



**Office of the Conflict  
of Interest and Ethics  
Commissioner**

**Commissariat aux  
conflits d'intérêts et à  
l'éthique**

## **The Toews Report**

made under the  
*CONFLICT OF INTEREST ACT*



**April 21, 2017**

**Mary Dawson  
Conflict of Interest and  
Ethics Commissioner**

The Toews Report

made under the  
*CONFLICT OF INTEREST ACT*

For additional copies of this publication, please contact:

Office of the Conflict of Interest and Ethics Commissioner  
Parliament of Canada  
66 Slater Street, 22<sup>nd</sup> Floor  
Ottawa, Ontario K1A 0A6

Telephone: (613) 995-0721  
Fax: (613) 995-7308  
Email: [ciec-ccie@parl.gc.ca](mailto:ciec-ccie@parl.gc.ca)

*Ce document est également publié en français.*

This publication is also available online at the following address:  
<http://ciec-ccie.parl.gc.ca>

© Office of the Conflict of Interest and Ethics Commissioner, Parliament of Canada, 2017  
042017-62E



## **PREFACE**

The *Conflict of Interest Act*, S.C. 2006, c.9, s.2 (Act) came into force on July 9, 2007.

An examination under the Act may be initiated at the request of a member of the Senate or House of Commons pursuant to subsection 44(1) of the Act or on the initiative of the Conflict of Interest and Ethics Commissioner (Commissioner) pursuant to subsection 45(1).

When an examination is initiated under section 45 of the Act, the Commissioner is required, under subsection 45(3), to provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination, unless the examination is discontinued. Subsection 45(4) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the current or former public office holder who is the subject of the report, and made available to the public.



## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
Norway House Cree Nation .....	1
Peguis First Nation .....	2
<b>CONCERNS</b> .....	<b>3</b>
Possible contraventions in relation to subsection 35(1) of the Act .....	3
Possible contravention in relation to subsection 34(1) of the Act.....	4
<b>PROCESS</b> .....	<b>5</b>
<b>BACKGROUND</b> .....	<b>9</b>
<b>THE NORWAY HOUSE CREE NATION AND PROPOSED AMENDMENTS</b> .....	<b>11</b>
Findings of Fact.....	11
Mr. Toews' Position .....	15
Analysis and Conclusion .....	17
<b>PEGUIS FIRST NATION AND THE KAPYONG BARRACKS LAND</b> .....	<b>21</b>
Findings of Fact.....	21
Mr. Toews' Position .....	27
Analysis and Conclusion .....	29
<b>SUMMARY OF CONCLUSIONS</b> .....	<b>33</b>
<b>SCHEDULE: LIST OF WITNESSES</b> .....	<b>35</b>



## **EXECUTIVE SUMMARY**

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) into the conduct of the Honourable Vic Toews, P.C., in relation to his post-employment obligations.

In March 2015, I received an examination request from a Member of the House of Commons related to Mr. Toews' post-employment obligations under the Act. I did not conduct an examination pursuant to that request, as it did not set out reasonable grounds for the belief that a contravention had occurred. In looking into the matter, however, my Office became aware of other information that gave me reason to believe that Mr. Toews had contravened subsections 34(1) and 35(1) of the Act, so I launched this examination on my own initiative.

I examined Mr. Toews' involvement in matters involving two different First Nations.

### **Norway House Cree Nation**

One matter related to subsection 35(1) and Mr. Toews' dealings with Manitoba's Norway House Cree Nation.

During Mr. Toews' last year in office, while he was Senior Regional Minister for Manitoba, he met in August 2012 and again in September 2012 with Norway House Cree Nation representatives regarding a possible amendment to the Keenanow Trust flood agreement and a proposed amendment to Schedule II of the *First Nations Goods and Services Tax Act*.

In October 2013, less than two years after his last day in office, Mr. Toews provided consulting services on a number of issues for the Norway House Cree Nation through a company owned by his spouse.

Subsection 35(1) prohibits former reporting public office holders from entering into a contract of service with, accepting an appointment to a board of directors of or accepting an offer of employment with, an entity with which they had direct and significant official dealings during their last year in office. This prohibition applies to former ministers for a cooling-off period of two years after their last day in office.

Mr. Toews had dealings with the Norway House Cree Nation during his last year in office that constituted "direct and significant official dealings." The dealings were official because they related to government business and activities. They were direct because Mr. Toews met personally with the group's representatives. And, they were significant because of their importance to the Norway House Cree Nation.



I determined that, during his cooling-off period, Mr. Toews provided services under a contract of service with the Norway House Cree Nation, an entity with which he had direct and significant official dealings during his last year in office. I therefore found that Mr. Toews contravened subsection 35(1) of the Act.

### **Peguis First Nation**

The other matter related to subsection 34(1) and Mr. Toews' dealings with the Peguis First Nation after he left office.

In 2007, while he was President of the Treasury Board, Mr. Toews approved the transfer of the Kapyong Barracks land, a portion of Canadian Forces Base Winnipeg (South), to the Canada Lands Company. In 2008, the decision to transfer the property was challenged in court by several First Nations, including the Peguis First Nation, and Mr. Toews was named a respondent in the legal proceedings. The Federal Court ruled in 2012 that Canada had failed to appropriately consult First Nations, and set aside the transfer. That ruling was upheld by the Federal Court of Appeal in August 2015.

Mr. Toews acted on behalf of the Peguis First Nation by providing strategic advice to their legal counsel, Mr. Rath, and by meeting with municipal and provincial officials on the Kapyong matter. Mr. Toews provided strategic advice in connection with the Kapyong settlement proposal in at least several discussions with Mr. Rath and was involved in the drafting of a portion of the settlement proposal.

Subsection 34(1) prohibits former public office holders, including ministers, from acting for or on behalf of any person or organization in connection with a proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown. Such actions are referred to colloquially as “switching sides.” This prohibition applies indefinitely.

