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CONFIDENTIAL

May 1, 2013

SENT BY EMAIL
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Mr. Tyler Sommers, Coordinator
Democracy Watch
P.O. Box 821, Station B
Ottawa, Ontario K1P 5E9

Subject: Concerns regarding Prime Minister Harper's decisions

Dear Mr. Sommers:

I have received and considered your letter of April 12, 2013, in which you raise concerns about recent decisions made by the Right Honourable Stephen Harper, P.C., M.P., Prime Minister of Canada, relating to the Honourable Peter Penashue, P.C., former Minister of Intergovernmental Affairs and former Member of Parliament for Labrador.

Mr. Penashue resigned his seat on March 14, 2013 and is currently the Conservative candidate in the Labrador by-election to be held on May 13, 2013. You raise concerns about Mr. Harper's decision to allow Mr. Penashue to make a \$1.35 million federal government spending announcement in his riding on March 11, 2013, a few days before resigning his seat. You also raise concerns about Mr. Harper's decision, on April 7, 2013, to call a by-election, before prosecutors had decided whether to charge Mr. Penashue or others involved in his 2011 election campaign for contraventions of the *Canada Elections Act*.

You state that Mr. Harper was in a conflict of interest as he had an opportunity to further the private interests of Mr. Penashue, whom you state is his friend, in getting re-elected as a Member of Parliament. Alternatively, you allege that he had an opportunity to improperly further Mr. Penashue's interests as he failed to meet the ethical standards set out in the *Accountable Government – A Guide for Ministers and Ministers of State: Annex A, Part 1: Ethical Guidelines and Statutory Standards of Conduct*. You cite sections 4 and 6 of the *Conflict of Interest Act* (Act).

Section 4 describes the circumstances in which a public office holder may be understood to be in a “conflict of interest” within the meaning of the Act. It reads as follows:

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.

Section 6 prohibits public office holders from making a decision related to the exercise of an official power, duty or function where they know or reasonably should know that they would be in a conflict of interest.

Under section 45 of the Act, I have authority to self-initiate an examination where I have reason to believe that a public office holder has contravened the Act based on information that comes to my attention, including from members of the public.

With respect to your allegation that Mr. Harper and Mr. Penashue are friends, I interpret the term “friends” as including those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. The fact that two individuals are members of a broad social circle or business associates does not necessarily mean that they are also friends. In this particular instance, I have no reason to believe that the Prime Minister and Mr. Penashue are friends as so interpreted.

As an alternative, you allege that the Prime Minister “improperly” furthered the private interests of Mr. Penashue by not upholding “the highest ethical standards”, which require that decisions be made in the public interest, as enunciated in the *Accountable Government – A Guide for Ministers and Ministers of State: Annex A, Part 1: Ethical Guidelines and Statutory Standards of Conduct* (guidelines). I do not have a mandate to administer these guidelines. I did, however, refer to them in a recent case where I made an order related to writing letters of support to administrative tribunals. I found that action to be improper under the Act. The guidelines were particularly relevant in that case as they addressed specifically the situation I had to review and provided an indicator of what was considered by the government to be the acceptable standard of conduct for a minister in that situation. The specific matters you raise, however, are not addressed, nor referred to, in the guidelines. The general nature of the passages that you quote from these guidelines are therefore of little assistance in suggesting a standard of propriety for the actions in question under the Act.

In any event, as I noted in my Cheques Report issued under the Act and the *Conflict of Interest Code for Members of the House of Commons* (Code) in 2010, I do not believe that all actions taken to improve a candidate’s election prospects necessarily constitute an attempt to advance private interests as contemplated by the Act or the Code. This would imply that any action taken by Members, including those who are also ministers or parliamentary secretaries, aimed at enhancing their image, or that of their party, with the electorate, could be considered to be furthering a private interest in contravention of the Act and the Code. This cannot be the intent of the Act and the Code.

The many opportunities available to a governing party to make public funding announcements, as well as its ability to control the timing and content of such announcements and to call by-elections, provide that party's candidates with a political advantage. This is a government prerogative that is part of our political system. The process for calling by-elections is set out in the *Parliament of Canada Act* and the *Canada Elections Act*. In my opinion, concerns related to this kind of systemic advantage go beyond the conflict of interest rules set out in the Act and the Code.

I thank you for raising this issue with me, but will not be pursuing this matter further.

As you have made your concerns regarding the conduct of Mr. Harper public by publishing your letter to me on your website, I have forwarded to Mr. Harper a copy of my response to you.

Sincerely,



Mary Dawson
Conflict of Interest and Ethics Commissioner