



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Angus Report II

2018

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Mario Dion

Conflict of Interest and
Ethics Commissioner

Angus Report II

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

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PREFACE

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

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

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

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EXECUTIVE SUMMARY

This report presents the findings of my inquiry under the *Conflict of Interest Code for Members of the House of Commons* into the conduct of Mr. Charlie Angus, Member of Parliament for Timmins–James Bay, in connection with public comments concerning a request for an inquiry about another Member of Parliament that he made to my Office.

On March 28, 2018, I received a letter from Mr. Angus asking me to conduct an inquiry into the conduct of Mr. Raj Grewal, Member of Parliament for Brampton East. Later that day, I learned that Mr. Angus had spoken about his request during an interview with a journalist. The resulting news article was posted on the media outlet’s website and a link to the article was posted on Mr. Angus’s Facebook page.

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

The evidence showed that Mr. Angus discussed his letter requesting an inquiry with a media outlet and later posted a link to the resulting article on his Facebook page, before I confirmed that the subject of his complaint had received a copy of the complaint and before 14 days had elapsed since I received the complaint.

I therefore found that Mr. Angus contravened subsection 27(2.1) of the Code.

I determined that there were no mitigating factors in this case. However, because Mr. Angus had apologized, I did not recommend the imposition of any sanctions.

CONCERNS AND PROCESS

On March 28, 2018, I received a letter from Mr. Charlie Angus, Member of Parliament for Timmins–James Bay, requesting that I conduct an inquiry into the conduct of the Mr. Raj Grewal, Member of Parliament for Brampton East.

I was informed by my Office that day that an article in which Mr. Angus discussed his request for an inquiry concerning Mr. Grewal was published on the *National Post*'s website. Later that day, a link to the article was also posted on Mr. Angus's Facebook page.

On April 5, 2018, I wrote to Mr. Angus to notify him of my concern that he may have contravened subsection 27(2.1) of the *Conflict of Interest Code for Members of the House of Commons* (Code) in relation to the public comments he had made to the *National Post* and on his Facebook account concerning his request for an inquiry into an alleged contravention of the Code by Mr. Grewal.

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

In my letter of April 5, 2018, I explained to Mr. Angus that the Code afforded him 30 days to respond to my concerns, after which I would decide whether to conduct an inquiry. I received Mr. Angus's response later that same day responding to the concerns raised.

On April 12, 2018, I wrote to Mr. Angus to inform him that, having carefully considered his written representations, I had determined 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.

On April 24, 2018, I conducted a first interview with Mr. Angus. As I did not interview any other witnesses in this matter or receive any additional documentary evidence from Mr. Angus, there was no need to conduct a second interview with him.

In keeping with the established practice of the Office, Mr. Angus was given an opportunity to review and comment on a draft of the factual portions of this report (Concerns and Process, Findings of Fact and Mr. Angus's Position) before it was finalized.

FINDINGS OF FACTS

The purpose of this inquiry was to determine whether Mr. Angus failed to comply with his obligations under the Code when he made public comments concerning a request for an inquiry he made in respect of a possible contravention of the Code by another member of Parliament, prior to my confirming that the subject of his request had received a copy of the complaint.

On March 28, 2018, I received a letter from Mr. Angus requesting that I conduct an inquiry into the conduct of Mr. Raj Grewal via an email from a member of his office's staff.

Also on March 28, 2018, my office became aware of public comments concerning Mr. Angus's request for an inquiry into the conduct of Mr. Grewal that he had made to the *National Post* on that day. An article entitled "NDP Asks Ethics Commissioner to Open an Investigation into Liberal MP over India Trip" published on the same day on the *National Post's* website was also later posted as a link on the Facebook page of "Charlie Angus NDP-NPD." The relevant portion of the article reads as follows:

Senior NDP MP Charlie Angus sent a letter about the matter to Ethics Commissioner Mario Dion on Wednesday, arguing that Grewal's conduct "failed the test of principles" laid out in the Conflict of Interest Code, which applies to all MPs. "To me this represents a very egregious abuse of the Conflict of Interest Code," Angus said in an interview. "I think this is an issue that must be investigated."

Mr. Angus indicated his usual procedure was to ask a question in the House of Commons regarding a matter falling within the jurisdiction of the Office, and should the answer be unsatisfactory, he would write a letter requesting an inquiry. Following his question in the House of Commons, media generally contacted him to find out if he had submitted a request for an inquiry or was planning to submit one.

During his interview, Mr. Angus testified that in this case, a reporter from the *National Post* who had been aware of the ongoing subject matter related to Mr. Grewal had contacted him by phone to find out if there would be a letter to the Commissioner, and Mr. Angus confirmed with the reporter that he had sent a letter to the Office.

He also confirmed that "Charlie Angus NDP-NPD" is his Facebook account, used in his capacity as a Member of the House of Commons. He testified that he personally had posted the link from the *National Post* article on his Facebook page on March 28, 2018, shortly after the letter was sent to my Office.