In providing strategic advice on a proposed settlement agreement in relation to the Kapyong matter, and in participating in its drafting, Mr. Toews switched sides. He acted for or on behalf of a party that was seeking relief against a decision in which he had been involved as a minister of the Crown.

I therefore found that Mr. Toews contravened subsection 34(1) of the Act.

## CONCERNS

On March 13, 2015, I received a letter from Mr. Pat Martin, then Member of Parliament for Winnipeg Centre, requesting that I conduct an examination into the conduct of the Honourable Vic Toews, P.C., former Minister of Public Safety and Senior Regional Minister for Manitoba, in relation to his post-employment obligations. Mr. Martin alleged, on the basis of information contained in media articles, that Mr. Toews may have contravened his post-employment obligations under sections 33, 34 and 35 of the *Conflict of Interest Act* (Act). Mr. Martin alleged that Mr. Toews had made the decision to award funds in relation to disaster relief and flood prevention measures to the Peguis First Nation and then had dealings with Peguis First Nation after leaving office.

After looking into the concern, I determined that Mr. Martin had not provided sufficient information to support a reason to believe that Mr. Toews had contravened any of the provisions cited by Mr. Martin in relation to the matters raised by Mr. Martin. I therefore did not commence an examination under section 44 of the Act.

However, in looking into Mr. Toews' post-employment obligations, my Office became aware of other dealings with First Nation groups, both during Mr. Toews' time in office and during his post-employment period, that raised questions for me.

### **Possible contraventions in relation to subsection 35(1) of the Act**

Information in the public domain indicated that several First Nations groups—the Norway House Cree Nation, the Peguis First Nation and the Manitoba Métis Federation—had received funding from Public Safety Canada while Mr. Toews was Minister of Public Safety. It also indicated that, within a year after leaving office, Mr. Toews was registered in Manitoba to lobby on behalf of the Norway House Cree Nation, was retained to provide consulting services in relation to the Peguis First Nation, and was registered to lobby on behalf of the Métis Economic Development Organization, the investment arm of the Manitoba Métis Federation.

Subsection 35(1) of the Act prohibits a former reporting public office holder from entering into a contract of service with an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office, for a “cooling-off period” of one or two years after leaving office. In Mr. Toews' case, the cooling-off period was two years because he was a minister.

Based on this information, I determined that I had reason to believe Mr. Toews may have contravened subsection 35(1) of the Act.



### **Possible contravention in relation to subsection 34(1) of the Act**

My Office found media articles indicating that Mr. Toews, in his capacity as President of the Treasury Board in 2007, was named as a respondent in legal proceedings in relation to the approval of the sale of Department of National Defence land in Winnipeg. Documents that were publicly available indicated that Mr. Toews, after leaving office, was retained by Mr. Jeffrey Rath, counsel of record for the Peguis First Nation in relation to the legal proceedings against the Crown regarding a portion of that land.

Subsection 34(1) of the Act prohibits former public office holders from acting for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown.

Based on this information, I determined that I had reason to believe Mr. Toews may have contravened subsection 34(1) of the Act.



## PROCESS

On March 20, 2015, I commenced an examination on my own initiative under subsection 45(1) of the *Conflict of Interest Act* (Act). I wrote to Mr. Toews informing him that I was commencing an examination pursuant to both section 34 and section 35 of the Act.

In my letter of March 20, 2015, I asked Mr. Toews to respond in writing to the allegations that I set out in the letter, and to provide me by April 20, 2015, with all documents in his possession that could assist me in my examination. In my letter, I informed Mr. Toews that upon receipt of all relevant documents, my Office would arrange a first interview with him.

In an email dated March 27, 2015, Mr. Toews expressed concerns as to what steps I would take to maintain the confidentiality of information forwarded to me. I replied to his email on March 31, 2015, indicating that examinations by my Office are required, under subsection 48(3) of the Act, to be conducted in private. I highlighted my Office's obligation under subsection 48(5) not to disclose any information obtained in conducting examinations, unless the disclosure of that information is, in my opinion, essential for the purposes of carrying out my examination, or for establishing the grounds for any conclusion contained in my examination report. I also noted to Mr. Toews, in this regard, that all witnesses are asked to keep the proceedings confidential.

On April 20, 2015, Mr. Toews responded by email to my initial letter of March 20, 2015. He informed me that he was not aware of any direct and significant official dealings with any of the organizations that were mentioned in my letter. Because of his position as a judge on the Court of Queen's Bench of Manitoba, he was reluctant to seek personally the information requested or to contact third parties and suggested that I contact the various government and non-government officials who were involved in those files. He did not address the question of whether he would like to take part in an initial interview in accordance with my usual process. Nor did he respond to the allegations as set out in my letter or provide me with any documents.

I received an additional response from Mr. Toews on May 22, 2015, in which he raised various procedural issues relating to my examination. He again raised his concern about his ability to comment on the allegations.

On July 16, 2015, I wrote to Mr. Toews addressing his concerns about the process and I invited him once again to comment on the allegations and to make representations on the subject matter of the examination at any time. At that time, I informed him that I intended to proceed immediately to interview witnesses and collect documents from third parties.



Over several months following my letter of July 16, 2015, I interviewed witnesses and received documentary evidence from third parties.

On November 3, 2016, I wrote to Mr. Toews informing him that after reviewing the information received, I had found no evidence to indicate that he was directly involved during his last year in office, in his capacity as Minister of Public Safety, in funding initiatives, programs or projects for the Norway House Cree Nation, the Peguis First Nation or the Manitoba Métis Federation, and would not be pursuing those matters further.

In that letter of November 3, 2016, I also informed Mr. Toews that I would be focusing my examination on two matters. The first related to subsection 35(1), and involved possible direct and significant official dealings he had in his capacity as Senior Regional Minister for Manitoba during his last year in office with the Norway House Cree Nation and subsequent consulting services he provided to the Norway House Cree Nation after he left office.

