



1 Nicholas St., Suite 1510, P.O. Box 821, Stn. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: [info@democracywatch.ca](mailto:info@democracywatch.ca) Internet: <http://democracywatch.ca>

---

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)

December 14, 2016

**RE: (a) Request for disclosure of whether you have applied to be reappointed for another term; (b) Request that if you have applied, that you recuse yourself from ruling on the matters addressed in this letter; (c) and (d) Requests for rulings that Prime Minister Trudeau and his Cabinet minister cannot take part in the decisions concerning who will be appointed Ethics Commissioner and Commissioner of Lobbying after your terms end in early January, and; (e) Proposed solution to appointment of Ethics Commissioner and Commissioner of Lobbying**

Dear Commissioner Dawson:

I am writing concerning enforcement of the *Conflict of Interest Act* generally, and specifically requesting a ruling that Prime Minister Trudeau and his Cabinet are in a conflict of interest under section 4 of the *Conflict of Interest Act* and, as a result, under subsection 6(1) cannot either reappoint you or extend your term as Conflict of Interest and Ethics Commissioner or choose another person as Commissioner, and also cannot extend the term of the current Commissioner of Lobbying or appoint the new Commissioner of Lobbying.

**(a) Request for disclosure of whether you have applied to be reappointed**

I am writing to request first, as a few journalists have in the past month, that you disclose whether you have applied to the federal Cabinet to be reappointed to another term as Conflict of Interest and Ethics Commissioner (as is allowed under subsection 81(3) of the *Parliament of Canada Act*).

Your current term ends in early January. The deadline for applying to the position was November 21, 2016. It has recently been extended to January 9, 2017 but that extension was made after November 21<sup>st</sup>. As a result, you must know whether you have applied to be reappointed.

You must disclose whether you have applied to be reappointed because if you have you are in a financial conflict of interest currently concerning making rulings that affect Prime Minister Trudeau and members of his Cabinet or Liberal Party caucus.

You have this financial conflict of interest because your reappointment would mean either that you would receive either approximately \$100,000 (if you were reappointed under subsection 82(2) of the *Parliament of Canada Act* in an interim position for six months, as you have been since last July) or you would receive up to \$1.4 million (approximately \$200,000 annually for the 7-year term).

Whether you receive either of those amounts of money will be decided by the Cabinet (“Governor-in-Council”) which under subsection 81(1) of the *Parliament of Canada Act* decides whether to nominate you for reappointment, with approval by the House of Commons (where Liberal MPs hold a clear majority of the seats).

It is unclear in the *Parliament of Canada Act* whether the Cabinet even has to consult with the leaders of every recognized party in the House of Commons on your reappointment. Subsection 81(1) requires that consultation on first appointment, but subsection 81(3) states simply:

“Reappointment

81.(3) The Commissioner is eligible to be reappointed for one or more terms of up to seven years each.”

Democracy Watch’s position is that really you are in a conflict of interest when ruling on any matters that affect any MP, as the Liberals also have an interest in having opposition party MPs found guilty of violating of the *Conflict of Interest Act* or the *Conflict of Interest Code for Members of the House of Commons*, as those rulings would hurt the opposition parties’ profile and standing with the public.

Section 10 of the *Conflict of Interest Act* 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.”

I believe you face an analogous situation – only it is your plans for continuing as Commissioner that create conflict of interest.

Clause 3(b) of the *Conflict of Interest Act* 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 *Act*, you must disclose whether you have applied to be reappointed. Given that you are an employee of the public, clearly the public also has a right to know whether you have applied to be reappointed.

**(b) Recusal if you have applied to be reappointed**

For all the reasons set out above in section (a), if you have applied to be reappointed either in an interim position for six months or for another 7-year term, you must recuse yourself from ruling on any matters concerning the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*.

**(c) Request for ruling that Prime Minister Trudeau and his Cabinet cannot reappoint you to an interim term or appoint another person to an interim term, nor can they reappoint you or appoint another person to a seven-year term as Ethics Commissioner**

If you have applied to be reappointed as Ethics Commissioner, please recuse yourself and refer the rest of this letter to another person for consideration and ruling (such as a provincial conflict of interest commissioner).

If you have not, and are not going to apply to be reappointed, please consider the rest of this letter and issue a ruling as soon as possible.

As noted above in section (b), the primary purpose of the *Conflict of Interest Act* 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 *Act* should be interpreted by the Conflict of Interest and Ethics Commissioner 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 *Act* with its main purpose in mind, nor have you been upholding the Supreme Court's standard.

