

Friday, June 16, 2017

THE NIGEL WRIGHT REPORT

Before Canadians wrap themselves in virtuous vestments to view the unfolding of bizarre events at the highest level of the United States federal government, we should not overlook our own blemishes. While outcomes in Washington, D.C., are uncertain at this time, the Duffy-Wright Affair in Ottawa has now been concluded. Senator Mike Duffy was charged with 31 counts of criminal conduct. The RCMP also considered four possible charges against Nigel Wright for fraud on the government. In its April, 2014 internal investigation, the RCMP reported that “there may be sufficient evidence to charge Nigel Wright”, but that: “The decision on whether or not to seek charges against Mr. Wright must be an assessment on the weight of value of the evidence he can provide in the matter of Senator Duffy, versus the prospects of a conviction on any charges that may be brought against him.” The RCMP decided to focus its investigation on members of the Senate of Canada. The RCMP decided not to charge Wright, who remained an “unindicted co-conspirator” in the charges that were laid against Duffy. Wright gave evidence for the prosecution in Duffy’s criminal trial. Duffy was acquitted on all counts and completely vindicated by the Court.

On May 25, 2017, the Conflict of Interest and Ethics Commissioner found that Wright, in connection with his activities in the Duffy-Wright Affair, contravened two important prohibitions in the federal *Conflict of Interest Act*. As a “public office holder”, Wright was found to have made a decision in the exercise of an official power, duty or function as Chief of Staff to improperly further the private interests of Senator Duffy. For some reason, however, the Act does not provide any sanctions, penalties, fines or other consequences for breaches of those sections. The Office of the Conflict of Interest and Ethics Commissioner stated that the only direct result of the report is to shed light on the activity examined. As the RCMP had earlier reviewed Wright’s conduct, the Commissioner decided not to initiate any proceedings against him as a result of her findings of his breaches of the Act.

The results of the Duffy-Wright Affair are that Senator Duffy was exonerated as an innocent man, and, although Nigel Wright was found to have contravened prohibitions in the *Conflict of Interest Act*, there are no consequences and he is not accountable for so doing.

After 13 lucrative years of business mentoring by Gerald Schwartz, Wright took a leave of absence as a managing director of ONEX from 2010 to 2014. During that period, he returned to his political base with the federal Conservative Party. As Chief of Staff in the Prime Minister Harper’s Office, he ran the PMO until his disgraced resignation on May 19, 2013. In that job, Wright was a “public office holder” and subject to applicable federal laws governing his conduct. In his capacity as Chief of Staff, Wright’s duties included advancing his government’s agenda in Parliament, caucus relations, parliamentary affairs and issues management. He admitted that,

under his leadership, the PMO was expected to operate in a manner that was “politically oriented”.

In defence of his personal payment of \$90,172.24 to Senator Duffy, Wright argued that he had dual roles: one in an official capacity as Chief of Staff (the “public office holder”) and the other as a political partisan with the Conservative Party of Canada (not as a “public office holder”). He acknowledged that “all significant Party decisions, including financial decisions involving the Conservative Fund Canada, were not made without consulting with him and, in most cases, without his approval.” He agreed that the actions he took to resolve Duffy’s politically damaging expense claims controversy fell within his official “public office holder” duties as Chief of Staff, other than his personal payment to Senator Duffy. Wright argued that his payment to Duffy was outside his role as Chief of Staff. Wright also argued that while Senator Duffy might technically have been entitled to claim the expenses, “morally and politically he should not have done so”.

The Commissioner rejected Wright's argument that he was acting in a political partisan capacity and not as Chief of Staff when he transferred funds to Duffy. He did so on condition that Duffy use the money to repay his challenged expense claims. Wright took charge of the Duffy problem, attempted to mitigate it and directed not only the staff of the PMO but also Conservative Party Senate members in exercising their duties. The Commissioner concluded: “Mr. Wright’s involvement in the reimbursement of Senator Duffy’s expenses was squarely within his responsibilities to manage political issues as Chief of Staff for the Prime Minister of Canada. This was a decision made in the exercise of his official powers, duties and functions as Chief of Staff.”

It is doubtful that, had the Duffy-Wright Affair occurred in the United States, Nigel Wright would have experienced as soft a landing as he did in Canada.