The second matter related to a possible contravention of subsection 34(1) in relation to Mr. Toews' decision in 2007, as then President of the Treasury Board, to transfer the Kapyong Barracks land to the Canada Lands Company. This decision had become the subject of ongoing legal proceedings between the Crown and the Peguis First Nation. My concern related to switching sides in that Mr. Toews may have provided consulting services to Mr. Rath on behalf of the Peguis First Nation about the same matter in the fall of 2013 after leaving office.

Finally, in the November 3, 2016, letter, I once again invited Mr. Toews to participate in an interview to provide him with an opportunity to present his views. I set out my specific concerns in more detail in a letter dated November 22, 2016. In this second letter, I asked Mr. Toews to provide me with all documents in his possession, custody or control related to the services he provided to Rath & Company in relation to the Kapyong Barracks in Winnipeg. Mr. Toews provided me with a number of documents related to his consulting work on the Kapyong matter on December 21, 2016.

On December 22, 2016, my Office forwarded to Mr. Toews and his counsel for review a copy of all relevant documents we had gathered in the course of our examination, as well as relevant excerpts of transcripts of interviews with the witnesses. My only interview with Mr. Toews was held on January 5, 2017.

In keeping with the practice I have established in conducting examinations, Mr. Toews was given an opportunity to comment on a draft of the factual sections of this report before it was finalized.

In this examination report, I am reporting on two unrelated matters. The first relates to the Norway House Cree Nation and the possible contravention of subsection 35(1) of the Act. The second relates to the Peguis First Nation and the possible contravention of subsection 34(1) of the Act. I will deal with each separately, setting out the facts, Mr. Toews' position, the analysis and the conclusion for each under separate headings.





## **BACKGROUND**

The Honourable Vic Toews, P.C., was the Member of Parliament for Provencher (Manitoba) from November 27, 2000, to July 9, 2013. On February 6, 2006, he was appointed Minister of Justice and Attorney General of Canada and became a reporting public office holder subject to the *Conflict of Interest Act* (Act). He served in that position until January 3, 2007.

Mr. Toews served as President of the Treasury Board from January 4, 2007, to January 18, 2010, and as Minister of Public Safety from January 19, 2010, to July 9, 2013. He was also the Senior Regional Minister for Manitoba from February 6, 2006, until July 9, 2013.

Mr. Toews left office on July 9, 2013, and retired from federal politics. At that time, Mr. Toews became subject to the Act's post-employment obligations, which are set out in Part 3 of the Act.





## THE NORWAY HOUSE CREE NATION AND PROPOSED AMENDMENTS

### Findings of Fact

The Norway House Cree Nation is one of the largest First Nation communities in Manitoba. While Mr. Toews was Senior Regional Minister for Manitoba, the Norway House Cree Nation sought assistance in the form of political support from Mr. Toews during his last year in office on two issues.

One issue related to an amendment to Schedule II of the *First Nations Goods and Services Tax Act*, part of a broader plan for more self-government. The other related to a possible amendment to the Keenanow Trust flood agreement that would allow for a restructuring of the Norway House Cree Nation's financial situation.

Mr. Toews described his role of Senior Regional Minister for Manitoba as being a liaison person in Manitoba for Cabinet. Matters falling within the jurisdiction of the Minister of Aboriginal Affairs and Northern Development (as styled at the time) or the Minister of Finance would continue to be the responsibility of those ministers. The Senior Regional Minister's role was to liaise on behalf of individuals or groups in Manitoba who were seeking assistance from Cabinet in some way.

After leaving public office, Mr. Toews provided consulting services to the Norway House Cree Nation, through 6572155 Manitoba Ltd. (henceforth referred to as "the numbered company"), a company owned by Mr. Toews' spouse.

For the purposes of this examination, I must determine whether Mr. Toews contravened subsection 35(1) of the *Conflict of Interest Act* (Act) by providing consulting services during his cooling-off period to the Norway House Cree Nation, an entity with which he may have had direct and significant official dealings during the year immediately before his last day in office.

### *Interactions between the Norway House Cree Nation and Mr. Toews before he left office*

During his last year in office, Mr. Toews met twice in person with the Norway House Cree Nation representatives as Senior Regional Minister for Manitoba, once on August 16, 2012, and again on September 5, 2012.

Mr. Toews testified that he did not recall either the issue or these meetings in any way, and was unable to confirm whether he had attended the meetings or had had a discussion on the issue. Chief Ronald Evans and Ms. Caterina Ferlaino of the Norway House Cree Nation confirmed that the meetings took place and provided me with notes from the meetings.



### *Meeting of August 16, 2012 – The First Nations Good and Services Tax Act*

The first meeting was organized in July and early August 2012 by Ms. Caterina Ferlaino, the staff member responsible for the Norway House Cree Nation's government relations. The meeting was requested to discuss options for entering into the regime under the *First Nations Goods and Services Tax Act*. First Nations that are listed in Schedule II of that Act are not subject to the federal goods and services tax, but instead are authorized to administer a tax on goods and services within their lands.

The Norway House Cree Nation saw the *First Nations Goods and Services Tax Act* as a possible avenue for increasing revenue to fund projects as well as a step toward a broader system of self-government.

Representatives of the Norway House Cree Nation had sought the meeting of August 16, 2012, with Mr. Toews to inform him of the possibility of an amendment to Schedule II of the *First Nations Goods and Services Tax Act* to add the Norway House Cree Nation to the schedule and that they then planned to send a formal joint request to then Manitoba Minister of Finance, the Honourable Stan Struthers, and then federal Minister of Finance, the Honourable Jim Flaherty, P.C.

Chief Evans and Ms. Ferlaino said that they briefed Mr. Toews on the matter in case the Norway House Cree Nation needed his support. Ms. Ferlaino explained that there was no expectation of assistance from Mr. Toews on this issue because of the process in place with the Ministry of Finance. Chief Evans said that they were seeking guidance on whether it was an option that the Norway House Cree Nation should pursue.

