



Senate Ethics
Officer
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en éthique

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Sent by email to: Leo.Housakos@sen.parl.gc.ca

August 26, 2020

The Honourable Leo Housakos
Room 265, East Block Building
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Housakos:

Re: Preliminary Determination Letter

I write further to my letter to you of July 22, 2020 initiating a preliminary review concerning an email sent from your Senate email account dated May 5, 2020 at 11:16 am in which you appear to be endorsing Erin O'Toole as Leader of the Conservative Party of Canada, as well as your response to me dated August 3, 2020.

In this letter, I gave you notice that I had reasonable grounds to believe that you had not complied with section 9¹ *Ethics and Conflict of Interest Code for Senators* (the "Code") in relation to this email.

In addition, I added that this email also raised issues concerning the principle outlined in paragraph 2(2)(c)² – that Senators are expected "to arrange their

¹ 9. A Senator shall not use or attempt to use his or her position as a Senator to influence a decision of another person so as to further the Senator's private interests or those of a family member, or to improperly further another person's or entity's private interests.

² 2.(2) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

...

private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.”. Underlying that principle is the notion that Senators should maintain a clear separation between their public affairs and their private/personal lives. I was concerned that the line between your official role as a Senator and your private affairs may have been blurred.

This is my preliminary determination letter pursuant to subsection 47(10) of the Code.

Facts

On May 5, 2020 at 11:16 a.m., an email was sent from your Senate email account, a copy of which was provided to you with my letter of July 22nd, in which you appear to be endorsing Erin O’Toole as Leader of the Conservative Party of Canada. The email refers to the deadline for new memberships and asks recipients to click on <https://donate.conservative.ca/en/membership-otoole/> in order “to support Erin O’Toole by becoming a member today”.

The Subcommittee on Agenda and Procedure of the Standing Senate Committee on Internal Economy, Budgets and Administration (the “Subcommittee”) published its Fourth Report, dated Thursday, June 25, 2020. That report concerns a letter dated May 7, 2020 and addressed to Senator Marwah, in his capacity as the Chair of the Standing Senate Committee on Internal Economy, Budgets and Administration (“CIBA”), from Steven MacKinnon, Member of Parliament for Gatineau, requesting that the CIBA investigate the possibility that you made inappropriate use of Senate resources by sending the email in question. Mr. MacKinnon made a similar complaint to me in a letter dated May 7, 2020 and delivered on May 8, 2020.

The Subcommittee reviewed the matter and in its report found that your action was not in compliance with the *Senate Administrative Rules* (the “SARS”) nor the *Senators’ Office Management Policy* (the “SOMP”) because Senate resources – both assets and human resources – are made available to Senators in order to conduct parliamentary functions. The Subcommittee noted that the SARS define “parliamentary function” as not including activities related to party leadership selection, among other things. The Subcommittee also noted that the SOMP provides that Senate resources (including human resources) must not be used to support certain partisan activities, including solicitation of party memberships. The Subcommittee indicated that, going forward, you should

(c) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

ensure that all your staff is properly advised and trained with respect to the applicable rules relating to the use of Senate resources.

I initiated this preliminary review following the Subcommittee issuing its report.

Your Submissions

In your letter to me of August 3, 2020, you submitted that the email in question was inadvertently sent from your Senate email account rather than your non-Senate account. You also assured me that this was a onetime occurrence and was in no way an intentional attempt to exert any more influence than that which comes naturally with any caucus endorsement for a leadership candidate through various other public proclamations.

You admitted that, though inadvertent, this was a breach of the Senate's policies on the use of Senate resources as found in the *Senate Administrative Rules* and the *Senators' Office Management Policy*.

You indicated that you took the following actions upon learning of this unintentional use of Senate resources and that, in doing so, you were guided by your commitment to personal accountability and by the principle of protecting the public interest:

- (1) You immediately acknowledged and apologized for the error publicly. You cooperated fully with inquiries of the Subcommittee of the CIBA.
- (2) You proactively took steps to ensure that your Senate and non-Senate emails are entirely separate and that further emails of this nature did not and do not originate from my Senate account.
- (3) In addition to your initial public apology, you proactively took further action to ensure the public interest was maintained by acknowledging and apologizing to all recipients of the original email.

Finally, you also raised some concerns about endorsements by parliamentarians of various political leadership candidates. You point out that the definition of "parliamentary duties and functions" in subsection 3(1) of the Code includes "partisan matters". You note that these are very public endorsements and that their value lies in the fact that they are coming from parliamentarians. In this respect, you ask whether such endorsements by Senators are permitted under the Code.

