Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

CONFIDENTIAL

January 17, 2022

Sent by email to: Matthew.Green.P9@parl.gc.ca; Heather.McPherson.P9@parl.gc.ca

Mr. Matthew Green
Member of Parliament for
Hamilton Centre
House of Commons
Ottawa, Ontario K1A 0A6

Ms. Heather McPherson
Member of Parliament for
Edmonton Strathcona
House of Commons
Ottawa, Ontario K1A 0A6

Subject: Request for an examination under the *Conflict of Interest Act*

Dear Mr. Green and Ms. McPherson:

I am writing in response to your request received January 7, 2022, and your addendum received January 11, 2022, concerning the post-employment obligations of Mr. Dominic Barton and his dealings with Rio Tinto during his last year as Ambassador to China. As you know, Mr. Barton's term in public office ended December 31, 2021. He has subsequently accepted a position on the board of directors of Rio Tinto, which is set to begin this spring.

It was alleged in your request that Mr. Barton contravened subsection 35(1) of the *Conflict of Interest Act* (Act), which prohibits former reporting public office holders from accepting an appointment to a board of directors of an entity with which they had direct and significant official dealings during their final year in public office.

In your addendum, you set out your concern that Mr. Barton may also, in his new position at Rio Tinto, find himself in contravention of section 33 and subsection 34(2) of the Act based on statements issued by the company referring to Mr. Barton's experience as Canada's Ambassador to China. These provisions prohibit former reporting public office holders from

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acting in such a manner as to take improper advantage of their previous public office and from giving advice to their employer using information that was obtained in their capacity as a public office holder and is not available to the public, respectively. Contrary to section 35, these provisions apply indefinitely.

In October 2021, Mr. Barton communicated with his compliance advisor in this Office to seek specific guidance in respect of his post-employment pursuits, namely whether a meeting he had with representatives of Rio Tinto on October 8, 2021 would be considered significant for the purpose of subsection 35(1) of the Act and thus prevent him from pursuing an opportunity with that company. According to the information he disclosed to the Office, the meeting was held virtually in the presence of two executives of Rio Tinto and two trade commissioners representing Canada, and the meeting's purpose was strictly informational, with no requests being made either by the company or by Canada. This was his only direct official dealing with Rio Tinto in his last year in office. Based on this information, I determined that Mr. Barton would not contravene subsection 35(1) by accepting a position on the board of directors of Rio Tinto.

Because Mr. Barton has not yet assumed his new position on the board of Rio Tinto, there is no basis for an allegation that he may have contravened sections 33 or 34 in the context of his new duties. Furthermore, I note that the Act's provisions on post-employment, and section 33 and subsection 34(2) in particular, do not prohibit former public office holders from leveraging the experience and knowledge acquired during their time in public office. Instead, the prohibitions apply only to the *improper* use of one's former public office and the use of information that is not available to the public. Without a specific set of facts to consider, no determination can be made in respect of a former public office holder's compliance with these provisions.

In light of Mr. Barton's prior consultation with the Office and because no information previously unknown to me was found in the request, I have determined that an examination of the matter is not warranted. Since the existence of your request for an examination was made public, I have also informed Mr. Barton of my decision not to pursue the matter further.

Thank you for bringing this matter to my attention.

Sincerely,

Mario Dion
Conflict of Interest and Ethics Commissioner