Ms. Ferlaino told me that the Norway House Cree Nation did not need Mr. Toews' political support or intervention in entering into the *First Nations Goods and Services Tax Act*. They had raised the issue with Mr. Toews simply to keep him informed of the direction the Norway House Cree Nation wanted to take.

### *Meeting of August 16, 2012 – The Keenanow Trust*

At the meeting of August 16, 2012, Chief Evans and Ms. Ferlaino raised a second issue, namely the possibility of amending the Keenanow Trust. That trust is a schedule to the Master Implementation Agreement established under the Northern Flood Agreement. The Keenanow Trust includes detailed terms relating to the withdrawal of funds from the trust through a community approval process for use by that community. The Norway House Cree Nation was seeking approval from the federal government for an amendment to the Keenanow Trust to allow the Norway House Cree Nation to access \$25 million in the form of a loan.



Chief Evans told me that he was seeking political support for the amendments from Mr. Toews on behalf of the Norway House Cree Nation. They were hoping for Mr. Toews' support for their request for the amendments to then Minister of Aboriginal Affairs and Northern Development Canada, the Honourable John Duncan, P.C. Ms. Ferlaino said that it was her understanding that Mr. Toews was going to have a discussion with Mr. Duncan about those amendments. Meeting notes from Ms. Ferlaino also indicate that Mr. Toews undertook to provide a letter of support to Mr. Duncan on behalf of the Norway House Cree Nation.

Following the meeting, Chief Evans sent two letters dated August 22, 2012 to Mr. Toews and copied them to Mr. Duncan. The first related to several self-government initiatives, including the addition to Schedule II of the *First Nations Goods and Services Tax Act*. In the letter, Chief Evans thanked Mr. Toews for his commitment to discuss these issues with Mr. Duncan.

The second letter related to the request for a \$25 million loan from the Keenanow Trust. Again, Chief Evans thanked Mr. Toews for his willingness to discuss this issue with Mr. Duncan and noted he would be raising this matter at a meeting scheduled with Mr. Duncan on October 1, 2012, in Ottawa.

#### *Meeting of September 5, 2012*

A second meeting was organized in late August by staff in Mr. Toews' office and staff at the Norway House Cree Nation. The meeting took place on September 5, 2012, and included Chief Evans, Ms. Ferlaino and Mr. Toews. On August 24, 2012, Aboriginal Affairs and Northern Development Canada had informed the Norway House Cree Nation that an amendment to the Keenanow Trust was not possible. Chief Evans and Ms. Ferlaino both testified that they were seeking support from Mr. Toews and that there was an expectation that Mr. Toews would follow up with Mr. Duncan about what might be possible.

Ms. Ferlaino told me that Mr. Toews' input was more important, in terms of the need for political support, in relation to the Keenanow Trust than it was for the *First Nations Goods and Services Tax Act*. She indicated that the Keenanow Trust was a matter of significant importance to her and to the Norway House Cree Nation. Chief Evans also told me that the matter was important. Both told me that, when Chief Evans was elected in 2011, the community was facing important financial issues and considered the meetings with Mr. Toews to be important for the matter to move forward.

#### ***Meetings between the Norway House Cree Nation and Mr. Duncan***

On October 1, 2012, Chief Evans met with Mr. Duncan to discuss the Keenanow Trust and self-government by the Norway House Cree Nation. Meeting notes provided to me indicated that



Mr. Duncan was told that Mr. Toews had been very helpful in relation to their proposal for the Keenanow Trust.

Mr. Toews said that he did not recall having discussions with Mr. Duncan on the issue. Mr. Duncan confirmed that he had no direct conversations with Mr. Toews about the Norway House Cree Nation before or after his meeting with them. Mr. Duncan's understanding of the Keenanow Trust matter was that the federal government had no capacity in which they could assist the Norway House Cree Nation in amending the Keenanow Trust.

### *Consulting work after Mr. Toews left office*

Chief Evans told me that, once he learned that Mr. Toews had left office, someone from the Norway House Cree Nation contacted Mr. Toews to inquire whether he could provide advice to the Norway House Cree Nation on some issues they were dealing with. On October 1, 2013, the Norway House Cree Nation and the numbered company owned by Mr. Toews' spouse entered into a contract for consulting services on a number of issues such as community policing and infrastructure. The contract identified Mr. Toews as the consultant and Mr. Toews confirmed that he was the consultant who provided the services under the terms of the contract. The company was paid a \$10,000 retainer by the Norway House Cree Nation.

Ms. Ferlaino stated that she was aware that Mr. Toews had contacted provincial representatives on behalf of the Norway House Cree Nation. According to the testimony of Ms. Ferlaino and various meeting notes, there were also several meetings during which Mr. Toews provided advice to the Norway House Cree Nation on possible funding options from the federal government.

Mr. Toews was appointed to the Court of Queen's Bench of Manitoba on March 7, 2014, and my Office has no evidence to suggest that work continued after his appointment.



### **Mr. Toews' Position**

Mr. Toews did not put forward a formal position on the matters relating to the Norway House Cree Nation at any time during the fact-finding portion of my examination.

Mr. Toews testified at his interview on January 5, 2017, that he could not recall anything related to his participation in meetings with the Norway House Cree Nation before leaving office, and very little regarding his work for them after leaving office. I have interpreted that to mean that Mr. Toews did not view his dealings with the Norway House Cree Nation as significant within the meaning of subsection 35(1) of the Act.





## Analysis and Conclusion

### *Analysis*

Under subsection 35(1) of the Act, a former reporting public office holder is prohibited from entering into a contract of service or accepting an offer of employment with an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office. Under subsection 36(2) of the Act, this prohibition applies to former ministers for a period of two years following their last day in office.