Disposition

Under Section 9 of the Code, a Senator is not permitted to use or attempt to use his position as a Senator to influence a decision of another person so as to improperly further another person's or entity's private interests. Section 11 defines "furthering private interests" primarily in financial terms, such as increasing the assets of a person or entity.

In your email, you invited its recipients to click on a link you provided and become a member of the Conservative Party. To become a member, a membership fee must be paid which financially benefits the Conservative Party. The website accessed through the link you provided invited people to make a donation to Mr. O'Toole's campaign, thus potentially benefitting Mr. O'Toole financially.

It is my opinion that by using your Senate email account, you have used your position as a Senator in order to influence the recipients of the email in question to become Conservative Party members, which furthered both the private interests of the Conservative Party as well as Mr. O'Toole. This was "improper" because, under the SARS and the SOMP, you are not permitted to use your Senate resources in order to promote a leadership candidate.

I note that the Subcommittee has found that you had made inappropriate use of the Senate resources (using your Senate email system) and you have admitted as much.

With respect to paragraph 2(2)(c) of the Code, in this case, the line between your official role as a Senator and your private affairs was blurred when you used your Senate resources for a non-Senate activity.

I not only find that there are sufficient reasonable grounds for concern that you may have breached your obligations under the Code pursuant to paragraph 47(11)(c), but I find that, based on the evidence, you have in fact breached section 9 of the Code.

However, pursuant to paragraph 47(12)(d)³, I find that you have addressed and remedied the situation to my satisfaction.

³ 47.(12) In the preliminary determination letter, the Senate Ethics Officer may make one or more of the following findings regarding a possible breach of the Code:

(d) that an obligation under the Code may have been breached, but that the situation has been addressed and remedied to the satisfaction of the Senate Ethics Officer or the Senator has undertaken to address and remedy the situation to the satisfaction of the Senate Ethics Officer.

In the particular circumstances of this case, I do not find it necessary to conduct an inquiry to confirm the relevant evidence that there was a violation. I do not believe that such an inquiry is warranted in light of the fact that I do not believe it will yield any new evidence in this matter. More importantly, you have already made a public apology in this matter. You have acknowledged and apologized to all recipients of the original email and you have taken remedial measures to ensure that this does not reoccur in the future. You proactively took steps to ensure that your Senate and non-Senate emails are separate and that further emails of this nature do not originate from your Senate account.

In other words, you have taken responsibility for the situation and apologized for it and addressed it by taking remedial measures. In my opinion, these measures are sufficient to address my concerns. As such, I do not find it necessary to commence an inquiry in this matter.

Having said that, you have the right to request an inquiry under paragraph 48(2)(b) of the Code. Should you decide to exercise this right, you must make this request in writing and, pursuant to subsection 48(3), it must be made within seven days following the day on which this preliminary determination letter is delivered to you.

With respect to your concerns about whether the Code permits public endorsements of leadership candidates by Senators, the Code does not preclude such activities; however, it prohibits you from using your Senate position and resources to make the endorsements while furthering the private interests of others.

And while it is true that the definition of “parliamentary duties and functions” in subsection 3(1) of the Code includes “partisan” activities, section 9 of the Code does not refer to the concept of “parliamentary duties and functions” (in contrast to section 8 which does refer to it). This means that that definition, which includes partisan activities, is not relevant in the context of section 9 of the Code. In other words, section 9 of the Code does not permit you to use your senator position, your Senate resources, your Senate email accounts and your Senate staff to further the interest of a candidate (within the meaning of the Code) in the context of a leadership campaign. Indeed, even CIBA has recognized that this is not a proper use of Senate resources in the context of the relevant Senate rules.

In light of the fact that this matter is already a matter of public record, I am required to provide a copy of this letter to the Standing Committee on Ethics and Conflict of Interest for Senators (“CONF”), pursuant to subsection 47(16) of the Code. Under subsection 47(17), the Chair of the CONF is required to then table it in the Senate at the first possible opportunity. If the Senate is not sitting on the day on which the CONF receives the letter, the Chair shall cause a true copy to be deposited with the Clerk of the Senate at the first opportunity.

A copy of the letter deposited with the Clerk of the Senate is a public document under subsection 47(18). However, until the letter is officially made public, either by tabling in the Senate or by a copy being deposited with the Clerk, it remains a confidential matter.

Sincerely,

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by a vertical stroke and a horizontal stroke.

Pierre Legault