



June 30, 2017

The Honourable Nicole Eaton
Room 208 – East Block
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Eaton:

This letter concerns my letter dated September 27, 2016 in which I advised you that I had reasonable grounds to believe that you had not complied with your obligations under the applicable versions of the *Conflict of Interest Code for Senators* (the “Code”), which was renamed in June 2014 the *Ethics and Conflict of Interest Code for Senators* (the “June 2014 Code”). My reasonable grounds for this belief are based on the result of a telephone conversation with your Policy Advisor, Mr. Al Fleming on September 22, 2016, a press release that your office sent out on September 20, 2016, a media report published by the *Toronto Star* on September 22, 2016, entitled “How a senator ended up as a director of an offshore Bahamian company without her knowledge”, as well as an e-mail you provided to me, dated September 20, 2016, from a foreign affairs reporter named Marco Chown Oved with the *Toronto Star*.

Under paragraph 47(4)(a) of the June 2014 Code, I advised you, in a letter dated September 27, 2016, that, pursuant to paragraph 47(2)(a), I would be conducting a preliminary review of this matter in order to determine whether an inquiry was warranted. I also provided you with 15 days within which to respond to the allegations, in accordance with subsection 47(7). You provided me with your written response on October 11, 2016, at which time you also provided me with a number of documents to support your submissions. On April 4, 2017, you met with me to discuss your submissions.

Having completed my preliminary review of the matter, I am required to write to you, under subsection 47(10), to inform you as to my decision, including my reasons, concerning whether or not an inquiry into this matter is warranted in order to determine whether you have not complied with your obligations under the applicable versions of the Code.

What follows is my decision, along with my reasons and the evidence that supports my findings.

Allegations

In my letter of September 27, 2016, I set out the following allegations:

1. that you failed to disclose a position you allegedly held as a director of Mount Bodun Ltd., a Bahamian corporation, as required under the provisions of the *Code*; and
2. that, depending on the relevant dates that your spouse, Thor Eaton, was a director of Misty Enterprises Ltd., a Bahamian corporation, you failed to disclose a position that your spouse held as a director of Misty Enterprises Ltd., as required under the provisions of paragraph 28(1)(b) of the *Code*.

Your Submissions

As already noted above, on October 11, 2016, you provided me with your written response to the above-noted allegations. The written documents that you provided are as follows:

1. October 11, 2016 letter from you to me;
2. Attachment to October 11, 2016 letter - Email communication dated September 21, 2016 from Marian Bassett provided to your office;
3. September 20, 2016 press release from your office;
4. September 22, 2016 email from Al Fleming to me which included the following email chain:
 - (a) September 19, 2016 email from Marco Oved of the *Toronto Star* to you regarding you acting as a director of Mount Bodun Ltd. and seeking comment;
 - (b) September 20, 2016 email from Marco Oved of the *Toronto Star* to you regarding Thor Eaton acting as a director of Misty Enterprises Ltd.;
 - (c) September 20, 2016 email from Al Fleming, on your behalf, to Marco Oved of the *Toronto Star* requesting documents (registers) mentioned in Marco Oved's emails;
 - (d) September 20, 2016 email from Marco Oved of the *Toronto Star* to you regarding restrictions on sharing director registers;
 - (e) September 20, 2016 email from Al Fleming, on your behalf, to Marco Oved of the *Toronto Star* advising that he was awaiting a call from you;
 - (f) September 20, 2016 email from Marco Oved of the *Toronto Star* to you attaching registers of Mount Bodun Ltd. and Misty Enterprises Ltd. and inviting comments; and
 - (g) September 20, 2016 email from Al Fleming, on your behalf, to Marco Oved of the *Toronto Star* which included your September 20, 2016 statement.

On April 4, 2017, you met with me and provided your oral response to the above-noted allegations and responded to questions that I asked you regarding these allegations.

In response to my allegations, you submit the following facts:

