



December 19, 2019

The Honourable Pierre-Hugues Boisvenu
East Block Building – Room 351
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Boisvenu,

I write further to my letter to you of August 30, 2019 regarding complaints filed against you by Senators Gold and Harder dated August 20, 2019, and to your response dated September 30, 2019. This letter incorporates information provided in your letter dated November 20, 2019 in response to additional questions I posed to you in a letter dated November 7, 2019. This is my preliminary determination pursuant to subsection 47(10) of the *Ethics and Conflict of Interest Code for Senators* (the “Code”).

Facts

On August 23, 2019, I received two complaints from Senators Gold and Harder dated August 20, 2019. The complaints were identical and so I have consolidated my preliminary reviews of each complaint. This preliminary determination applies to both complaints.

The complaints allege that you violated sections 7.1 and 7.2 of the *Code* by engaging in a pattern of engagement with online groups that promote and proliferate content known to be racist, discriminatory and hateful. The alleged misconduct arises from two incidents, the first in 2017 and the second in August 2019.

First, in 2017, it was reported in the media that you belonged to and participated in certain Facebook groups which have been described as racist, hateful, and discriminatory.¹ There were three Facebook groups at issue. One was a group called “PEGIDA Quebec”. (“PEGIDA” is a German acronym for “Patriotic Europeans Against the Islamization of the West”.) Another was a group associated with Marine Le Pen’s Alliance of Patriots, and another was associated with a group called “La Meute” (“the Pack”), a group that claims to be against illegal immigration and “radical Islam.”²

You stated in media reports at the time that you had followed the PEGIDA group “perhaps by accident” and subsequently removed yourself from the group. You are reported as saying that you followed the group associated with La Meute, out of curiosity and to see what people were talking

¹ “Quebec senator defends membership in anti-immigration Facebook groups”, *Canadian Press* (August 21 2017), online: <https://montrealgazette.com/news/local-news/quebec-senator-defends-membership-in-anti-immigration-facebook-groups>; Melanie Marquis, “Boisvenu défend son adhésion à des groupes Facebook anti-immigration”, *Le Soleil*, August 18, 2017, online: <https://www.lesoleil.com/actualite/politique/boisvenu-defend-son-adhesion-a-des-groupes-facebook-anti-immigration-a1ba8c1772821b87d30e749a55487fb6>.

² “La mouvance de l’extrême droite plus visible au Québec”, Radio-Canada, September 25, 2019, online: <https://ici.radio-canada.ca/nouvelle/1057836/mouvance-xtreme-droite-portrait-quebec-meute>.

about. As for the Le Pen group, you said that the anti-immigration label should not be applied to groups that oppose religious accommodation. You first stated that you intended to remain in both groups, although you later changed your position and removed yourself from them.

Second, the complaints allege that you made a post on August 2, 2019 to a Facebook group called “Canadian Coalition of Concerned Citizens”, which has been described as being associated with neo-Nazism and white supremacy. Underneath a news article about Justin Trudeau visiting a gay bar in Vancouver, you posted “always a show.”³

On August 30, 2019, I provided you with a copy of the complaints of Senator Gold and Senator Harder and informed you that I had commenced a preliminary review of this matter. I asked you to provide your response to the allegations against you.

You provided a response dated September 30, 2019. In your response, you offered an “wholehearted and unreserved apology” [TRANSLATION] for allowing your Facebook account to be associated with certain far-right groups. You explained that you had been added to these groups without your knowledge or approval. You accepted responsibility for the lack of prudence that resulted in your Facebook account being associated with these groups.

You expressly disclaimed the views and positions attributed to the groups with which you had affiliated on Facebook. You stated that “I am not a racist. I believe in the inherent dignity and worth of each human being. I stand for the diversity, multiculturalism, and equality that this country proudly upholds” [TRANSLATION] and later “I reiterate that I reject wholeheartedly all extremist and hateful views” [TRANSLATION] and “I re-iterate this stance now: racism and white supremacy have no place in our democracy.” [TRANSLATION]

You explained that you have approximately 5,000 Facebook “friends”. Your practice is to accept anyone as a “friend” who makes a friend request. You explained that you engage in dialogue with Canadians on Facebook on political matters. You have explained that any one of these “friends” can add you to a Facebook group without your prior knowledge or approval. I have reviewed outside sources to confirm that this is in fact how Facebook groups operate.⁴ While you would receive a notification that you had been added, your large number of “friends” made it difficult to review all of these notifications.