During his interview, Mr. Angus took responsibility for the public comments he had made and apologized for his misinterpretation of the Code.

MR. ANGUS'S POSITION

Mr. Angus noted in his letter of April 5, 2018, that his interpretation of subsection 27(2.1) of the Code is that the Conflict of Interest and Ethics Commissioner must be free to choose to investigate or not investigate a complaint without having to deal with ongoing commentary from parliamentarians. In his view, the public comments he had made amounted to stating that he believed an investigation request was warranted given the nature of the ethical breaches.

Mr. Angus also wrote in his letter of April 5, 2018 that he was not aware of any similar response from me or my predecessor in similar circumstances. In his testimony, Mr. Angus acknowledged that in previous correspondence from my predecessor, the issue of not commenting publicly on a request for an inquiry prior to the Commissioner receiving the request and confirming that the Member who is the subject of the request has received a copy had come up. He noted it was never the subject of a letter from the Office. He also stated that subsection 27(2.1) was not enforced by my predecessor to the best of his knowledge. His understanding was that the practice was discouraged by the former Commissioner but the former Commissioner had not taken a strict position on what Mr. Angus considered a standard practice.

ANALYSIS AND CONCLUSION

Analysis

In this inquiry, I had to determine whether Mr. Angus, as a Member of the House of Commons, contravened subsection 27(2.1) of the Code when he made public comments to the *National Post*, and subsequently linked the published article on Facebook, regarding a request for an inquiry into an alleged contravention of the Code by Mr. Grewal prior to receiving my confirmation that Mr. Grewal had received the complaint.

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

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

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

In my view, the language and intent of subsection 27(2.1) of the Code is unambiguous and clearly prohibits any Member from making public comments unless certain conditions have been met. In its *Thirty-Ninth Report*, PROC discussed the origin of the amendment and its purpose:

Ms. Dawson [the former Commissioner] brought to the Committee's attention another issue related to the fairness of the inquiry request process. Specifically, when a request for an inquiry is made, the Member who is the subject of the request might hear about the request in the media or through other sources before hearing from the Commissioner's office. Ms. Dawson has requested that Members not comment publicly on requests they submit until the Member who is the subject of the request has been informed.

In the Committee's view, this prohibition would be fair to all Members and would not unduly constrain Members' right to freedom of speech, provided that the Commissioner's office undertook to inform affected Members in a timely manner.

The Committee recommends that the Code be amended to prohibit Members who request an inquiry from commenting publicly on the request until the Commissioner confirms that the Member who is the subject of that request has received a copy of the complaint. The commissioner must confirm that the subject member has been informed no later than 14 days after the commissioner received the request, failing which the requesting member may comment publicly.

[Emphasis in original]

The evidence gathered in this inquiry clearly shows that Mr. Angus was responsible for discussing his letter concerning Mr. Grewal with the *National Post* and later posting a link to the article, prior to either my confirming that the subject of his complaint had received a copy of the complaint or prior to the required 14 days having elapsed following my receipt of the complaint on March 28, 2018.

In my view, the Member's issuance of a public notification or confirmation that a request for an inquiry has been made constitutes a public comment. This interpretation is consistent with other provisions of the Code, namely paragraphs 27(5.1)(i) and (ii), which refer to the mere confirmation that a request for an inquiry has been received or a preliminary review or inquiry has been commenced or completed as "public comments." These read as follows:

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

- (i) confirm that a request for an inquiry has been received;*
- (ii) confirm that a preliminary review or inquiry has commenced or been completed;*

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

In my view, Mr. Angus's discussion with the *National Post* and link to the article on his Facebook page ran contrary to the intent of subsection 27(2.1), as the Member who was the subject of the complaint risked hearing about the request from other sources before hearing from my Office.

Conclusion

For the reasons stated above, I have determined that Mr. Angus contravened subsection 27(2.1) of the Code.

SANCTIONS

Where the Commissioner concludes that a Member has not complied with an obligation under the Code, the Commissioner considers 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 judgement made in good faith, the Commissioner shall so state in the report and may recommend that no sanction be imposed.

I have concluded that none of the circumstances set out in subsection 28(5) apply, since Mr. Angus was aware of subsection 27(2.1) but chose to disregard the provision because, according to him, my predecessor had not previously enforced it.

Pursuant to subsection 28(6) of the Code, where a Member has not complied with the Code and none of the circumstances set out in subsection 28(5) apply, the Commissioner may recommend sanctions. The subsection 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.

While I concluded that Mr. Angus has not complied with his obligations under subsection 27(2.1) of the Code, I also recognize that Mr. Angus apologized. Therefore, I do not recommend that any sanctions be imposed.



Mario Dion
Conflict of Interest and Ethics Commissioner
June 14, 2018