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Office of the Auditor General of Canada
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November 30, 2017

RE: Request for performance audit of Ethics Commissioner Mary Dawson concerning enforcement of the *Conflict of Interest Act* (“COIA”) and the *Conflict of Interest Code for Members of the House of Commons* (“MPs Code”)

Dear Auditor General Ferguson:

With this letter, Democracy Watch is requesting a performance audit of the Conflict of Interest and Ethics Commissioner Mary Dawson concerning her enforcement of the *Conflict of Interest Act* (“COIA”) and the *Conflict of Interest Code for Members of the House of Commons* (“MPs Code”) since April 1, 2007. This audit would be similar to the audit the Auditor General conducted into Public Sector Integrity Commissioner Christiane Ouimet in 2009-2010. You can see the report on that audit at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201012_e_34448.html

According to Ethics Commissioner Dawson’s 2016-2017 annual report, at any one time since 2012, on average approximately 2,500 public office holders have been covered by the *COIA*, and 338 MPs by the *MPs Code* (some of whom are Cabinet MPs covered also by the *COIA*). Also according to that annual report, 3,845 public office holders left office between April 1, 2012 and March 31, 2017. Assuming approximately the same number of public office holders covered by the *COIA* and *MP Code* left their position from 2007 to 2012, over the past 10 years the Ethics Commissioner would have enforced rules that cover approximately 10,000 people.

The three grounds for Democracy Watch’s request are as follows:

1. Very weak record of holding violators accountable

According to her [annual reports](#), from April 1, 2007 up to March 31, 2017, the Ethics Commissioner completed 253 investigations of violations of the ethics rules in the *COIA*

and the *MPs Code* (not including administrative reviews of things like filing accurate reports by required deadlines). However, she released only 35 public rulings which means she made 218 secret rulings (86.1% of all rulings).

In every one of those 218 secret rulings, Commissioner Dawson found the person not guilty of violating the *COIA* and/or the *MPs Code*. It is impossible to tell whether these were correct rulings because Commissioner Dawson's annual reports before 2012-2013 didn't provide any details about these rulings, and her annual reports from 2012-2013 provide few details of the situations she investigated that led to these 218 secret rulings.

In Commissioner Dawson's 35 public rulings, a total of 88 people were investigated for alleged violations – 12 were found guilty (13.6%), and 76 were found innocent (86.3%).

As a result, overall of the 253 case investigations Commissioner Dawson ruled on from April 1, 2007 up to March 31, 2017, she ruled that the person investigated was guilty of violating the *COIA* or the *MPs Code* in only 4.7% of the cases.

2. Very weak record of effective enforcement actions

Ethics Commissioner Dawson doesn't mention in her annual reports that she conducts any audits, random or otherwise, of any information Cabinet ministers, Cabinet staff and appointees, and MPs submit to her or of any MP activities. The Ethics Commissioner may have contact with a newly elected MP or newly appointed Cabinet minister, staff or appointee as they file their initial information, and then that information is reviewed annually under the *MPs Code* (clause 20(1)(ii)) and *COIA* (section 28).

However, the information that public office holders – Cabinet ministers, Cabinet staff and appointees, and MPs – disclose to the Ethics Commissioner is not audited by the Commissioner or anyone in her office. Commissioner Dawson has testified before a House Committee more than once that she simply trusts that everyone is telling her the truth. Because she doesn't do any inspections or audits – which experts in law enforcement agree is necessary for effective law enforcement – Ethics Commissioner has never caught a public office holder violating the *COIA* or the *MPs Code*.

As a result, likely she has caught only 5% of the people have done wrong – which means that likely more than 1,700 federal politicians and top government officials have violated the *COIA* or *MPs Code* since 2007.

Overall the Ethics Commissioner has only found an implausibly low 0.12% of public office holders in violation of the *COIA* or the *MPs Code* since 2007 (only 12 out of the 10,000 people covered by the law or code since 2007).

In addition, Ethics Commissioner Dawson has not found any Liberal guilty of violating the ethics rules in the *COIA* or *MPs Code* since the Liberals were elected in 2015.

3. Many very questionable rulings since 2007

Ethics Commissioner Dawson made many very questionable rulings (and made up many loopholes in federal ethics rules) from when she was appointed in 2007 up to June 2015. You can see those rulings summarized at:

<http://democracywatch.ca/group-calls-on-auditor-general-to-audit-performance-of-federal-ethics-commissioner-given-negligently-weak-enforcement-record-that-is-a-sad-joke/>.

Since then, Commissioner Dawson has continued at the same high rate to let people off the hook for clear violations, including the following public cases:

- the clearly illegal fundraising events attended by Prime Minister Trudeau and several of his Cabinet ministers that involved lobbyists and departmental stakeholders;
- several other situations involving Prime Minister Trudeau and his Cabinet;
- fundraising events attended by Justice Minister Jody Wilson-Raybould in spring 2016;
- as revealed recently, Finance Minister Bill Morneau's investment scheme, and;
- possibly many other cases she has kept secret in which she let the person off the hook even though they clearly violated the rules.

Ethics Commissioner Dawson has also refused to recuse herself from investigating these complaints. Democracy Watch filed a court case in July challenging the Ethics Commissioner for being in a conflict of interest because the Trudeau Cabinet's re-appointed her last June to her third six-month interim term – so she is essentially currently serving at the pleasure of the Trudeau Cabinet. You can see that court case summarized at:

<http://democracywatch.ca/group-files-court-cases-challenging-trudeau-cabinet-reappointments/>.

Please contact Democracy Watch at the address above if your office needs any more information concerning the matters raised above. We look forward to hearing back from you very soon concerning whether you will audit Ethics Commissioner Dawson's performance since 2007.

Sincerely,



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