau II Report*, I set out the meaning of the word *improper* in the context of an examination under section 9 of the Act. I interpreted this word to mean instances where a public office holder used their office to commit a "serious or fundamental error." In other words, an impropriety under the Act occurs "when a public office holder exercises an official power, duty or function that goes against the public interest, either by acting outside the scope of his or her statutory authority, or contrary to a rule, a convention or an established process."

[29] The matter relating to letters of support has been the subject of three compliance orders issued in 2013 as well as an examination report (*The Gill Report*). In the case of two compliance orders and of the examination, the individuals were parliamentary secretaries who had written letters of support to the CRTC on behalf of constituents seeking broadcasting licences from that administrative tribunal.

[30] With respect to the compliance orders, which were detailed in the *2012-2013 Annual Report*, former Commissioner Mary Dawson determined that the position of a parliamentary secretary entails official government duties and functions and that the CRTC is meant to operate at arm's length from the government with respect to its decision making. Commissioner Dawson concluded that it was therefore improper for parliamentary secretaries to write letters of support to the CRTC regardless of whether or not they explicitly identified their title.

[31] The compliance orders led to the development of the Commissioner's 2013 guideline, *Serving your constituents when you are a minister or a parliamentary secretary*. This document is posted on the Office's website. The guideline states that ministers and parliamentary secretaries may not, under any circumstances, attempt to intervene in the decision-making process of an administrative tribunal on behalf of any constituent or expedite the processing of an application as such contact may be considered an attempt to influence a decision, which is contrary to section 9 of the Act.

[32] In *The Gill Report*, Commissioner Dawson further noted that the role of parliamentary secretaries has been enhanced over the years to include supporting ministers in the development of specific departmental policies. Considering the special influence ministers and parliamentary secretaries possess given their governmental roles, Commissioner Dawson determined that parliamentary secretaries cannot remove themselves from their responsibilities as reporting public office holders by signing letters of support as Members of Parliament—even if they do not include their parliamentary secretary title.

[33] The role of parliamentary secretaries and the principle of non-intervention in quasi-judicial decisions are also outlined in the Prime Minister's *Open and Accountable Government* guideline. Although much of the guideline is directed to ministers, I believe that the advice applies equally to parliamentary secretaries, in light of their role in supporting the government agenda. The guideline notes specifically that broadcasting decisions are "considered sensitive and vulnerable to political interference." Accordingly, the guideline advises that members of the executive branch "must not intervene, or appear to intervene, with tribunals on any matter requiring a decision in their quasi-judicial capacity, except as permitted by statute." For greater certainty, the guideline adds that "it is inappropriate to attempt to influence the outcome of a specific decision of a quasi-judicial nature."

[34] These documents, developed by the Commissioner's Office or by the Prime Minister's Office, establish the practice to be followed by parliamentary secretaries in respect of their dealings with administrative tribunals such as the CRTC. I therefore find that it was improper for Mr. Fergus to write a letter of support for Natyf Inc. in its pursuit of a broadcasting licence.

[35] Even though the letter was written on Mr. Fergus' Member of Parliament letterhead, his role as Parliamentary Secretary simply cannot be disregarded. This matter could have been avoided had Mr. Fergus consulted this Office prior to sending the letter.

Conclusion

[36] I find that Mr. Fergus contravened section 9 of the Act by writing a letter in support of Natyf Inc., whose application for mandatory distribution on the digital basic service for its television service, Natyf TV, was before the CRTC.

A handwritten signature in black ink, appearing to read 'Mario Dion', with a stylized, cursive script.

Mario Dion
Conflict of Interest and Ethics Commissioner

February 14, 2023