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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](mailto:ciec-ccie@parl.gc.ca)

July 12, 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) Request for ruling on whether federal public office holders violated section 7 of the *Conflict of Interest Act* by giving the Council of Canadian Innovators (CCI) preferential treatment because Benjamin Bergen and Dana O’Born work for CCI**

Dear Commissioner Dawson:

I am writing concerning your role in enforcement of the *Conflict of Interest Act* (“COIA”) generally, and also specifically concerning the actions of various federal public office holders with regard to the Council of Canadian Innovators (CCI).

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

Your second six-month interim term as Ethics Commissioner ended in early July but it was renewed for a third six-month, renewable term by the Trudeau Cabinet in mid-June. 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 Democracy Watch’s position is that the legally correct interpretation of subsection 82(2) is that any one person is only allowed to serve one six-month term as interim Conflict of Interest and Ethics Commissioner).

As you are likely aware, Democracy Watch has challenged the federal Cabinet's decision to give you that contract in Federal Court.

In any case, because the Trudeau Cabinet appointed you for six months, for a salary worth approximately \$100,000, and you are now essentially serving at the pleasure of the Cabinet, 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 short-term appointment for six months and 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*, and as a result of your conflict of interest, and what in Democracy Watch's opinion your current illegal position, 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, and that you must refer the investigations to someone who is fully independent of the Cabinet and all federal political parties.

**(b) Request for ruling on whether federal public office holders violated section 7 of the *Conflict of Interest Act* by giving the Council of Canadian Innovators (CCI) preferential treatment because Benjamin Bergen and Dana O'Born work for CCI**

According to the CCI's website, and the CanTechLetter.com article at:

<https://www.cantechletter.com/2016/03/ben-bergen-appointed-executive-director-of-council-of-canadian-innovators/>

Benjamin Bergen has been the Executive Director since March 2016. According to the CCI's website, Dana O'Born is the Director of Policy (I do not know the date Ms. O'Born starting working at CCI).

Democracy Watch is filing this complaint for the following reasons. First, according to this *Globe and Mail* article:

<https://www.theglobeandmail.com/news/politics/lobby-group-asked-to-stop-offering-access-to-ottawa-for-cash/article35660454/>

and the CanTechLetter.com article linked above, Mr. Bergen played a senior management role in the 2015 federal election campaign of Chrystia Freeland, former International Trade Minister from November 2015 to January 2017, and since the Minister of Foreign Affairs. According to Mr. Bergen, as cited in the *Globe* article linked above, Ms. O'Born was Ms. Freeland's 2015 election campaign manager.

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.

Section 7 of the *Conflict of Interest Act* states:

"Preferential treatment

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization."

The evidence Democracy Watch of preferential treatment by federal Cabinet officials that is presenting to you points to is from a report by Radio-Canada that you can see at:

<http://ici.radio-canada.ca/nouvelle/1044637/trudeau-justin-acces-gouvernement-federal-mckenna-ottawa-entreprise-innovation?fromBeta=true>

about the CCI's "Membership Prospectus" document that states the CEOs of so-called "cleantech" companies who are members of CCI participate in "Monthly meetings with

the Chief of Staff to the Minister of Environment and Climate Change.” The article in the *Globe and Mail* cited above which you can see at:

<https://www.theglobeandmail.com/news/politics/lobby-group-asked-to-stop-offering-access-to-ottawa-for-cash/article35660454/>

states that the CCI claims it changed the prospectus in June to promise only regular meetings with the minister’s chief of staff. I have included the prospectus with this letter.

The CCI document also states:

“CCI is a unique forum where CEOs speak directly with government decision makers about ideas that can improve the ecosystem for their companies. The Council hosts regular meetings between government civil servants and our CEOs. Our events have attracted Privy Council Officials, Cabinet Ministers, Deputy Ministers and many others.” and

“The Council is the only non-governmental referral partner to the Accelerated Growth Service (AGS). All CCI companies that are under 500 employees are enrolled into this new concierge service from the Federal Government.”

and

“Starting in May 2017, a permanent Federal Trade Commissioner from Global Affairs Canada will be part of CCI, exclusively dedicated to helping CCI member companies navigate new markets and advance their companies’ growth globally.”

Beyond Cabinet ministers approving their own, and senior government officials’, attendance at CCI meetings, Democracy Watch’s opinion is that it seems very likely that a Cabinet minister would be involved in approving:

- a Chief of Staff meeting with a lobby group regularly;
- allowing the CCI to be the only non-governmental referral partner for the AGS, and;
- allowing a Federal Trade Commissioner to become part of CCI.

In your March 22, 2012 ruling on Minister Christian Paradis’ relationships with Rahim Jaffer and his company which can be viewed at:

<http://ciec-ccie.parl.gc.ca/Documents/English/Public%20Reports/Examination%20Reports/The%20Paradis%20Report.pdf>

you stated that:

“I believe that facilitating access to decision-makers or those who may influence them is captured by the Act’s prohibition against providing preferential treatment. Ministers are in a position of power and have a special responsibility to ensure that that power is exercised fairly and in a way that is open to all Canadians.” (page 2)

and

“The expression “preferential treatment” is not defined in the Act and was not defined in the predecessor 2006 *Conflict of Interest and Post Employment Code for Public Office Holders*. I believe, however, that its meaning is quite clear. I take note of the 1984 Report of the Task Force on Conflict of Interest, co-chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, entitled *Ethical Conduct in the Public Sector*, in which “preferential treatment” is defined as “treatment more favourable than might be accorded to anyone else in similar circumstances.” (page 21)

You concluded that Mr. Paradis gave Mr. Jaffer and the company he represented preferential treatment in violation of section 7 of the *COIA* even though all Mr. Paradis did was give the company a “procedural advantage” that provided “an opportunity to promote its idea that other companies in similar circumstances did not receive...” Mr. Paradis was found guilty even though he “did not intervene” to ensure that his department “assisted the company beyond meeting with them.” (page 26)

Democracy Watch’s position is that given Mr. Bergen and Ms. O’Born acted as co-campaign managers for Minister Freeland’s 2015 election campaign, you should assume that any preferential treatment given to CCI was given because they (and any other Liberal Party connected people) work in senior positions at the CCI. In other words, there may not be a detailed paper trail that any preferential treatment was given because Mr. Bergen and Ms. O’Born work at CCI, you should assume it was given because they work there. You made a similar assumption in the Paradis ruling when you concluded that Minister Paradis gave Mr. Jaffer and his company preferential treatment because “he wanted to help a former caucus colleague.”

Therefore, Democracy Watch’s position is that the evidence set out above presents reasonable grounds to believe a violation of section 7 of the [\*Conflict of Interest Act\*](#) has occurred, unless Liberal Cabinet officials, and any Cabinet ministers who approved of their actions, can show they did not give CCI preferential treatment compared to other lobby/interest groups. An inquiry is needed to determine whether they can show that.

Please contact Democracy Watch at the address above if your office needs any more information to initiate an inquiry into this situation.

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

In any case, , we hopefully look forward to seeing rulings very soon concerning everyone involved in this situation.

Sincerely,



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