With respect to the comment posted about Justin Trudeau’s visit to a gay bar, you apologized for your post and have deleted it. You wrote that “In hindsight, my comment left room for unwanted interpretation and was not intended as a comment on the LGBTQ2S+ community. I have since deleted the comment. To be clear, my comment only referred to political theatre by the Prime Minister.” [TRANSLATION]

In response to the above issues, you have blocked the groups in question, as well as an additional 50 groups and 280 “friends” who may pose a risk of association with racist or hateful ideologies. You are conducting daily checks of your Facebook account to ensure that you are not added to any

³ Justin Ling, “Conservative Senator Is an Active Member of a Far-Right Facebook Group”, *Vice*, August 2 2019, online: https://www.vice.com/en_ca/article/wjwejm/conservative-senator-is-an-active-member-of-a-far-right-facebook-group.

⁴ e.g., Susan Gunelius, “Learn Why You Should Be Wary of Friends Adding You to Facebook Groups”, May 15, 2019, *Lifewire*: <https://www.lifewire.com/beware-friends-adding-you-to-facebook-groups-without-permission-3476690>.

problematic groups. Your staff are conducting a review of the remainder of your “friends” to identify any potentially problematic accounts.

On November 7, 2019, I wrote to you to seek clarification of certain points made in your letter. You provided your response to these questions on November 20, 2019. In my letter, I pointed out that there was a tension between your comments to the media in 2017 that you had followed a group associated with La Meute out of curiosity and your statement in your September 30, 2019 letter that you “did not request to join any of these groups” [TRANSLATION]. You explained that you were unaware that members of La Meute belonged to this group. You explained that your initial statement to the media that you would not leave the group associated with Le Pen was made “on the spot and without any prior thought” [TRANSLATION] and that, after reviewing the matter more fully, you decided to leave the group. I further asked you how it was that you had engaged with posts that were made through these groups if you were not aware that you had been added to the group at all. You explained that the posts populated your Facebook “newsfeed” and that you engaged with these posts without appreciating that they originated from the impugned groups.

You confirmed that you would readily agree to post a statement on your Facebook page clarifying the facts and repeating your opposition to racist, hateful and discriminatory views, along with an apology for allowing your name to be associated with groups that promote such ideas.

Relevant Provisions of the *Code*

Sections 7.1 and 7.2 of the *Code* provide as follows:

7.1. (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.

(2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the Senate.

7.2 A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.

Subsection 47(12) of the *Code* provides as follows:

Findings regarding breach

(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:

(a) that an obligation under the Code may have been breached but that the non-compliance was trivial;

(b) that an obligation under the Code may have been breached but that the non-compliance occurred through inadvertence or an error in judgment made in good faith;

(c) that an obligation under the Code may have been breached but that all reasonable measures were taken to prevent the non-compliance; and

(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.

Analysis

Senators occupy a position of power and influence. By associating with groups, whether online or offline, they lend legitimacy to those groups. This is usually a positive thing that allows Senators to strengthen Canadian civil society. However, it also carries risks that Senators may, even if unintentionally, legitimize the ideas of fringe or extremist groups. Senators must be careful to prevent their names and the office they hold from being used in this manner when hateful, racist, or discriminatory ideas are involved.

Through sections 7.1 and 7.2 of the *Code*, Senators have set a high standard of conduct for themselves. Section 7.1 applies to conduct of a Senator in their personal life. My predecessor summarized the relevant principles in the Meredith Report as follows:⁵

Section 7.1 advises Senators that not only their professional conduct, but also their personal conduct may be subject to scrutiny when that conduct (a) undermines the standards of dignity inherent to the position of Senator, such that, for example it impacts a Senator's professional reputation, integrity or trustworthiness, or (b) may have an adverse impact on the reputation of the office of Senator or the Senate as an institution.

Section 7.2 applies a higher standard of conduct to a Senator's conduct in the course of their official duties and functions. That raises the question of whether use of your personal Facebook account in this case could be characterized as falling within the scope of your official duties and functions. You have explained that you have approximately 5,000 Facebook "friends" and that you always accept "friend" requests. You engage in debate with Canadians about political matters through this forum.

