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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

May 7, 2017

RE:

- (a) Request that you recuse yourself from ruling on the matters addressed in this letter because you received 6-month possibly renewable contract worth approximately \$100,000 from the Trudeau Cabinet in mid-December;**
- (b) The purpose of, and correct basis for interpretation of, the *Conflict of Interest Act*, and;**
- (c) Request for ruling on whether members of the Advisory Council on Economic Growth violated subsection 6(1) of the *Conflict of Interest Act***
- (d) Request for ruling on whether Minister of Finance Bill Morneau violated section 7 of the *Conflict of Interest Act***

Dear Commissioner Dawson:

I am writing concerning your role in enforcement of the *Conflict of Interest Act* (“COIA”) generally, and the purpose and interpretation of the COIA, and also specifically requesting a ruling on whether members of the Advisory Council on Economic Growth violated the COIA.

(a) Recusal requested because you received six-month contract from the Trudeau Cabinet (and may be reappointed)

Your term ended in early January but it was renewed for a second six-month, renewable term by the Trudeau Cabinet in mid-December. Under subsection 82(2) of the *Parliament of Canada Act*, the Trudeau Cabinet (“Governor in Council”) may have full discretion to reappoint you for as many consecutive six-month terms as it wants (I qualify

this statement as it is also arguable to interpret subsection 82(2) as saying that any one person is only allowed to serve one six-month term as interim Conflict of Interest and Ethics Commissioner).

In any case, because the Trudeau Cabinet appointed you for six months, for a salary worth approximately \$100,000, and you are now serving at the pleasure of the Cabinet as that Order-in-Council appointment can be rescinded at any time for any reason by the Cabinet (and also possibly can be extended by the Cabinet for another six months), you are therefore in a financial conflict of interest currently concerning making rulings that affect Prime Minister Trudeau and members of his Cabinet or Liberal Party caucus.

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

As well, section 10 of the *COIA* 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."

Democracy Watch's position is that you are in an analogous situation – only it is your possible continuation as Commissioner for another six-month term that creates the conflict of interest.

Clause 3(b) of the *COIA* 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 *COIA*, Democracy Watch's position is that you must recuse yourself from ruling on the matters addressed in this letter, and any other matters concerning the *COIA* and the *MP Code*, especially concerning the Trudeau Cabinet.

(b) The purpose of, and basis for interpretation of, the *Conflict of Interest Act*

The primary purpose of the *Conflict of Interest Act* ("*COIA*") 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 *COIA* should be interpreted by the Conflict of Interest and Ethics Commissioner (and any substitute decision-maker, given that you should recuse yourself from ruling on such matters) 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 *COIA* or the *MP Code* with its main purpose in mind, nor have you been upholding the Supreme Court's standard.

Subsection 6(1) prohibits any public office holder, including Cabinet ministers, from making a decision or participating in making a decision that relates to an exercise of official power if they know or reasonably should know that they would be in a conflict of interest, which is defined in section 4 as having "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."

(c) Request for ruling on whether members of the Advisory Council on Economic Growth violated the *Conflict of Interest Act*

(i) Advisory Council on Economic Growth members are ministerial advisers as defined in the *Conflict of Interest Act*

The definition of "ministerial adviser" in subsection 2(1) of the *Conflict of Interest Act* ("*COIA*") is as follows:

"*ministerial adviser* means a person, other than a public servant, who occupies a position in the office of a minister of the Crown or a minister of state and who provides policy, program or financial advice to that person on issues relating to his or her powers, duties and functions as a minister of the Crown or a minister of state, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice. (conseiller ministériel)"

As the "Letter of Agreement" that I have attached to this letter that the Department of Finance required members of the Advisory Council on Economic Growth to sign shows, the members of the Council match all of the criteria in the definition of "ministerial adviser" in the *COIA*. They are providing policy advice to Minister of Finance Bill Morneau on issues relating to his powers and duties, on a part-time basis.

Further, the Advisory Council has a much closer, direct relationship with Minister Morneau than a usual task force or advisory committee or consultation forum established by a government department and made up of stakeholders, as those usually meet a few times with officials from whichever department to discuss an issue, and they may or may not issue a report (as officials may instead just prepare a brief of what the stakeholders said and their positions on the issue), and they are usually abandoned after those few sessions.

The members of the Advisory Council are clearly ministerial advisers to Minister Morneau based on the following reasons. First, Minister Morneau appointed the members of the Advisory Council just like he appoints his ministerial staff, and the Advisory Council's webpage is on the Government of Canada's website at: <http://www.budget.gc.ca/aceg-ccce/home-accueil-en.html>

Second, the Department of Finance's March 18, 2016 news release with the announcement by Minister Morneau of the people he had appointed to be members of the Advisory Council – which you can see at: <http://www.fin.gc.ca/n16/16-031-eng.asp> – states that “The Advisory Council will guide the Minister of Finance in the development of” the government's growth strategy.

The news release also contains a quote from Minister Morneau that says: “I look forward to working with the Council members,…”

Third, the Department of Finance Canada's May 16, 2016 news release concerning the first meeting of the Advisory Council – which you can see at: <http://www.fin.gc.ca/n16/16-066-eng.asp> – states that Minister Morneau opened the meeting, and the Minister of Innovation, Science and Economic Development, Minister of Infrastructure and Communities, Minister of International Trade, and Minister of Employment, Workforce Development and Labour also all attended the meeting.

