



1 Nicholas St., Suite 1510, P.O. Box 821, Stn. B, Ottawa K1P 5P9
Tel: 613-241-5179 Fax: 613-241-4758
Email: info@democracywatch.ca Internet: <http://democracywatch.ca>

Office of the Conflict of Interest and Ethics Commissioner
ATTN: Mary Dawson, Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

Email: ciec-ccie@parl.gc.ca

May 24, 2017

RE:

- (a) Request that you recuse yourself from ruling on the matters addressed in this letter because you received 6-month possibly renewable contract worth approximately \$100,000 from the Trudeau Cabinet in mid-December;**
- (b) The purpose of, and correct basis for interpretation of, the *Conflict of Interest Act*, and;**
- (c) Request for ruling on whether executives and staff of BlackRock violated subsection 6(1) of the *Conflict of Interest Act***
- (d) Request for ruling on whether Privy Council Office staff, Prime Minister's Office staff and/or Cabinet ministers and their staff including Minister of Infrastructure and Communities Amarjeet Sohi and his staff, violated section 7 of the *Conflict of Interest Act***

Dear Commissioner Dawson:

I am writing concerning your role in enforcement of the *Conflict of Interest Act* (“COIA”) generally, and the purpose and interpretation of the COIA, and also specifically requesting a ruling on whether executives and staff of BlackRock Asset Management Ltd., and one or more of Privy Council staff, Prime Minister's Office staff, Cabinet ministers including Minister of Infrastructure and Communities Amarjeet Sohi and his staff, violated the COIA.

(a) Recusal requested because you received six-month contract from the Trudeau Cabinet (and may be reappointed)

Your term ended in early January but it was renewed for a second six-month, renewable term by the Trudeau Cabinet in mid-December. Under subsection 82(2) of the *Parliament of Canada Act*, the Trudeau Cabinet (“Governor in Council”) may have full discretion to reappoint you for as many consecutive six-month terms as it wants (I qualify this statement as it is also arguable to interpret subsection 82(2) as saying that any one person is only allowed to serve one six-month term as interim Conflict of Interest and Ethics Commissioner).

In any case, because the Trudeau Cabinet appointed you for six months, for a salary worth approximately \$100,000, and you are now serving at the pleasure of the Cabinet as that Order-in-Council appointment can be rescinded at any time for any reason by the Cabinet (and also possibly can be extended by the Cabinet for another six months), you are therefore in a financial conflict of interest currently concerning making rulings that affect Prime Minister Trudeau and members of his Cabinet or Liberal Party caucus.

And Democracy Watch’s position is that you are in a conflict of interest when ruling on any matters that affect any MP or former MP, as the Liberals also have an interest in having opposition party MPs found guilty of violating the *COIA* or the *Conflict of Interest Code for Members of the House of Commons* (“*MP Code*”) as those rulings would hurt the opposition parties’ profile and standing with the public.

As well, section 10 of the *COIA* states:

“Offers of outside employment

10. No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.”

Democracy Watch’s position is that you are in an analogous situation – only it is your possible continuation as Commissioner for another six-month term that creates the conflict of interest.

Clause 3(b) of the *COIA* states:

“Purpose

...

3.(b) minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise;

To fulfill this main purpose of the *COIA*, Democracy Watch’s position is that you must recuse yourself from ruling on the matters addressed in this letter, and any other matters concerning the *COIA* and the *MP Code*, especially concerning the Trudeau Cabinet.

(b) The purpose of, and basis for interpretation of, the *Conflict of Interest Act*

The primary purpose of the *Conflict of Interest Act* (“*COIA*”) in section 3 is to "minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise." That means the *COIA* should be interpreted by the Conflict of Interest and Ethics Commissioner (and any substitute decision-maker, given that you should recuse yourself from ruling on such matters) with this goal in mind.

The Supreme Court of Canada ruled in two cases in 1996 that "If democracies are to survive, they must insist upon the integrity of those who seek and hold public office" (*Harvey v. New Brunswick*), and; "given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe" and; “[t]he magnitude and importance of government business requires not only the complete integrity of government employees and officers conducting government business but also that this integrity and trustworthiness be readily apparent to society as a whole” (*R. v. Hinchey*).

