

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Office of the Integrity Commissioner
The Honourable J. David Wake, Commissioner

Bureau du commissaire à l'intégrité
L'Honorable J. David Wake, Commissaire

CONFIDENTIAL

April 11, 2019

Duff Conacher, Co-founder
Democracy Watch
P.O. Box 821, Station B
Ottawa, ON M1P 5P9

Sent via email: info@democracywatch.ca

Dear Mr. Conacher,

In your letter to me of December 4, 2018 you acknowledged my position that I cannot conduct an inquiry under the *Members' Integrity Act, 1994* (MIA) unless a member of the Ontario Legislative Assembly or the Executive Council requests it under section 30 of the MIA. Notwithstanding this acknowledgement you seem determined to continue to send multiple requests to my office requesting investigations and rulings on various appointments since, in your view, they raise questions concerning whether Premier Doug Ford violated the MIA by making those appointments. Since you are not a member of the Legislative Assembly I cannot act on your requests and I do not intend to respond to any further requests from you with regard to matters under the MIA.

Your letter to me and Commissioner Sidney B. Linden of March 25, 2019 is of a different category in that it does not involve the MIA. Instead, it is a request for an investigation and a public ruling on Premier Ford's staff and deputy minister. I have decided to reply to this request. I believe that Commissioner Linden has responded to you with respect to the request concerning the deputy minister.

As the Ethics Executive for every public servant who works in a minister's office, I receive numerous requests from public servants under section 69 of the *Public Service of Ontario Act, 2006* (PSOA) to determine questions about the application of conflict of interest rules to them. Under subsection 69(4) I also have discretion to make such inquiries as I consider appropriate where I have concerns that a conflict of interest rule has been contravened by a public servant. If I choose to exercise my discretion to make inquiries, I must then make a determination as to the subject matter of the inquiry. If the determination is that there is a conflict of interest or a potential conflict of interest then I must give the public servant directions, if any, that I consider appropriate to address the conflict or potential conflict of interest. In those circumstances I am obliged by the PSOA to notify the public servant's minister either a) that the public servant has a

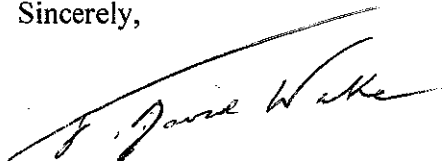
conflict or potential conflict of interest or b) the direction given by me to the public servant to address the conflict.

Contravention of a conflict of interest rule or a direction given under section 69 by a public servant can lead to disciplinary measures including suspension and dismissal.

You are correct that there is no provision in the PSOA prohibiting me from making a determination public, but neither is there any authority for me to do so. I found it odd that the paragraphs of the case you referred to in support of a quasi-constitutional right to access to government information (*Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403) were from the dissenting opinion of Laforest, J. who nevertheless went on in subsequent paragraphs to assert the fundamental value of the protection of privacy which, in his view on the facts of that case, overcame any right to access. Although Cory, J. writing for the majority disagreed and found that the document in question did not meet the definition of "personal information", he too recognized that Parliament did not intend access to be given pre-eminence over privacy. He also found that the document in question did not have an element of evaluation which would otherwise make it unjust to be made public, thereby distinguishing the matter from *Canada (Information Commissioner) v. Canada (Solicitor General)* 551(T.D.).

The determinations I make as Ethics Executive to ministers' staff are handled in confidence, although samples of the inquiries and determinations are provided in an abbreviated and anonymized format in the Office's annual report. Given the employment relationship between public servants and the government I do not think that it would be appropriate for any determinations I make to public servants as their Ethics Executive to be made public as you suggest.

Sincerely,

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive style with a long, sweeping underline that extends across the width of the signature.

The Honourable J. David Wake
Integrity Commissioner