

Employee Criminally Charged for Breach of Trust

RCMP arrested Environment Canada Employee on May 9, 2007 for leaking the government's environmental plan.



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On April 17, 2007, the RCMP Commercial Crime Section received a complaint from Environment Canada's security department that a draft secret copy of "Climate Change Section of the Eco-Action Plan" had been released a full week before it was meant to go public. The source of the leak also attached a manifesto justifying the leak as an act of protest against the "secrecy of the Harper government" and that the action was taken because the need for public information outweighed the importance of due process. Jeffrey Monaghan, 27, was arrested on an allegation for breach of trust under the Criminal Code ("the Code").

In order for Monaghan to be found criminally liable for breach of trust, the Crown would have to establish five factors outlined by Chief Justice Beverly McLachlin in *R. v. Boulanger*, a 2006 Supreme Court of Canada case. The Crown would have to prove beyond a reasonable doubt that Monaghan is an official, he was acting in connection with the duties of his office, he breached the standard of responsibility and conduct demanded of him by the nature of the office, his conduct represented a serious and marked departure from the standards expected of an individual in his position of public trust, and he acted with the intention to use his public office for a purpose other than the public good.

Monaghan would be considered an "official" given that the term official, under the Code, broadly includes "a position or an employment in a public department." There is a possibility that because of the nature of his work, as an employee responsible for analyzing government-specific information, the Court would find that Monaghan was acting in connection with the duties of his office. However,

Monaghan may not have been privy to highly confidential information on a regular basis and it is unclear how he obtained the secret draft of the document. It is apparent that Monaghan breached the standard of responsibility and conduct required of him, given his responsibilities. In addition, there is a higher duty of care associated with employees of a government department because such employees are in a position of public trust regardless of their ranking. It may be difficult for the Crown to prove that Monaghan acted with the intention to use his position as an official for a purpose other than the public good, as the purpose was to provide information to the public.

The possibility of the government criminally convicting Monaghan for breach of trust may also have implications for employers and employees in general. Non-public official employees, however, may not be held to the same standard as public official employees because they would not carry the same level of duty of care or fiduciary obligation, and may not warrant a criminal charge. Bank employees and professionals, however, are exceptions to the rule because they are expected to live up to community standards of integrity and honesty. Non-public official employers who have alleged that an employee has committed a breach of trust should first conduct a thorough investigation and appropriate disciplinary measures or termination of employment, rather than proceed to charge their employee criminally. **MB**

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