When your current term ends in early January, your or any other person's appointment for another six-month interim term will be decided by the Cabinet ("Governor-in-Council") under subsection 81(2) of the *Parliament of Canada Act*, and your reappointment for a seven-year term or another person's appointment as Ethics Commissioner for a seven-year term is decided by Cabinet under subsection 81(1) of the *Parliament of Canada Act* decides, with approval by the House of Commons (where Liberal MPs hold a clear majority of the seats).

I know that, technically, the Governor General will make the appointment. I am challenging with this complaint the action of Prime Minister Trudeau and his Cabinet of nominating the person to serve either a six-month term under subsection 81(2) or a seven-year term under subsection 81(1) of the *Parliament of Canada Act*.

Democracy Watch and the opposition parties, specifically MP Rona Ambrose and MP Alexandre Boulerice, have filed complaints with you alleging that Prime Minister Trudeau and/or his Cabinet ministers have, by hosting or attending high-priced, exclusive, invite-only fundraising events, violated the *Conflict of Interest Act*. Under subsection 44(3) of that *Act*, you are required to examine the complaints and under subsection 44(8) of that *Act* you are required to make your report on the complaint public.

You have pre-judged the results of these complaints before examining the new facts set out in the complaints (and before you have investigated the facts concerning any of the fundraising events) by issuing a public statement on November 30, 2016 stating that the fundraising events do not, and cannot, violate any section of the *Conflict of Interest Act*.

Prime Minister Trudeau and his Cabinet therefore know your position on the fundraising events – they know that you will not find them guilty of violating any section of the *Conflict of Interest Act*.

Therefore, they know that if they reappoint you for a six-month interim term and/or a full seven-year term that they will be able to continue to raise funds at these exclusive fundraising events for themselves and Liberal Party of Canada, a private organization to which they belong, and will be protected from being found guilty of violating the *Conflict of Interest Act*.

If you have not applied to be reappointed for a six-month interim term or a full seven-year term, Prime Minister Trudeau and his Cabinet will determine who will be nominated to fill the position of Ethics Commissioner. In making that determination, they have an opportunity also to determine what position the people who have applied for the position will take on the issue of the Cabinet fundraising events.

As the funds go to themselves, their riding associations and their private organization (the Liberal Party), the fundraising by Prime Minister Trudeau and his Cabinet and continuing the fundraising are, by definition, a private interest for them.

You have also recently received a complaint filed about Defence Minister Harjit Sajjan's refusal to call an inquiry into the treatment of prisoners by Canada's armed forces in

Afghanistan. As Minister Sajjan served in Afghanistan with the armed forces, he potentially has a private interest in ensuring an inquiry does not occur.

As a result of the above, Prime Minister Trudeau and his Cabinet have an opportunity to further their private interest when they exercise their official power to nominate you or anyone else to be Ethics Commissioner after your term ends in early January.

Sections 4 and 6 together prohibit any public office holder, including Prime Minister Trudeau and his Cabinet ministers, from making a decision or participating in making a decision that relates to an exercise of official power when they have an opportunity to further their private interest.

The decision concerning who will be the next Ethics Commissioner is not a decision of general application or a decision that affects Prime Minister Trudeau and his Cabinet ministers as a few people in a broad class of persons – it affects only them directly as the complaints only concern their fundraising activities – and it does not concern the remuneration or benefits they receive as public office holders. Therefore the decision is not exempted from being covered by the *Conflict of Interest Act* under the huge loophole created by the definition of “private interest” in section 2 of the *Act*.

Therefore, it is very clear that the legally correct ruling under the *Act* is that Prime Minister Trudeau and his Cabinet ministers must recuse themselves from making the decision or participating in making the decision concerning who will be Ethics Commissioner after your term ends in early January.

I request that you issue a ruling before your term ends requiring this recusal by Prime Minister Trudeau and his Cabinet ministers before they take part in the decision of who will be appointed Ethics Commissioner after your term ends in early January.

Again, if you have applied to be reappointed as Ethics Commissioner, I request that you immediately refer this complaint to an independent decision-maker (such as a provincial ethics commissioner) so they can issue a ruling.

**(d) Request for ruling that Prime Minister Trudeau and his Cabinet cannot reappoint the current Commissioner of Lobbying to an interim term or appoint another person to an interim term, nor can they appoint another person as the new Commissioner of Lobbying**

The argument set out above in section (c) that Prime Minister Trudeau and his Cabinet are in a conflict of interest and so can't participate in the appointment decision applies equally to the appointment of the Commissioner of Lobbying after the current Commissioner's term ends in early January. The only differences are first that the current Commissioner has, unlike yourself, made it clear with a public statement that she has not applied to be reappointed to another seven-year term.