1. Prior to receiving a September 19, 2016 email from Marco Oved, a reporter at the *Toronto Star*, alleging that you acted as a director of Mount Bodun Ltd., you had no knowledge of Mount Bodun Ltd.
2. After some further inquiries by your office staff following the inquiries from the *Toronto Star* reporter, you were advised by your office staff that Marian Bassett, your friend of over 40 years, was involved with Mount Bodun Ltd. Marian Bassett advised you that Mount Bodun Ltd. was a Bahamian company that she established, that she had named you a director because she trusted you as a long-time friend and that she had forgotten to tell you that she had listed you as a director of Mount Bodun Ltd.
3. You never agreed, either orally or in writing, to act as a director of Mount Bodun Ltd. Moreover, any listing of you as a director of Mount Bodun Ltd. in the Bahamian public registry was without your knowledge or consent.
4. You have never attended any director meetings or any other meetings relating to Mount Bodun Ltd., either in person or by telephone.
5. You have never signed any document for, on behalf of, or relating to Mount Bodun Ltd.
6. You have never received any communication from Mount Bodun Ltd., its registered agent, or the Bahamian government regarding Mount Bodun Ltd. or regarding you acting as a director of Mount Bodun Ltd.
7. You have never received any compensation or payments from Mount Bodun Ltd.
8. Your husband, Mr. Thor Eaton, was an executor of the estate of the late David Bassett and, in connection with the disposition of the estate of the late David Bassett, your husband served as a director of Misty Enterprises Limited. He was appointed a director in 2002 and his involvement as a director ceased prior to October 1, 2012.

You confirmed these facts in an affidavit that you provided to me.

Findings of Fact

As the allegations involved two Bahamian corporations and Bahamian corporate law, the Canadian business law firm McMillan LLP was retained, which in turn retained the Bahamian law firm Higgs & Johnson (the "Firm") to assist in the review of the corporate records of Mount Bodun Ltd. and Misty Enterprises Ltd. A lawyer at the Firm reviewed the corporate records of Mount Bodun Ltd. at the registered office of Mount Bodun Ltd. ("the Mount Bodun Records") on March 30, 2017 and the Firm carried out a search on January 18, 2017 of the corporate files of Mount Bodun Ltd. at the Companies Registry (the "Companies Registry") in Nassau, The Bahamas, as confirmed by the counsel to the Firm in a sworn affidavit dated June 29, 2017. Based on the above, the following facts and legal conclusions were verified:

Mount Bodun Ltd.

1. Mount Bodun Ltd. is a Bahamian international business company incorporated on May 20, 1999 under the provisions of the *International Business Companies Act, 1989* (which was repealed and replaced by the *International Business Companies Act, 2000*) with registration number 90,584B.
2. Based on the searches of the corporate files of Mount Bodun Ltd. at the Companies Registry carried out by the Firm on January 18, 2017, Mount Bodun Ltd. is on the Register of Companies, the Registered Agent of the Company (the "Registered Agent") is Lyford Corporate Management Ltd., and the Registered Office of Mount Bodun Ltd. ("Registered Office") is located at Lyford Financial Centre, P. O. Box N-7776/514, Nassau, New Providence, The Bahamas.
3. There were no documents in the Mount Bodun Records signed by you as a director, and Mr. Mike Klonaris, a representative of the Registered Agent, advised the lawyer at the Firm that he had been informed by Marian Bassett, the President of Mount Bodun Ltd., that she had appointed you as a director of Mount Bodun Ltd. without your knowledge.
4. You were appointed as a director of Mount Bodun Ltd., in accordance with the Memorandum and Articles of Mount Bodun Ltd. on June 1, 1999 by virtue of the resolutions of the subscribers to the Memorandum of Association of the Company passed on June 1, 1999. However, you were not a signatory to those resolutions and there is no record of you consenting to being a director in the Records of Mount Bodun Ltd. at the Registered Office.
5. Under Bahamian law, a director does not have to sign a written consent to act as a director of a company. Consequently, notwithstanding the resolutions that technically appointed you as a director of Mount Bodun Ltd., it is possible that under Bahamian law you were appointed as a director without your knowledge or your consent.
6. There are no documents in the Records that are signed by you and in fact there is only one resolution of the directors of Mount Bodun Ltd. in the Records and although there is a signature block for you, it is unexecuted by you.
7. Although the Registers of Officers and Directors of the Company filed with the Companies Registry on July 3, 2014 and September 26, 2016 reflect the date of your resignation as a director on October 6, 2011, there was no evidence in the Records of your resignation or removal as Director. In other words, you did not sign any documents to resign as a director.

Marian Bassett swore an affidavit dated June 29, 2017 in which, among other matters, she swore:

1. that you were appointed or purportedly appointed by the incorporators of Mount Bodun Ltd. without your knowledge or consent;
2. that your appointment or purported appointment was made upon Ms Bassett's sole instruction for personal reasons and that she inadvertently never informed you; and

3. that you were never aware of, or attended, or participated in, any directors' meetings or decisions of Mount Bodun Ltd.

The evidence demonstrates that you did not act as a director of Mount Bodun Ltd. and had no knowledge of being appointed as a director. Both you and Ms. Bassett have sworn affidavits to verify this point. The Registered Agent has advised that there is no correspondence to or from you in the Records of Mount Bodun Ltd., and a review of the corporate records of Mount Bodun Ltd. by Higgs & Johnson indicates that there is no evidence of you acting in any capacity as a director.