Subsections 35(1) and 36(2) of the Act read as follows:

*35. (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.*

[ . . . ]

*36. (2) With respect to former ministers of the Crown and former ministers of state, the prohibition set out in subsections 35(1) to (3) apply for a period of two years following their last day in office.*

During the year immediately before Mr. Toews' last day in office, Mr. Toews attended two meetings with representatives of the Norway House Cree Nation. These meetings, held on August 16 and September 5, 2012, were requested by the Norway House Cree Nation in relation to two matters. One was to inform Mr. Toews of the application to have Schedule II of the *First Nations Goods and Services Tax Act* amended to add the Norway House Cree Nation to those covered by the Act. The other was to gain support from Mr. Toews for an amendment to the Keenanow Trust, which would have permitted the Norway House Cree Nation to access additional funding to address issues in their community.

I must first determine whether these meetings constituted direct and significant official dealings. I must then determine whether Mr. Toews provided services under a contract with the Norway House Cree Nation during his cooling-off period.

### *Direct and official dealings*

Dealings are official if they relate to government business and activities. This was the case in this instance. These dealings were also direct. Mr. Toews met directly with representatives of the Norway House Cree Nation in his capacity as a federal cabinet minister and as Senior Regional Minister for Manitoba.



### *Significant dealings*

Whether dealings are significant depends on the importance of the subject matter in question to either of the parties involved; their significance is not determined solely by the type of dealing or by the period of time over which the reporting public office holder was involved with an entity.

With respect to the *First Nations Goods and Services Tax Act* amendment, the evidence suggests that the discussions on that matter were merely for Mr. Toews' information and were general in nature. I am of the opinion that they were not significant.

With respect to the Keenanow Trust issue, Ms. Ferlaino testified that that issue was significant for the Norway House Cree Nation, and Chief Evans described the issue as important. Both said that they were seeking Mr. Toews' support, particularly in relation to the proposed amendment to the Keenanow Trust. The Norway House Cree Nation made representations to Mr. Toews supporting its request that the Keenanow Trust be amended. Both the testimony and the documentary evidence show that, during their meetings, Mr. Toews undertook to communicate with Mr. Duncan, then Minister of Aboriginal Affairs and Northern Development Canada, in support of the proposed amendments.

I accept the testimony of both Mr. Toews and Mr. Duncan that Mr. Toews never spoke about the amendment to the Keenanow Trust to Mr. Duncan. Despite the fact that Mr. Toews did not actually follow through by speaking to Mr. Duncan, I am nevertheless of the view that Mr. Toews' meetings constituted significant dealings from the perspective of the Norway House Cree Nation, even if they were not significant for Mr. Toews.

### *Providing services under a contract*

During his two-year cooling-off period, Mr. Toews was named as the consultant designated to provide services to the Norway House Cree Nation in relation to the Keenanow Trust matter. A contract was signed between the Norway House Cree Nation and the numbered company. The evidence indicates that Mr. Toews provided advice under the contract on possible funding options from the federal government.

Although Mr. Toews was only indirectly contracted to supply the services, he was specifically named in the contract as a consultant and as the person who was to perform the duties under the contract. I find that the connection was close enough to be caught by the prohibition under subsection 35(1).

This conclusion is, in my view, appropriate in this case and in keeping with the spirit of the Act.

## ***Conclusion***

I have determined that Mr. Toews had direct and official dealings with the Norway House Cree Nation when he met with them as Senior Regional Minister for Manitoba. While I am of the view that the discussions relating to the *First Nations Goods and Services Tax Act* were not significant, I have determined that the issue of a proposed amendment to the Keenanow Trust was of importance to the Norway House Cree Nation, and hence that the dealings were significant under the Act.

Mr. Toews, through a numbered company, subsequently provided consulting services for the Norway House Cree Nation under a contract during his two-year cooling-off period.

I therefore find that, Mr. Toews contravened subsection 35(1) of the Act by providing services under a contract to the Norway House Cree Nation, an entity with which he had direct and significant official dealings during his last year in office.





## PEGUIS FIRST NATION AND THE KAPYONG BARRACKS LAND

### Findings of Fact

In his capacity as President of the Treasury Board in 2007, Mr. Toews was responsible for the sale of a portion of Canadian Forces Base Winnipeg (South) known as the Kapyong Barracks land. The Government's decision to transfer the Kapyong Barracks land was judicially challenged by several First Nations, including the Peguis First Nation. The legal proceedings spanned the years from 2008 to 2015.

Media reports indicated that Mr. Toews met with, and was retained by, Mr. Jeffrey Rath in the months leading up to the hearing of the appeal in the Kapyong Barracks case, which took place in January 2014. Mr. Rath was counsel of record for the Peguis First Nation throughout the legal proceedings in that case. Mr. Rath was preparing a proposed settlement of the legal proceedings in the fall of 2013 and Mr. Toews was a consultant on the Kapyong Barracks matter. The draft settlement agreement proposed, among other things, putting an end to the ongoing legal proceedings by finalizing the transfer of the Kapyong Barracks land to the Treaty 1 First Nations.

For the purposes of this examination, I must determine whether Mr. Toews contravened subsection 34(1) of the *Conflict of Interest Act* (Act) by providing strategic advice to Mr. Rath or his firm, Rath & Company. Mr. Rath was counsel for the Peguis First Nation, in connection with legal proceedings to which the Crown was a party and with respect to which Mr. Toews may have previously acted for the Crown.

### ***Background on the Kapyong Barracks land***<sup>1</sup>

Canadian Forces Base Winnipeg (South) is divided into two separate sites, the Kapyong Barracks land and the South Site Housing land. The Base had housed the 2<sup>nd</sup> Battalion, Princess Patricia's Canadian Light Infantry, until the regiment was relocated in 2004. Shortly thereafter, the Kapyong Barracks land and South Site Housing land were each declared surplus federal property.

The Kapyong Barracks land, which comprises roughly 160 acres, is situated in an urban area of southwest Winnipeg and is located on the traditional territory of the ancestors to the Brokenhead and Peguis First Nations.

---

<sup>1</sup> A more detailed factual background can be found in Stratas J.A.'s reasons for judgment in *Canada v. Long Plain First Nation*, 2015 FCA 177, at paras. 11-79.



