

SUMMARY¹

The Ethics Commissioner's inquiry report on Mr. Pierre Fitzgibbon, Minister of Economy and Innovation and Member for Terrebonne

June 13, 2019

CONTEXT

On November 20, 2018, Mr. Martin Ouellet, House Leader of the Second Opposition Group and Member for René-Lévesque ("the House Leader"), filed an inquiry request with the Ethics Commissioner ("the Commissioner") with regard to Mr. Pierre Fitzgibbon, Minister of Economy and Innovation and Member for Terrebonne ("the Minister").

The House Leader claimed to have reasonable grounds to believe that the Minister had violated sections 15, 16, 22 and 49 of the *Code of ethics and conduct of the Members of the National Assembly*² ("the Code") by intervening with actors in the aerospace industry following Bombardier's announcement that 2,500 jobs would be cut in Québec, while personally holding shares in Héroux-Devtek, of which Bombardier is a client. In particular, the House Leader alleged that the Minister's intervention had possibly indirectly caused an increase in the value of Héroux-Devtek shares. Furthermore, he alleged that the Minister had placed himself in a conflict of interest situation by intervening with actors in the industry while his shares had not yet been placed in a blind trust or entrusted to an independent mandatary under a blind management agreement.

The purpose of the inquiry was to determine whether the Minister had violated sections 15, 16, 22 and 49 of the Code.

FACTS

The Minister was elected Member for Terrebonne in the October 1, 2018 general election. He was appointed to Cabinet as Minister of Economy and Innovation and Minister Responsible for the Lanaudière Region on October 18, 2018.

On November 8, 2018, Bombardier announced its intention to cut 2,500 jobs in Québec. Following the announcement, the Minister made several declarations in the media, concerning, among other things, the possibility that the Government might lend support to Bombardier and the aerospace industry in general. Furthermore, the Minister convened a meeting with actors in the aerospace industry, attended by Mr. Gilles Labbé, President and Chief Executive Officer of Héroux-Devtek.

1. The Ethics Commissioner's official positions and conclusions are included in the inquiry report. Where there are any differences between the summary and the report, the latter prevail.

2. CQLR, c. C-23.1.

According to the testimony and documents obtained, the main purpose of the meeting was to address the skilled labour shortage in the aerospace sector and to draw up an action plan to keep the employees affected by the cuts in the industry.

The documents received show that, even though Bombardier is a client of Héroux-Devtek, it is not its main client since such transactions represent a small proportion of Héroux-Devtek's total sales, that is, less than one percent of the company's sales figure in 2018.

ANALYSIS OF THE FACTS AND APPLICABLE LAW

Independence of judgment (s. 15 of the Code)

Under section 15 of the Code, it had to be determined whether the Minister, in the context of the alleged facts, had placed himself "in a situation where his [...] private interests might impair his independence of judgment in carrying out the duties of office", thereby contravening that section.

Considering the limited business relationship between Bombardier and Héroux-Devtek, the alleged impact of the Minister's declarations on the value of Héroux-Devtek shares was purely hypothetical and prospective. Therefore, the public offer to provide government support had no reasonably foreseeable effect on the value of Héroux-Devtek shares.

Even though, as far as appearances go, it would have been more prudent for the Minister not to intervene with the actors in an industry in which he held interests, nothing in this inquiry showed that the Minister had placed himself in a situation where his interests in Héroux-Devtek might impair his independence of judgment at the time of his interventions regarding the aerospace industry.

The Minister did not violate section 15 of the Code.

Prohibition against furthering private interests (s. 16 of the Code)

Under paragraph 1 of section 16 of the Code, it had to be determined whether, through his interventions and declarations with actors in the aerospace industry, the Minister had acted, attempted to act or refrained from acting so as to further his personal interests as a Héroux-Devtek shareholder or to improperly further those of Héroux-Devtek.

First, the limited business relationship between Héroux-Devtek and Bombardier and the absence of any reasonably foreseeable effect on the value of Héroux-Devtek shares as a result of the Minister's declarations and interventions had to be considered.

In addition, the testimony gathered and the documentary evidence confirmed that the sole objective was to relocate dismissed employees and to retain skilled workers in Québec's aerospace industry.

Therefore, the Minister did not act or attempt to act so as to further his interests or to improperly further the company's interests, within the meaning of paragraph 1 of section 16. Since it had been established that the interests of Héroux-Devtek could not, in a reasonable and foreseeable manner, be furthered by the Minister's interventions, it was not necessary to

analyze paragraph 2 of section 16, which pertains to the exercise of influence for the same purposes. Consequently, the Minister did not violate section 16 of the Code.

Conflict of interest at the time of an election (ss. 22 and 49)

Here, it had to be determined whether the Minister, through his interventions, had violated sections 22 and 49 of the Code. Section 22 provides in particular that a Member whose election places him or her in a conflict of interest situation must put an end to the situation within 60 days. Section 49, which specifically concerns Cabinet Ministers, prescribes measures to be taken for as long as the situation is not regularized.

At the time of his election on October 1, 2018, the Minister was allowed, as a Member, to hold interests in a company whose securities were listed on an exchange, such as Héroux-Devtek.

From the time of his appointment to Cabinet, the Minister had 60 days to dispose of his interests in companies whose securities were listed on an exchange or to place them in a blind trust or entrust them to an independent mandatary under a blind management agreement. And the Minister did in fact entrust the management of his shares to an independent mandatary under a blind management agreement, in accordance with section 45 of the Code.

The House Leader claimed that, even though the Minister had begun to take steps to entrust his interests to an independent mandatary under a blind management agreement, he was not authorized to intervene in matters conducive to conflicts of interest. He was right. However, in the case at hand, it was determined that the Minister did not place himself in a situation of conflict of interest. Therefore, he was not required to take the measures set out in section 49 of the Code.

Therefore, the Minister did not violate sections 22 and 49 of the Code.

CONCLUSION

The Commissioner concluded that the Minister did not violate sections 15, 16, 22 and 49 of the Code in his actions and declarations with actors in the aerospace industry between November 6 and 20, 2018.