Misty Enterprises Ltd.

Based on the counsel of the Firm's review of the corporate records of Misty Enterprises Ltd. (the "Misty Records") at the registered office of Misty Enterprises Ltd. on March 30, 2017 and a search carried out by the Firm on March 27, 2017 of the corporate files of Misty Enterprises Ltd. at the Companies Registry, as confirmed by an affidavit of the counsel of the Firm dated June 29, 2017, the following facts and legal conclusions were verified:

1. Misty Enterprises Ltd. is a Bahamian international business company incorporated under the provisions of the *International Business Companies Act, 2000* on 27th November, 2002 with registration number 125,602B.
2. Based on the searches of the corporate files of Misty Enterprises Ltd. at the Companies Registry carried out by the Firm on March 27, 2017, Misty Enterprises Ltd. is still on the Register of Companies, the Registered Agent of Misty Enterprises Ltd. (the "Misty Registered Agent") is Lyford Corporate Management Ltd., and the Registered Office of the Company ("Misty Registered Office") is located at Lyford Financial Centre, P.O. Box N-7776/514, Nassau, New Providence, The Bahamas.
3. Mr. Eaton was duly appointed as a director and as President of Misty Enterprises Ltd. in accordance with the Memorandum and Articles on November 27, 2002; and
4. Mr. Eaton resigned as a director and as President of Misty Enterprises Ltd. on October 6, 2011. This resignation was accepted by a resolution of the directors of Misty Enterprises Ltd. also dated October 6, 2011.

Moreover, you stated in the written materials you provided to me that Thor Eaton resigned prior to the requirement for a senator to disclose his or her spouse's position as a director came into effect under the *Conflict of Interest Code for Senators*, which came into force on October 1, 2012 ("2012 Code"). You also reiterated this position in our meeting on April 4, 2017.

Relevant Provisions of the Code

Since the beginning of your term as senator on Jan 2, 2009, there have been several versions of the Code in force. The applicable provisions from the versions of the Code that were in force during that time period are the following:

1. *Code in force as of May 29, 2008 to October 1, 2012*

Your term as senator began on Jan 2, 2009. At that time, the *Conflict of Interest Code for Senators*, which came into force on May 29, 2008 ("2008 Code"), was the version of the Code in force. The relevant provisions applicable from January 2, 2009, the date your term as a senator began, until October 1, 2012 are the following:

Confidential disclosure statement: sitting Senators

27.(1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential disclosure statement disclosing the information required by section 28.

Contents of confidential disclosure statement

28.(1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

- (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;

2. *Versions of the Code in force since October 1, 2012*

On October 1, 2012, a new version of the *Conflict of Interest Code for Senators* ("2012 Code") came into force. The relevant provisions of the 2012 Code are the following:

Confidential disclosure statement: sitting Senators

27.(1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential disclosure statement disclosing the information required by section 28.

Contents of confidential disclosure statement

28.(1) Subject to subsection (4) regarding excluded matters, and any guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

- (b) any corporations, income trusts and trade unions in which the Senator or the Senator's spouse or common-law partner is a director or officer, and any partnerships in which the Senator or the Senator's spouse or common-law partner is a partner, including a description of the activities of each entity;

Subsection 27(1) and paragraph 28(1)(b) set out above have remained unchanged in subsequent versions of the *Code*.¹

Issues

1. Did you fail to disclose in your confidential disclosure statement, information related to your position as a director of a Bahamian company named Mount Bodun Ltd.
 - (a) from January 2, 2009 until October 1, 2012, contrary to paragraph 28(1)(a) of the 2008 *Code*; and/or
 - (b) from October 1, 2012 contrary to paragraph 28(1)(b) of the applicable versions of the *Code* that have applied since such date?
2. Did you fail to disclose in your confidential disclosure statement, information related to the position of your spouse, Thor Eaton, acting as a director or officer of a Bahamian company named Misty Enterprises Ltd.
 - (a) from January 2, 2009 until October 1, 2012, contrary to paragraph 28(1)(a) of the 2008 *Code*; and/or
 - (b) from October 1, 2012 contrary to paragraph 28(1)(b) of the applicable versions of the *Code* that have applied since such date?

Analysis

The allegations in relation to this matter must be examined in the context of the provisions of the applicable versions of the *Code* that were in force at the relevant time since the date of your appointment to the Senate on January 2, 2009.

(a) *Disclosure of Positions within Mount Bodun Ltd.*

Under paragraph 28(1)(a) of the 2008 *Code* and under paragraph 28(1)(b) of the versions of the *Code* that have applied since October 1, 2012, senators were required to disclose to the Senate Ethics Officer any positions they held in any corporations, income trusts or trade unions, whether as directors, officers or partners.

