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April 5, 2018

Mr. Shin Imai, Associate Professor
Osgoode Hall Law School
York University, 3019 Ignat Kaneff Bldg.
4700 Keele Street
Toronto, ON M3J 1P3

Re: File No. PSIC-2017-D-0413

Dear Mr. Imai,

This letter is in response to the disclosure of wrongdoing that you made to my Office on February 5, 2018, pursuant to the *Public Servants Disclosure Protection Act* (the Act), as a member of the public. I would like to begin by saying that I sincerely sympathize with Mr. Mariano Abarca's family and his community and supporters for their loss. I want to reassure you that my Office has taken your allegations very seriously and has conducted a thorough review of all the information you provided. However, the purpose of this letter is to inform you of the reasons why I will not commence an investigation.

Before I may commence an investigation based on information received from a member of the public, subsection 33(1) of the Act provides that I must have reason to believe that wrongdoing, as defined under section 8 of the Act, has been committed. I must also assess whether an investigation is in the public interest, taking into account sections 23 and 24 of the Act, which set out respectively, the restrictions and the discretionary factors that I must take into account in determining whether an investigation is warranted.

In your disclosure, you allege that Mr. Guillermo Rishchynski, Former Ambassador to Mexico, Mr. Douglas Challborn, Former Political Counsellor, Mr. Paul Connors, Former Trade Commissioner, and the Canadian Embassy in Mexico City (collectively referred to as "the Embassy"), committed wrongdoing as defined at paragraphs 8(d) and (e) of the Act.

More specifically, you allege that the Embassy committed a serious breach of a code of conduct when it failed to follow policies in relation to human rights defenders, and also committed an act or omission that created a substantial and specific danger to the life, health or safety of a person when it further failed to report an act of corruption in a timely manner.

Regarding the first allegation, you contend that the Embassy's alleged failure to adhere to the following "policies" intended to protect Mr. Abarca as a human rights defender, constitutes a serious breach of a code of conduct and created a substantial and specific danger to Mr. Abarca's life: "Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector", "Protection of human rights defenders" and "Facilitating open and informed dialogue".

From our understanding, these documents are not official Government of Canada policies and they do not appear to prescribe specific actions that should have been taken or not taken by the Embassy at the relevant time. Of the three "policies", one is a strategy document, written in 2009 and aimed at Canadian extractive sector companies. Concerning the other two documents, based on the information provided, one was an excerpt of an unnamed document written in 2016, and the other appears to be an excerpt of a statement the Department of Foreign Affairs and International Trade made to the Toronto Star in December 2009.

You state that the Embassy communicated with Blackfire more than 30 times between 2007 and 2010 and that you believe the number and substance of these communications are indicative of the Embassy's inappropriate support for Blackfire's economic interests over the interests of the community in which they operated. Recognizing that the Embassy's mandate in general appears to include providing assistance to Canadian companies abroad interested in expanding and succeeding in the international market, it does not appear that these interactions were contrary to the above-noted documents you refer to as "policies", or that wrongdoing, as defined in the Act, was otherwise committed through these communications.

Regarding the Embassy's interactions with individuals who were opposed to the operations of the mine, you view these interactions as insufficient and contrary to the above-noted documents. Based on the information provided, it does not appear that the Embassy was obligated to mediate the dispute between Blackfire and its opponents. While some may have considered the Embassy's interaction with opponents of the mine to have been limited, it cannot be said that the Embassy's actions or inactions,

regarding the difficulties between Blackfire and the community, constitute wrongdoing as defined by the Act.

It also appears that the Embassy did not ignore the human rights concerns raised, as alleged. In particular, according to the information provided, after Mr. Abarca was detained in 2009, the Embassy sought information about his detention from the Government of Chiapas, the Chiapas Human Rights Commission, the federal Economy Ministry and the Canadian Chamber of Commerce, and from Blackfire. Following Mr. Abarca's death, you noted that the Embassy stated that "Canada welcomes the judicial investigation by Mexican authorities to determine facts related to Mr. Abarca's death" but you indicated that they should have taken a more active role in "urging a full and impartial investigation" rather than allegedly distancing themselves from the proceedings. That being said, an investigation was conducted by the Mexican authorities, arrests were made and one individual was, at the trial level, found guilty of Mr. Abarca's death. In that regard, the Embassy would not have had jurisdiction in relation to that local investigation or the legal proceedings. I understand that you also believe the Embassy should have intervened earlier or made further efforts and that their failure to do so is a contravention of the above-referenced "policies"; however, the information provided does not suggest that wrongdoing, as contemplated by the Act, was committed.

In light of the foregoing, the information provided regarding the Embassy's alleged failure to adhere to "policies" does not suggest that wrongdoing pursuant to paragraphs 8(d) and (e) of the Act was committed.

With respect to your allegation regarding the Embassy's alleged duty to report bribery and corruption, in your disclosure, you indicated that under the "2010 Policy and Procedures for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies (the 2010 Policy), public officials are to report suspected bribery or corruption involving Canadian companies to their headquarters in Ottawa". It appears that the bribery allegations became public in the Mexican press in June 2009 and that you suggest the Embassy reported the allegations in December 2009, following Canadian news coverage of the matter. Although you provided your beliefs surrounding what the Embassy may or should have known or done and when, the information provided in this regard appears speculative. As a result, despite that it is not clear whether a policy similar to the later 2010 Policy was in effect at the time in question, and considering that it appears the alleged bribery and corruption was reported by the Embassy, the information provided is not sufficient to suggest wrongdoing, as defined by the Act, on the part of the Embassy officials. I further note that an investigation by the Royal Canadian Mounted Police was conducted into the bribery and corruption allegations and, subsequently, it was held the evidence did not support criminal

charges. Consequently, the information provided regarding your allegation that the Embassy failed to report alleged bribery and corruption does not suggest that that wrongdoing was committed pursuant to paragraphs 8(d) and (e) of the Act.

In light of the foregoing, the information provided in your disclosure does not give me reason to believe that wrongdoing was committed by the Embassy as defined at paragraphs 8(d) and (e) of the Act. As such, the requirements of subsection 33(1) of the Act have not been met and it is not in the public interest to commence an investigation.

Human rights defenders play an important role in protecting human rights, and my decision not to investigate the allegations as you have presented them, is not, in any way, intended to take away from the seriousness or the importance of this situation. I can appreciate that this decision was not the one you were anticipating, but it is consistent with, and reflective of my particular mandate and role under the Act. I do wish to thank you for taking the time to bring your concerns to my attention. Should you have any questions about my decision, please do not hesitate to contact Raynald Lampron, Director of Operations, at 613-941-6304 or 1-866-941-6400.

Sincerely,



Joe Friday
Commissioner

cc.: Ms. Jen Moore, 508 - 250 City Centre, Ottawa, ON K1R 6K7