After the Kapyong Barracks land was declared surplus, several First Nations expressed an interest in buying it. This interest was largely ignored by the Government of Canada. In 2006, the Treasury Board of Canada deemed that land to be a “strategic” property under the Treasury Board *Directive on the Sale or Transfer of Surplus Real Property*. Properties so classified were usually transferred to the Canada Lands Company without external consultation and eventually sold to third parties for redevelopment. They were not made available to First Nations on a priority basis, which would usually have been the case.

In 2007, Mr. Toews, as President of the Treasury Board, stated publicly that he made personal inquiries and met with senior officials from the Department of National Defence to finalize plans for the transfer of the Kapyong Barracks land to the Canada Lands Company. On November 23, 2007, Mr. Toews, also as President of the Treasury Board, approved the transfer of the Kapyong Barracks land to the Canada Lands Company on behalf of the Government of Canada.

The decision to transfer the Kapyong Barracks land was the subject of legal proceedings on the basis of a failure to appropriately consult with First Nations, including the Peguis First Nation. Mr. Toews, in his capacity as then President of the Treasury Board, was a named respondent in the legal proceedings. In 2012, the Federal Court held that Canada had failed to consult meaningfully within the scope of that duty and set aside the transfer to the Canada Lands Company. The Federal Court of Appeal heard the matter in January 2014 and ultimately upheld most of the trial judge’s ruling in August 2015.

Despite the decision of the Federal Court of Appeal, a final settlement of the transfer of the Kapyong Barracks land has not yet been reached.

### ***Mr. Toews’ work for Rath & Company***

Mr. Toews testified that he met with Mr. Rath on September 25, 2013. He indicated that he was first introduced to Mr. Rath at that meeting through a mutual friend who was involved in joint ventures with various First Nations groups in Manitoba.

Following that initial meeting, Mr. Toews was retained to provide strategic advice to Rath & Company on ongoing files through his spouse’s consulting company, 6572155 Manitoba Ltd. (henceforth referred to as “the numbered company”).

Mr. Toews told me that it was agreed at the meeting that most of his consulting work would be in relation to a joint venture between the Peguis First Nation and the Manitoba Jockey Club on the development of the Assiniboia Downs racetrack. He also agreed to work on the Kapyong matter, which also involved the Peguis First Nation.



On September 30, 2013, Rath & Company issued two cheques, in the amount of \$10,500 each, to the numbered company as non-refundable retainers. The first cheque is marked “JVG,” which appears to refer to the joint venture between the Peguis First Nation and the Manitoba Jockey Club. The second retainer is marked “K,” which appears to refer to the Kapyong matter.

### *Testimony and documentary evidence*

Mr. Toews testified that he was likely advised by Mr. Rath that he was a named respondent in the ongoing legal proceedings on the Kapyong Barracks land transfer at their initial meeting on September 25, 2013. Mr. Rath confirmed that they discussed the fact that Mr. Toews was a named party in the litigation.

According to Mr. Toews, he made it clear to Mr. Rath that he could not involve himself in the ongoing litigation or in the settlement discussions. He testified that he and Mr. Rath had reached an agreement that Mr. Toews was to be involved as a community liaison with provincial and municipal stakeholders and testified further that he was laying the groundwork to be able to involve himself in getting the community onside in terms of development of that land, once the settlement had been reached. Mr. Toews said that he believed that there were no ethical issues as long as he did not involve himself in the negotiations relating to the proposed settlement agreement.

Mr. Toews confirmed that a settlement proposal was being drafted by Mr. Rath in an effort to resolve the dispute over transfer of the land prior to the appeal before the Federal Court of Appeal, which was heard in January 2014. He also testified that Mr. Rath had sent him the proposed settlement agreement that Mr. Rath wanted the federal government to sign.

Mr. Rath testified that Mr. Toews’ work on the Kapyong file was primarily outreach and public education work towards the City of Winnipeg and the Province of Manitoba to communicate the intentions of the Peguis First Nation with regard to development of the property. Mr. Rath explained to me that one of the reasons that this matter was in litigation for so many years was because the City of Winnipeg and the Province of Manitoba had vested interests in the property and had concerns about what property owned, controlled and developed by First Nations in an urban setting would look like.

Mr. Rath stated that no consulting work was performed by Mr. Toews on the Kapyong file relating to the ongoing legal proceedings, or relating to any settlement meetings, discussions or negotiations involving federal officials. Mr. Rath added that much of what Mr. Toews did was “hypothetical” and based on the premise that the ongoing legal proceedings would have been settled successfully on behalf of the Peguis First Nation.



I reviewed four invoices from the numbered company to Rath & Company, sent to me by Mr. Rath, one of which, dated December 13, 2013, was marked as covering work completed by Mr. Toews on the Kapyong matter. The other three invoices referred to work completed on the Jockey Club file.

The invoice relating to Kapyong lists general descriptions of work completed by Mr. Toews from September 27, 2013, to January 22, 2014. This invoice refers to meetings with Mr. Rath as well as phone calls, meetings and events with municipal, provincial and federal elected officials.

When questioned about the numerous other entries on the invoice from the numbered company to Rath & Company, Mr. Toews testified that some of them would have been indirectly or generally related to the Kapyong settlement, and others would have been in relation to the Jockey Club file. Mr. Toews stated that there was some back and forth between him and Mr. Rath in terms of what he could actually do with respect to the settlement proposal, but insisted that he told Mr. Rath that he could not give any advice on the specifics of anything to do with the settlement.

I also reviewed a statement of account, dated December 30, 2013, from Rath & Company to the Peguis First Nation, for work on the “Kapyong Matter.” This statement of account included a more detailed description of work done by Mr. Rath, which is found on the invoice of the numbered company relating to Kapyong. The statement of account has entries showing that Mr. Toews met directly with, or spoke by phone to, Mr. Rath on the Kapyong Barracks land settlement proposal on several occasions. Two entries on the statement of account indicate that Mr. Rath discussed the settlement agreement with Mr. Toews, as follows:

- October 1, 2013: Prepare settlement proposal; meeting with Vic Toews re: same.
- October 2, 2013: Meet Vic Toews re: Kapyong settlement hearing; prepare settlement proposal.