I was advised that under Bahamian company law an individual can be technically appointed as a director of a company as a result of a members' resolution, even if the individual has no knowledge of or does not consent to acting as a director. I was advised by the counsel of the Firm, who is a member of the Bar in the Bahamas with approximately 18 years' experience in Bahamian commercial and corporate law, that under Bahamian law, there is no requirement that an individual consent to acting as a director, either by written consent, by attending meetings of directors, or by

¹ These subsequent versions of the *Code* include both the *Conflict of Interest Code for Senators*, which came into force on April 1, 2014 ("April 2014 *Code*"); and the *Ethics and Conflict of Interest Code for Senators*, which came into force on June 16, 2014 ("June 2014 *Code*").

acting as a director after his or her appointment. This leads to the odd result where an individual could technically be appointed a director of a Bahamian company under Bahamian law without any knowledge of such appointment and without consenting to such appointment. This result is important in the analysis of your case. Conversely, I am advised by Canadian corporate counsel that under the *Canada Business Corporations Act* ("CBCA"), an individual elected or appointed to act as a director is deemed not to have been elected or appointed to hold office as a director unless certain requirements are met, such as consenting in writing to the appointment within 10 days after the election or appointment or acting in fact as a director pursuant to the election or appointment (see subsection 106(9) of the CBCA). So under the CBCA, an individual could not technically become a director without his or her consent, either in writing or by inference based on the individual acting as a director.

You submitted that you never held nor agreed to hold a position as a director of Mount Bodun Ltd. and confirmed that submission in an affidavit to me. Your submission is corroborated by (a) the findings of the Firm after its review of searches from the Corporate Registry, its review of the Records of Mount Bodun Ltd. and its interview of the Registered Agent, as contained in an affidavit from Higgs & Johnson, and (b) by statements from Marian Bassett, the individual who elected you as director without your consent or knowledge, as confirmed by an affidavit from Marian Bassett.

In light of the above, I have no reasonable grounds for concern that you breached paragraph 28(1)(a) of the 2008 *Code* or paragraph 28(1)(b) of the versions of the *Code* that have applied since October 1, 2012.

(b) *Disclosure of Positions within Misty Enterprises Ltd.*

Paragraph 28(1)(b) of the 2012 *Code* expanded the reporting obligations of senators to include disclosing to the Senate Ethics Officer any corporations, income trusts, and trade unions under which the senator or the senator's spouse or common-law partner is a director or officer. Prior to October 1, 2012 (the date of the coming into force of the 2012 *Code*), there was no requirement under paragraph 28(1)(a) of the 2008 *Code* to report a senator's spouse's position as a director or officer.

The Firm advised me that its review of the Misty Records indicated that Thor Eaton resigned as a director and President of Misty Enterprises Ltd. on October 6, 2011. Since this resignation occurred prior to the enactment of the 2012 *Code*, I have no reasonable grounds for concern that you breached paragraph 28(1)(a) of the 2008 *Code* (which did not contain an obligation to report a senator's spouse's position as a director or officer) nor paragraph 28(1)(b) of the versions of the *Code* that have applied since October 1, 2012.

Conclusion

In light of the above, I am of the view that an inquiry into this matter is not warranted since, based on the evidence before me, I have found no reasonable grounds for concern that you have breached your obligations under the versions of the *Code* that were in force during the time of the above events. As such, this matter properly falls within paragraph 47(11)(a) of the *Code*.

Based on the evidence I have before me, as you had no knowledge of and never consented to any alleged appointment of you as a director of Mount Bodun Ltd. and such appointment was done without your knowledge or consent, and based on the evidence that you never acted or agreed to act in any capacity relating to Mount Bodun Ltd., I conclude that you did not fail to disclose acting as a director of Mount Bodun Ltd. in your confidential disclosure statements contrary to the *Code*. There was no factual basis on which you would have known that you were technically appointed and listed as a director of Mount Bodun Ltd. under Bahamian law as such events occurred without your knowledge or consent. I cannot expect you to know and disclose a directorship, which based on the evidence before me, was a result of actions by other people who never advised you that they appointed you as a director.

In addition, I conclude that you did not fail to disclose that your spouse Thor Eaton acted as a director and officer of Misty Enterprises Ltd. as he resigned on October 6, 2011, prior to any requirement under the *Code* to disclose corporations in which a senator's spouse is a director or officer.

As such, I will not be proceeding with an inquiry into this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Ricard', with a stylized flourish at the end.

Lyse Ricard

c.c. Standing Senate Committee on Conflict of Interest for Senators