In the Beyak Report, I had determined that content posted on a Senator's official webpage fell within section 7.2. While a personal Facebook page is further removed from a Senator's office than an official Senate webpage, from a functional perspective, they are similar in this case. From the large number of "friends" and your practice of accepting all friend requests, this platform functioned in a manner very similar to a webpage. Not only did you say in your response that you use your personal Facebook page to engage in debates with Canadians and share your political views on current Quebec and Canadian news, you generally accepted all 'friend requests' because you saw it as part of your Senate duties to remain open and available to all Canadians. I am prepared to accept, for the purposes of this preliminary determination, that content posted on your personal Facebook page is subject to section 7.2.

Senators, like all Canadians, enjoy the right to freedom of expression. This right is essential to the fulfillment of a Senator's function. Senators must be free to engage in vigorous debate with members of the community and other stakeholders. However, as the Beyak Report demonstrates, there are limits to the freedom expression of Senators. That matter involved content that described

⁵ Office of the Senate Ethics Officer, "Inquiry Report under the *Ethics and Conflict of Interest Code for Senators* Concerning Senator Don Meredith," March 9, 2017, p. 7.

Indigenous people as “opportunistic, pampered whiners who are milking the government and exploiting the taxpayer.”⁶ The report concluded that these comments were racist but not sufficiently extreme to constitute hate speech. The report identified three scenarios in which a Senator can be found to have violated sections 7.1 or 7.2 by virtue of posting such content:

- a. A finding of a violation of section 7.1 is available where a Senator posts hate speech online, even where this was not done intentionally;
- b. A finding of a violation of section 7.1 is available where a Senator posts racist content with the intention of promoting racist ideas or ideology; or
- c. A finding of a violation of section 7.2 is available where a Senator posts, on an online site associated with their office, racist content without taking due care.

A preliminary question is whether the Facebook groups at issue in fact promote racist or hateful ideas. In the complaints filed by Senator Gold and Senator Harder, they describe some of the Facebook groups at issue as promoting content that is racist, hateful, and discriminatory. In your response, you describe these groups as “far-right” groups and you disavow their beliefs, and implicitly accept the characterization of these groups by Senator Gold and Senator Harder. As such, I will proceed for the purposes of this preliminary determination that these groups promote racist views and ideologies without the need for further investigation of that issue.

In this case, it does not appear that your intention in joining the Facebook groups at issue was to promote racist or hateful ideas. By analogy to (a), it could be said in this case that you had the effect of promoting hateful content by associating with and participating in these Facebook groups, even if you did not realize their true nature. In the circumstances, section 7.1 is engaged in that acting in such a manner is inconsistent with upholding the highest standards of dignity inherent in your position as a Senator and this behaviour could reflect adversely on that position or the Senate itself. Your conduct also engages section 7.2 in that you have associated with these groups on a platform associated with your official duties and functions.

Disposition

Subsection 47(12) provides that “[i]n 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.”.

Under subsection 47(12), I am not required to make a finding of whether you have violated the *Code*. In the particular circumstances of this case, I do not find it necessary to conduct an inquiry to confirm the relevant evidence that suggests there was a violation. I do not believe that such an inquiry would be warranted in light of the apology set out in your response and the remedial measures that you have already taken.

⁶ Office of the Senate Ethics Officer, “Inquiry Report under the *Ethics and Conflict of Interest Code for Senators* Concerning Senator Lynn Beyak,” March 19, 2019, p. 28.

Nonetheless, I have serious concerns regarding your conduct, as described by Senator Gold and Senator Harder in their complaints. Had it not been for the convincing apology contained in your response and the remedial steps you have taken, I would have found it necessary to commence an inquiry in this matter.

In your initial response letter, you have taken responsibility for the situation and apologized for it. You have outlined a number of prophylactic measures to ensure that the situation does not recur, including blocking problematic contacts, a daily review of your group affiliations, and a review of all of your Facebook contacts.

As already noted above, in your letter dated November 20, 2019, you confirmed that you would readily agree to post a statement on your Facebook page clarifying the facts and repeating your opposition to racist, hateful and discriminatory views, along with an apology for allowing your name to be associated with groups that promote such ideas. This is an appropriate step in this case in order to show publicly that you have distanced yourself from these groups.

In my opinion, these measures are sufficient to address the concerns raised by Senator Gold and Senator Harder. I therefore conclude that, while you may have breached section 7.1 and 7.2 of the *Code*, the situation has been addressed and remedied to my satisfaction, pursuant to paragraph 47(12)(d) of the *Code*. This conclusion is conditional upon the Facebook post described in the previous paragraph being made within two weeks of the date of this letter.

Having said that, of course 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 received.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized, elongated horizontal stroke with a small vertical tick mark near the center.

Pierre Legault