However, it is possible that the current Commissioner could be reappointed for another six-month interim term, especially given the recent extension to January 19, 2017 of the Trudeau Cabinet's application deadline for the Commissioner position.

Another difference is that Prime Minister Trudeau and his Cabinet have the power to nominate the next Commissioner of Lobbying under subsection 4.1(1) of the *Lobbying Act* (not under the *Parliament of Canada Act*).

The other difference in the situation is that the complaints the Commissioner of Lobbying is investigating are two complaints filed by Democracy Watch concerning two fundraising events that a registered lobbyist participated in organizing, one for Finance Minister Morneau on November 7, 2016 and one for Justin Trudeau in August 2015.

The opposition parties, again specifically MP Rona Ambrose and MP Alexandre Boulerice, have also filed complaints with the Commissioner of Lobbying about various Liberal Party fundraising events involving Prime Minister Trudeau and/or his Cabinet ministers and people who are seeking decisions from the Cabinet.

As a result, again Prime Minister Trudeau and his Cabinet have an opportunity to further their private interest when they exercise their official power to nominate the current Commissioner or someone else to be Commissioner of Lobbying after the current Commissioner's term ends in early January.

Sections 4 and 6 of the *Conflict of Interest Act* together prohibit any public office holder, including Prime Minister Trudeau and his Cabinet ministers, from making a decision or participating in making a decision that relates to an exercise of official power when they have an opportunity to further their private interest.

The decision concerning who will be the next Commissioner of Lobbying is not a decision of general application or a decision that affects Prime Minister Trudeau and his Cabinet ministers as a few people in a broad class of persons – it affects only them directly as the complaints only concern their fundraising activities – and it does not concern the remuneration or benefits they receive as public office holders. Therefore the decision is not exempted from being covered by the *Conflict of Interest Act* under the huge loophole created by the definition of “private interest” in section 2 of the *Act*.

Therefore, it is very clear that the legally correct ruling under the *Act* is that Prime Minister Trudeau and his Cabinet ministers must recuse themselves from making the decision or participating in making the decision concerning who will be Commissioner of Lobbying after the current Commissioner's term ends in early January.

I request that you issue a ruling before the current Commissioner's term ends requiring this recusal by Prime Minister Trudeau and his Cabinet ministers before they take part in the decision of who will be appointed Commissioner of Lobbying after the current Commissioner's term ends in early January.

Again, if you have applied to be reappointed as Ethics Commissioner, I request that you immediately refer this complaint to an independent decision-maker (such as a provincial ethics commissioner) so they can issue a ruling.

**(e) Solution to appointment of Ethics Commissioner and Commissioner of Lobbying**

The legally required recusal of Prime Minister Trudeau and his Cabinet from choosing who will serve as Ethics Commissioner and Commissioner of Lobbying when your current terms end in early January presents a question of who can appoint these commissioners.

In order to avoid any other conflict of interest, the answer must be someone, or a group of people, who have full independence from Prime Minister Trudeau and his Cabinet. This person, or group of people, cannot therefore be chosen by Prime Minister Trudeau or his Cabinet, and they cannot serve at the pleasure of Prime Minister Trudeau and his Cabinet.

Opposition party MPs also have a conflict of interest in terms of choosing the next Ethics Commissioner and Commissioner of Lobbying as it is in their interest to have people chosen who will find Prime Minister Trudeau and his Cabinet ministers guilty of violating the *Conflict of Interest Act*.

I therefore suggest that, in ruling that Prime Minister Trudeau and his Cabinet ministers must recuse themselves from making the appointment decisions for both commissioners, you propose the following solution for making these appointments:

1. An outside company be contracted by the Public Service Commission to conduct a merit-based search for nominees for both commissioners;
2. Or a committee of independent people, made up of sitting Chief Justices not appointed by the Trudeau Cabinet, lawyers that head provincial associations who have not connection to the government or opposition parties, and lay people chosen by organizations with no ties to or funding from the federal government, be delegated by the Cabinet to conduct a public, merit-based search for nominees for Ethics Commissioner and Commissioner of Lobbying, and;
3. In either case, that the Cabinet bind itself with an Order in Council that it will forward the nominee for each position to the House of Commons for approval in a free vote in which Liberal MPs will face no sanction or threat of sanction from the Cabinet for voting in favour of the nominee.

Please contact Democracy Watch at the address above if you need any more information to initiate the inquiries. We hopefully look forward to seeing your ruling very soon.

Sincerely,



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