The meetings shown on the statement of account for October 1 and October 2, 2013 correspond to the dates of meetings and discussions between Mr. Toews and Mr. Rath that appear on the numbered company’s Kapyong invoice and indicate “in person meetings with Jeff,” which I have understood to be in reference to meetings with Mr. Rath.

In an email from Mr. Toews to Mr. Rath dated November 2, 2013, Mr. Toews writes that he “look[s] forward to reviewing the documents.” During his interview, Mr. Toews told me that he received a copy of the proposed agreement that Mr. Rath wanted the federal government to sign.

An entry on the invoice from the numbered company to Rath & Company referred to above, for November 5, 2013, three days later, describes Mr. Toews' work as follows:

- November 5, 2013: Review documents, prepare amendments, telephone conversations, emails.

This appears to correspond to Mr. Rath's entries of November 6 and 7, 2013 on the statement of account. They read as follows:

- November 6, 2013: Draft email to Rod B, meeting Vic Toews re: settlement, review and revise settlement agreement.
- November 7, 2013: Calls to Darren Jorgensen [*sic*], Vic Toews re: settlement, revise Treaty settlement docs.

Mr. Rath explained that there were, in fact, direct meetings between himself and Mr. Toews in October and November 2013, during which they were tailoring the settlement proposal that would be acceptable to the City of Winnipeg as well as discussing strategy with regard to the Province of Manitoba and the City of Winnipeg, as they were fairly major barriers to the settlement.

According to Mr. Rath, the aim of those strategic meetings was to get the City and the Province on board so that they could pressure the federal government into resolving this matter.

In addition to the invoices, an email dated November 21, 2013 between Mr. Toews' spouse and Mr. Rath refers to a meeting between Mr. Toews and Winnipeg Mayor Sam Katz. In the email, Mr. Toews' spouse asks whether there is anything in particular Mr. Rath would like Mr. Toews to address at the meeting other than Kapyong. It also indicates that Mr. Toews was considering leaving a copy of the settlement proposal with the mayor. Mr. Toews testified that he could not recall the meeting but likely would have spoken more generally about urban reserves, as opposed to specifically about Kapyong Barracks land.

Finally, I also considered an email dated April 3, 2017, forwarded to my Office by Mr. Toews' counsel. At that time, Mr. Toews had received a copy of the factual portion of my examination report for his review and comments. Mr. Toews' counsel had forwarded a message from Mr. Rath reiterating that Mr. Toews had not been requested to contact the Government of Canada, and that Mr. Toews' input on the settlement agreement was limited to his "impressions as to how the document would be received by the City and the Province." Included in the email chain was a note Mr. Toews wrote to Mr. Rath on March 30, 2017, which refers to the fact that Mr. Toews drafted a portion of the proposed settlement agreement. Mr. Toews' message reads as follows:



*I am wondering whether you can confirm the following. I need to reply to the ethics commissioner shortly.*

*Simply to confirm that there was never any intention of me to lobby the federal government but that my role would be to speak to the MPs (not memebtrs [sic] of cabinet) if that was permissible; Since it was a grey area that I never pursued that avenue and that we never used the portion of the document that I drafted (which related to community liaison and dispute resolution mechanism to be used if a settlement was to be achieved with the federal government and Peguis) and I was never involved in any settlement negotiations with the federal government involving Kapyong. [...] [Emphasis added]*

### ***Advice sought by Mr. Toews***

Mr. Toews emailed my Office on September 25, 2013, just prior to his initial meeting with Mr. Rath, seeking post-employment advice. Mr. Toews wrote that he had been approached by a First Nation community in Manitoba, which he did not name, to provide strategic advice on economic development issues. Mr. Toews added that he was providing these services through his spouse's consulting company, which was incorporated provincially. He asked specifically about his obligations under subsection 35(2) of the Act, which differ from the obligations under section 34. The focus of section 34 is on switching sides and is not limited to a cooling-off period.

No mention was made of section 34 of the Act by Mr. Toews or by my Office during the exchange of correspondence. He had, however, been sent a post-employment letter from my Office following his resignation from federal politics in July 2013, which described in detail the obligations under sections 33, 34 and 35.

During his interview, Mr. Toews said that the request for advice had been, in his mind, in reference to the Peguis First Nation. However, no mention of the Peguis First Nation was made to my Office at the time of his initial request for advice.

My Office responded by email to Mr. Toews on September 27, 2013. Based on the general information provided, my Office gave Mr. Toews general advice in relation to his various obligations under section 35 of the Act and reminded him of the general obligation, under section 33 of the Act, to refrain from acting in such a manner as to take improper advantage of his previous public office. My Office also noted in the email that the advice was based on the assumption that he had not had any direct and significant official dealings during his last year in office with the First Nation he had in mind, a factor that expressly relates to section 35, but not to section 34. Mr. Toews replied to our email the same day to validate that assumption.

## **Mr. Toews' Position**

Mr. Toews did not put forward a formal position at any time on this matter during the fact-finding portion of my examination. I have, therefore, summarized his position on the basis of his testimony, as set out above.

Mr. Toews stated, at his interview on January 5, 2017, that he was not involved in any discussions related to the ongoing Kapyong litigation or to the settlement negotiations that took place with federal officials. He testified that his role was strictly limited to community outreach with municipal and provincial elected officials in the event of a successful settlement. Mr. Toews added that any discussions he had with officials before the court hearing in January 2014 would have been general in nature and would not have touched upon the proposed settlement agreement.

Mr. Toews did not offer any comments on this representation of his position.





## Analysis and Conclusion

### *Analysis*

Under subsection 34(1) of the Act, a former public office holder is prohibited from acting for a person or organization in a matter in which the Crown is a party and with respect to which the former public office holder had previously acted for the Crown. There are no time limits or cooling-off periods with respect to this prohibition; it remains in effect until the matter is completed.