Fourth, that news release states “Today, the Finance Minister, Bill Morneau, met with the government's new Advisory Council on Economic Growth to help develop a strong Growth Strategy…” and that “The Council's work is part of a whole-of-government approach…”

Fifth, the Department of Finance Canada's August 24, 2016 news release concerning the second meeting of the Advisory Council – which you can see at: <http://www.fin.gc.ca/n16/16-066-eng.asp> – states that Minister Morneau hosted the meeting, and that the Council “has been tasked with generating bold and innovative ideas.” It also includes this statement from Minister Morneau: “I want to thank my colleague Minister Bains and the members [of the Advisory Council] for their ongoing work as we develop a Growth Strategy…” Also in that news release, the Council's continuing “work” is distinguished from “the Department of Finance Canada's pre-budget consultations,” during which “Canadians from coast to coast to coast will be invited to submit their thoughts and contribute to the Growth Strategy through various means, including digital tools, social media and formal consultations that will seek their views on the long-term economic vision for Canada.”

Sixth, the Department of Finance Canada's October 20, 2016 news release concerning the first set of recommendations of the Advisory Council – which you can see at: <http://www.fin.gc.ca/n16/16-135-eng.asp> – states that: “Since their first meeting on May 16, 2016, members of the Advisory Council on Economic Growth have been working with the Government...”

Seventh, in the “Statement of Work” section of the Letter of Agreement for Advisory Council members it says that the members will “provide advice directly to the Minister of Finance.”

Eighth, Annex 1 of the Letter of Agreement states that members:

“ACKNOWLEDGE that I will be provided in confidence with correspondence, documents, materials, and other information relating to the ACEG's work, including draft policy papers, draft legislation, formal written briefing material, and verbal discussions (the "Confidential Information") by officials of the Department of Finance...”

and

“I undertake to observe the following requirements and restrictions with respect to the Confidential Information...” [the Annex continues with a list of the requirements and restrictions that apply to any ministerial adviser or staff person]

You may attempt to argue that none of the members of the Advisory Council “occupies a position in the office of a minister...” which is part of the definition of ministerial adviser under the *COIA*. Democracy Watch's position is that the above evidence shows clearly that they do occupy positions within the Minister of Finance's office, even if they are rarely physically in that office.

If you take the position that to be a ministerial adviser a person must be physically located within the office of a minister, you will create a huge loophole that will essentially gut the *COIA* as the loophole will allow a minister to have advisers who work outside their office and are, at the same time, lobbyists seeking specific decisions from the minister.

In other words, you will erase the line between the federal public sector and the private sector.

(ii) The violations of the *Conflict of Interest Act* by members of the Advisory Council

As ministerial advisers, the members of the Advisory Council on Economic Growth are required to comply with subsection 6(1) of the *Conflict of Interest Act* (“*COIA*”), which states:

“Decision-making

6.(1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.”

Conflict of interest is defined in section 4 of the *COIA* as follows:

“Conflict of interest

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.”

Democracy Watch’s position is that the official “duty or function” of the members of the Advisory Council is as described in their Statement of Work – to advise the Minister of Finance.

Under the Annex 2 “Conflict of Interest Guidelines” in the Letter of Agreement each member of Morneau’s Advisory Council was required to sign with the Finance Canada, members were required to disclose any apparent conflicts of interest and to remove themselves from discussions that affected their or their business’ interests. According to the media report cited above, no disclosures were made, and no recusals happened. I have included a copy of the Letter Agreement in sending you this letter.

In Democracy Watch’s opinion, there are reasonable grounds to believe that Michael Sabia, President of the Caisse de dépôt et placement du Québec, and Mark Wiseman of BlackRock Asset Management Canada Ltd., violated the *COIA* given that, as ministerial advisers to Minister Morneau, they took part in a decision-making process when they were in an conflict of interest, which is prohibited by subsection 6(1) of the *COIA* and by their contract as a Council member.

In Democracy Watch’s opinion, based on the information in the media report cited above, and other research it has conducted, Mr. Sabia and Mr. Wiseman were in a conflict of interest when they took part in decisions concerning the Council’s recommendations for the creation of an Infrastructure Bank, given that the Caisse and BlackRock would benefit from the public funding provided to the bank. Mr. Sabia also had a conflict of interest because the Caisse is seeking federal government funding for its public transportation initiative in Montreal, as you can see in this media report:

<http://www.theglobeandmail.com/news/politics/montreal-lrt-is-first-test-for-ottawas-private-sector-infrastructure-plans/article34482281/>.

Mr. Wiseman also had a conflict of interest because BlackRock was registered to lobby Finance Canada through to December 21, 2016, as you can see in this Lobbyist Registry report:

<https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/vwRg?cno=15837®Id=810233/>.

Democracy Watch’s position is that an investigation is needed to determine whether other members of the Council also work with organizations that would benefit from the Infrastructure Bank.

(d) Request for ruling on whether Minister of Finance Bill Morneau violated section 7 of the *Conflict of Interest Act*

Section 7 of the *Conflict of Interest Act* (“*COIA*”) prohibits ministers and other public office holders from giving preferential treatment to any organization based on the organization’s representative.

According to the media report cited above, the federal government has hired Toronto investment bank Blair Franklin Capital Partners under a special process to speed up the government’s review of the Caisse’s request for federal funding that is cited above.

Democracy Watch’s opinion is that it seems the Caisse is receiving preferential treatment from Minister Morneau because it is represented by Mr. Sabia, who is serving on Minister Morneau’s Advisory Council.

For these reasons, Democracy Watch’s opinion is that there are reasonable grounds to believe that Minister Morneau has violated section 7 of the *COIA*.

Please contact Democracy Watch at the address above if your office needs any more information to initiate an inquiry into the above alleged violations of the *Conflict of Interest Act* by members of the Advisory Council on Economic Growth, and by Finance Minister Morneau.

We look forward to hearing back from you very soon concerning whether you will recuse yourself from ruling on these situations.

In any case, given that the facts have been made public and are clear in these situations, we hopefully look forward to seeing rulings very soon on all of these matters.

Sincerely,



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