In many cases since 2007, most recently concerning fundraising events involving Cabinet ministers and/or their staff, you have not been interpreting or enforcing the *COIA* or the *MP Code* with its main purpose in mind, nor have you been upholding the Supreme Court’s standard.

Subsection 6(1) prohibits any public office holder, including Cabinet ministers, from making a decision or participating in making a decision that relates to an exercise of official power if they know or reasonably should know that they would be in a conflict of interest, which is defined in section 4 as having “an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person’s private interests.”

(c) Request for ruling on whether executives and staff of BlackRock violated subsection 6(1) of the *Conflict of Interest Act*

The information set out below concerning the actions of executives and staff of BlackRock is based on the information in the *Globe and Mail* article that you can see at: <http://www.theglobeandmail.com/news/politics/ottawas-dealings-to-secure-infrastructure-funds-raise-questions/article34904963/>.

As well, I have sent with this letter a 458-page PDF document that is the result of a request made by Ken Rubin, and followed up by Bill Curry, the *Globe and Mail* reporter who wrote the article linked above. Various pages of the document are cited through the rest of this letter.

I note that the above linked article, as well as pages 41-221 of the PDF document, provide evidence in support of the letter dated May 7, 2017 that Democracy Watch recently sent you requesting an investigation and ruling on whether members of the Advisory Council on Economic Growth violated subsection 6(1) of the *Conflict of Interest Act*, and on whether Minister of Finance Bill Morneau violated section 7 of the *Conflict of Interest Act*.

(i) Executives and staff of BlackRock were serving as ministerial advisers as defined in the *Conflict of Interest Act*

The definition of “ministerial adviser” in subsection 2(1) of the *Conflict of Interest Act* (“COIA”) is as follows:

“*ministerial adviser* means a person, other than a public servant, who occupies a position in the office of a minister of the Crown or a minister of state and who provides policy, program or financial advice to that person on issues relating to his or her powers, duties and functions as a minister of the Crown or a minister of state, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice. (conseiller ministériel)”

Mark Wiseman was President and CEO with the Canada Pension Plan Investment Board (CPPIB) when he was appointed by Finance Minister Bill Morneau to the Advisory Council on Economic Growth on March 18, 2016, as set out in the Department of Finance news release at: <http://www.fin.gc.ca/n16/16-031-eng.asp> – which states that “The Advisory Council will guide the Minister of Finance in the development of” the government’s growth strategy. The news release also contains a quote from Minister Morneau that says: “I look forward to working with the Council members,…”

Mr. Wiseman left the CPPIB two months later and became the Global Head of Active Equities, and Chairman of BlackRock Alternative Investors at BlackRock, as you can see on this webpage:

<https://www.blackrock.com/corporate/en-de/about-us/leadership/mark-wiseman/>.

BlackRock is registered to lobby the federal government as you can see on this webpage: <https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/vwRg?cno=15837®Id=810233>.

Democracy Watch has already set out the details in its letter to you dated May 7, 2017 concerning why Mr. Wiseman is a ministerial adviser (along with all the other members of the Advisory Council on Economic Growth), as defined in section 2 of the COIA, to Finance Minister Morneau.

In addition to Mr. Wiseman, Jean Boivin of the BlackRock Investment Institute is also an executive at BlackRock Asset Management Ltd. as you can see on page 15 of the PDF document I have included with this letter, and on this BlackRock webpage:

<https://www.blackrock.com/corporate/en-ca/biographies/jean-boivin> with further details under #1 on this webpage:

<https://www.blackrock.com/corporate/en-ca/insights/blackrock-investment-institute/what-we-do>
and on this webpage
<https://www.blackrock.com/corporate/en-ca/insights/blackrock-investment-institute/>.

