



Office of the  
Conflict of Interest and  
Ethics Commissioner

Commissariat aux  
conflits d'intérêts et  
à l'éthique

**CONFIDENTIAL**

November 3, 2023

**Sent by email to:** info@democracywatch.ca

Mr. Duff Conacher  
Democracy Watch  
P.O. Box 821, Stn. B  
Ottawa, Ontario K1P 5P9

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

Dear Mr. Conacher:

I have reviewed your letter of April 24, 2023, in which you request an investigation under the *Conflict of Interest Act* (Act), into the conduct of the Prime Minister, the Right Honourable Justin Trudeau. Your request relates to his conduct in the context of the appointment of the Right Honourable David Johnston as Independent Special Rapporteur on Foreign Interference (Special Rapporteur).

In your letter you wrote that “Prime Minister Trudeau violated subsection 6(1) and section 21 of the *COIA* by participating in the decision to give the “special rapporteur” contract to his friend Dave Johnston”.

You have characterized the decision as awarding Mr. Johnston a “sole-sourced contract”. Section 14 of the Act prohibits public office holders from entering into contracts with a circle of close relatives. It does not apply to the circumstances in this matter as Mr. Johnston’s appointment as Special Rapporteur is not a contract (ref. *Hewat v. Ontario*, [1998] O.J. No. 802 at paragraph 11 and *McAnsh v. Ontario*, [2023] O.J. No. 2650 at paragraph 27).

Rather, Mr. Johnston’s appointment was made by Order in Council on the advice of the King’s Privy Council as represented by Cabinet, and in this case, on the recommendation of the Prime Minister pursuant to statute. As set out by the Privy Council Office in a briefing document made available on their website entitled *Governor in Council appointments*: “the Prime Minister exercises a number of constitutional prerogatives formalized through a 1935 Order in Council,

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PARLIAMENT OF CANADA

66 Slater Street, 22<sup>nd</sup> floor  
Ottawa, Ontario K1A 0A6

PARLEMENT DU CANADA

66, rue Slater, 22<sup>e</sup> étage  
Ottawa (Ontario) K1A 0A6

 ciec-ccie.parl.gc.ca

 @EthicsCanada | @EthiqueCanada

TEL/TÉL 613.995.0721  
FAX/TÉLÉC 613.995.7308

including determining the organization of government and recommending the appointment of the principal holders of public office.”

Section 17 of the *Interpretation Act* provides that no enactment, which would include the *Conflict of Interest Act*, affects his Majesty’s rights or prerogatives in any manner unless so mentioned in the enactment.

Based on the above, I do not have reason to believe that Mr. Trudeau contravened any of his obligations under the Act and will not look further into the matter.

In your letter you have also asked that I recuse myself. As I informed you in my letter of October 19, 2023, since the issue of the appointment process has been dealt with definitely by the Courts, there is no requirement that I recuse myself from this matter.

As you’ve made your letter public, a copy of this letter will be sent to Mr. Trudeau.

Sincerely,

A handwritten signature in black ink, appearing to read 'Konrad Finckenstein', written in a cursive style.

Hon. Konrad von Finckenstein, C.M., K.C.  
Interim Conflict of Interest and Ethics Commissioner

c.c.: The Right Honourable Justin Trudeau, Prime Minister of Canada