Subsection 34(1) reads as follows:

*34. (1) No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown.*

I must determine whether Mr. Toews contravened subsection 34(1) of the *Conflict of Interest Act* (Act) by providing strategic advice to Mr. Rath or his firm, Rath & Company. Mr. Rath was counsel for the Peguis First Nation, in connection with legal proceedings to which the Crown was a party and with respect to which Mr. Toews may have previously acted for the Crown.

#### *Mr. Toews' decision to transfer the Kapyong Barracks land*

Despite Mr. Toews' testimony that he did not spend any time discussing or being briefed on the approval of the Kapyong Barracks land transfer to the Canada Lands Company, several press clippings show that Mr. Toews was personally and directly involved in the process leading up to the decision to transfer the land. Furthermore, it was Mr. Toews, as President of the Treasury Board of Canada, who gave final approval for this transfer on November 23, 2007, on behalf of the Crown. Legal proceedings were instituted in respect of this decision by several First Nations, including the Peguis First Nation, as a result of Mr. Toews' decision. Therefore, I conclude that Mr. Toews had acted for the Crown in respect of the Kapyong matter.

#### *Mr. Toews' involvement in the subsequent Kapyong legal proceedings*

The Kapyong legal proceedings were ongoing at the time Mr. Toews' services were retained by Rath & Company. Mr. Toews testified that he became aware that he was a named respondent in these legal proceedings, which involved Mr. Rath's client, the Peguis First Nation, on or around his initial meeting with Mr. Rath of September 25, 2013.



The documentary evidence shows that work was performed by Mr. Toews both for the Manitoba Jockey Club matter and the Kapyong Barracks matter. Mr. Toews issued separate invoices for each file and, accordingly, Rath & Company made separate payments to Mr. Toews. Testimony from both Mr. Rath and Mr. Toews indicated that certain entries under the Kapyong invoice were for the Jockey Club file. However, no documentary evidence was provided to support this claim. In any event, it is clear that some of those entries relate to the Kapyong matter.

During his interview, Mr. Toews testified that his involvement in the discussions relating to the proposed settlement agreement were limited to discussions about his role as a community liaison once a settlement had been reached. He indicated that any discussions he had with municipal or provincial officials were general in nature, relating to the creation of urban First Nations reserves within the city of Winnipeg.

However, the documentary evidence shows that Mr. Toews' involvement went beyond the level of superficial discussions. An invoice from the numbered company, dated December 13, 2013, relating to the work done by Mr. Toews, as well as Rath & Company's statement of account, dated November 15, 2013, show that Mr. Toews provided strategic advice on the Kapyong matter directly to Mr. Rath on at least four occasions.

Mr. Rath testified that these were direct discussions between himself and Mr. Toews on tailoring the Kapyong settlement proposal to get the various municipal and provincial stakeholders on board and that this was done to pressure the federal government to accept the settlement proposal, as they were major barriers to resolution of the legal proceedings. Based on Mr. Rath's testimony and the description of work in the statement of account and in emails sent that coincide with those meetings, I must conclude that the meetings with Mr. Rath related to the Kapyong settlement proposal.

In addition to the direct meetings with Mr. Rath, the invoice from the numbered company to Rath & Company, as well as the testimony of Mr. Toews and Mr. Rath, indicate that Mr. Toews had discussions with representatives of the City of Winnipeg and Province of Manitoba to lay the groundwork for his involvement in the development of an urban reserve on the Kapyong Barracks land following a settlement.

Mr. Toews has maintained that he has not had any dealings with the federal government involving the litigation or the settlement proposal. Nonetheless, in an email chain forwarded to my Office by Mr. Toews' counsel on April 3, 2017, Mr. Toews refers to drafting a portion of the settlement proposal himself. The email states that the portion of the settlement proposal was to be used in the event a settlement was reached.



After having carefully considered all the evidence, I have determined that Mr. Toews acted on behalf of the Peguis First Nation by providing strategic advice to their legal counsel, Mr. Rath, and by meeting with municipal and provincial officials on the Kapyong matter. Mr. Toews provided strategic advice in connection with the Kapyong settlement proposal in at least several discussions with Mr. Rath and was involved in the drafting of a portion of the settlement proposal. His involvement appears to have related not only to preparing for its implementation, as Mr. Toews testified, but also addressing the terms of the Kapyong settlement themselves. It is of no import that the agreement on the settlement has not actually been achieved.

Ultimately, by providing advice to the counsel of record for the Peguis First Nation prior to the resolution of the legal proceedings, Mr. Toews acted for or on behalf of a party that was seeking relief against a decision he had originally made and endorsed as a minister of the Crown.

### ***Conclusion***

Based on the information above, I find that Mr. Toews contravened subsection 34(1) of the Act by acting for or on behalf of the Peguis First Nation, a party that was seeking relief against a decision in which Mr. Toews had been involved as a minister of the Crown.





## SUMMARY OF CONCLUSIONS

With respect to the dealings with the Norway House Cree Nation, I have determined that Mr. Toews had direct and significant official dealings with that group in the year immediately before his last day in office. I have therefore concluded that by providing consulting services for the Norway House Cree Nation during his two-year cooling-off period, Mr. Toews contravened subsection 35(1) of the Act.

By providing advice relating to the settlement of an ongoing legal proceeding relating to the Kapyong Barracks matter with respect to which Mr. Toews had previously acted for the Crown, Mr. Toews also contravened subsection 34(1) of the Act.





## **SCHEDULE: LIST OF WITNESSES**

Except where noted, the names of all witnesses are listed below according to the organizations to which they belonged at the time the events that are the subject of this examination occurred.

### *Interviews*

The Hon. John Duncan, former Minister of Aboriginal Affairs and Northern Development Canada, as it was styled at the time

### Norway House Cree Nation

Chief Ronald Evans  
Ms. Caterina Ferlaino

### Rath & Company

Mr. Jeffrey Rath