Pages 11-16 of the PDF document I have sent with this letter detail how Mr. Boivin and/or other BlackRock staff were retained sometime around August 12, 2016 by the Privy Council Office, and the Ministry of Transport, Infrastructure and Communities (Infrastructure Canada), as ministerial advisers planning a meeting to be held on November 14, 2016 with BlackRock representatives, Prime Minister Trudeau, other Cabinet ministers, investors who are clients of BlackRock.

Page 11 of the PDF document states that:

“An event has been scheduled with the investment firm BlackRock, involving the Prime Minister, a number of Ministers and major global investors...”

and

“In order to prepare for productive sessions, it was agreed to form small working groups with representation from lead Departments, political staff and BlackRock. The intent is notably to ‘test’ the presentations scheduled for November 14 so they resonate with investors and to prepare for constructive engagement during the sessions, which will help support the preparation of ministers.”

Page 13 of the PDF document states that:

“PCO has organized three meetings on August 12 with representatives from BlackRock (led by Jean Boivin).”

Page 16 of the PDF document, under #6, sets out “Questions for BlackRock” for which PCO and the departments were seeking answers.

Page 23 of the PDF document states:

“Infrastructure Canada has been participating in bi-weekly working group conference calls with BlackRock and the Privy Council Office, to construct a deck that will be presented by Minister Sohi at the November 14 meeting.”

Page 38 of the PDF document shows that, at the November 14, 2016 meeting, BlackRock CEO Larry Fink led the “Client Lunch and Briefing Session” and, along with Prime Minister Justin Trudeau, led the “Official Welcome to CANADA.” The “Opening Session” was co-led by Jean Boivin of BlackRock along with two Cabinet ministers. The “Second Session” was co-led by Poppy Allonby of BlackRock along with two different Cabinet ministers. The “Third Session” was co-led by Brian Stern of BlackRock along with three other different Cabinet ministers. The “Fourth Session” was co-led by Anne Valentine Andrews of BlackRock along with two more different Cabinet ministers.

In sum, five BlackRock executives and staff co-led four sessions at the meeting with Prime Minister Trudeau and nine of his Cabinet ministers. And, although the earlier documents do not make this clear, the meeting was attended by clients of BlackRock.

It is clear from the above evidence that BlackRock executives and staff had a much closer, direct relationship with the Privy Council Office (PCO), and Minister of Infrastructure Sohi and his staff (as did the members of the Advisory Council on Economic with Minister Morneau) than a usual task force or advisory committee or consultation forum established by a government department and made up of stakeholders. Usually, task forces/advisory committees/consultation forums meet a few times with officials from whichever department to discuss an issue, and they may or may not issue a report (as officials may instead just prepare a brief of what the stakeholders said and their positions on the issue), and they are usually abandoned after those few sessions.

Based on the above evidence, BlackRock executives and staff were clearly ministerial advisers to PCO and Minister Sohi during the time period of August 12, 2016 and November 14, 2016.

You may attempt to argue that none of BlackRock executives or staff occupied “a position in the office of a minister...” which is part of the definition of ministerial adviser under the *COIA*. Democracy Watch’s position is that the above evidence shows clearly that they do occupy positions within the PCO and Minister Sohi’s office, even if they are rarely physically in that office.

If you take the position that to be a ministerial adviser a person must be physically located within the office of a minister, you will create a huge loophole that will essentially gut the *COIA* as the loophole will allow a minister to have advisers who work outside their office and are, at the same time, lobbyists seeking specific decisions from the minister.

In other words, you will erase the line between the federal public sector and the private sector.

(ii) The violations of the *Conflict of Interest Act* by BlackRock executives and staff

As ministerial advisers, executives and staff of BlackRock were required to comply with subsection 6(1) of the *Conflict of Interest Act* (“*COIA*”), which states:

“Decision-making

6.(1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.”

Conflict of interest is defined in section 4 of the *COIA* as follows:

“Conflict of interest

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person’s private interests.”

Democracy Watch's position is that the official "duty or function" of the BlackRock executives and staff is as described on page 11 of the PDF document I have sent along with this letter – namely to organize the event, to participate in working groups that prepared the document that Minister Sohi would present at the November 14th event. Page 38 shows that BlackRock executives and staff also co-led the sessions at the event.

Therefore, in Democracy Watch's opinion, there are reasonable grounds to believe that at least Jean Boivin, and possibly other BlackRock executives and staff, violated the *COIA* given that, as ministerial advisers to the Privy Council Office and Minister Sohi, they took part in a decision-making process when they were in an conflict of interest, which is prohibited by subsection 6(1) of the *COIA*.

In Democracy Watch's opinion, based on the information in the media report cited above, and other research it has conducted, all BlackRock executives and staff were in a conflict of interest when they took part in decisions concerning the November 14th event because they had the opportunity to further their own interests as executives of BlackRock, and the interest of BlackRock, in the design of the event, the clients invited, and the information presented by Minister Sohi.

The conflict of interest of BlackRock executives and staff is only compounded by that fact that BlackRock was registered to lobby Finance Canada through to December 21, 2016, as you can see in this Lobbyist Registry report:
<https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/vwRg?cno=15837®Id=810233> .

(d) Request for ruling on whether Privy Council Office staff, Prime Minister's Office staff and/or Cabinet ministers including Minister of Infrastructure and Communities Amarjeet Sohi and his staff, violated section 7 of the *Conflict of Interest Act*

The information set out below concerning the actions of Privy Council Office (PCO) staff and Minister Sohi and his staff in working with executives and staff of BlackRock Asset Management Ltd. is based on the information in the *Globe and Mail* article that you can see at:

<http://www.theglobeandmail.com/news/politics/ottawas-dealings-to-secure-infrastructure-funds-raise-questions/article34904963/>

As well, as noted above in section (c), I have sent with this letter a 458-page PDF document that is the result of a request made by Ken Rubin, and followed up by Bill Curry, the *Globe and Mail* reporter who wrote the article linked above. The article linked above, and pages 11-16 and 22 to 40 of the PDF document, provide evidence that BlackRock executives and staff were ministerial advisers to the Privy Council Office and Minister Sohi and his staff. And the article linked above, and pages 41 to 221 of the PDF document, and the letter dated May 7, 2017 that Democracy Watch sent you, provide evidence that BlackRock executive Mark Wiseman was a ministerial adviser to Minister Morneau (along with the other members of the Advisory Council on Economic Growth).

Section 7 of the *Conflict of Interest Act* (“COIA”) prohibits ministers and other public office holders from giving preferential treatment to any organization based on the organization’s representative.

According to the evidence cited above, the federal government gave BlackRock preferential treatment as it allowed BlackRock executives and staff to work directly with PCO staff, and Minister Sohi and his staff. There is no evidence that an open contract competition was held for the services of organizing the November 14, 2016 event that BlackRock provided to PCO and Minister Sohi.

As well, at the event BlackRock’s clients received preferential access to Prime Minister Trudeau and nine federal Cabinet ministers.

Democracy Watch’s opinion is that it is reasonable to conclude that BlackRock was given preferential treatment by PCO and Minister Sohi between August 12, 2016 and November 14, 2016 because Mark Wiseman of BlackRock was already serving (since March 18, 2016) as a ministerial adviser on Minister Morneau’s Advisory Council.

As a result, Democracy Watch’s opinion is that the Privy Council Office staff, Prime Minister’s Office staff and/or Cabinet ministers including Minister of Infrastructure and Communities Amarjeet Sohi and his staff violated section 7 of the *Conflict of Interest Act* by giving preferential treatment to BlackRock.

Please contact Democracy Watch at the address above if your office needs any more information to initiate an inquiry into the above alleged violations of the *Conflict of Interest Act* by BlackRock executives and staff, and by Privy Council Office staff, Prime Minister’s Office staff and/or Cabinet ministers including Minister of Infrastructure and Communities Amarjeet Sohi and his staff.

We look forward to hearing back from you very soon concerning whether you will recuse yourself from ruling on these situations.

In any case, given that the facts have been made public and are clear in these situations, we hopefully look forward to seeing rulings very soon on all of these matters.

Sincerely,



Duff Conacher, Board member of Democracy Watch
On behalf of the Board of Directors of Democracy Watch