



democracy Watch
émocratie en surveillance

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Office of the Conflict of Interest and Ethics Commissioner
ATTN: Mario Dion, Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

Email: ciec-ccie@parl.gc.ca

November 28, 2018

RE:

- 1. Request for inquiry into Prime Minister Trudeau and ministers giving preferential treatment to the individuals, companies and/or organizations represented by “bundler” fundraisers at Liberal Party Leader’s Circle events (or similar events), and;**
- 2. Request that you recuse yourself from conducting inquiry and ruling on the above matters because you were appointed by the Trudeau Cabinet, and also because of your statements showing bias against effective enforcement**
- 3. Request that you ensure this and other Democracy Watch complaints will be investigated and ruled on, given the commitment you made at the House Ethics Committee in December 2017**

Dear Commissioner Dion:

I am writing concerning enforcement of the *Conflict of Interest Act* generally, and specifically requesting an inquiry into Prime Minister Trudeau, ministers and other public office holders giving preferential treatment to individuals, companies and/or organizations represented by “bundler” fundraisers at Liberal Party Leadership Circle events (whether or not the events occurred, as even making the offer to people who do such fundraising would be a violation of the *Act*).

This letter supplements the information already filed with you in the letter Democracy Watch sent to you dated September 17, 2018 requesting an inquiry

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into Liberal Party fundraising events that lobbyists were invited to, which you can see at:

<https://democracywatch.ca/wp-content/uploads/LettToEthicsCommFundraisingEventsSept172018.pdf>

and it also supplements the information filed with you in the letter Democracy Watch sent to you dated October 31, 2018 requesting an inquiry into the September 2016 gala dinner in honour of Chinese Premier Li Keqiang that Prime Minister Trudeau held to which top Liberal Party donors, and also lobbyists for several companies that lobby the federal government, were invited, which you can see at:

<https://democracywatch.ca/wp-content/uploads/LettToEthicsCommSept2016EventOct312018.pdf>

1. Request for inquiry into Prime Minister Trudeau and Cabinet ministers giving preferential treatment to the companies and/or organizations or other individuals represented by “bundler” fundraisers at Liberal Party Leadership Circle events (if the events occurred)

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*).

Section 7 of the *Conflict of Interest Act* states:

"Preferential treatment

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization."

Former Ethics Commissioner Mary Dawson's wrote on page 21 of her 2012 ruling on Conservative Minister Paradis giving preferential treatment to former Conservative MP Rahim Jaffer, that "preferential treatment" means:

"The expression “preferential treatment” is not defined in the Act and was not defined in the predecessor 2006 Conflict of Interest and Post Employment

Code for Public Office Holders. I believe, however, that its meaning is quite clear. I take note of the 1984 Report of the Task Force on Conflict of Interest, co-chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, entitled Ethical Conduct in the Public Sector, in which “preferential treatment” is defined as “treatment more favourable than might be accorded to anyone else in similar circumstances.””

You can see mention in the media about the Liberal Party’s Leader’s Circle invitation and webpage at:

<https://democracywatch.ca/wp-content/uploads/HillTimesLiberalBundlerArticleApril202016.pdf>

and you can see a screen capture from August 31, 2016 of the Liberal.ca webpage concerning the Leader’s Circle at:

<https://democracywatch.ca/wp-content/uploads/FedLibLeadersCircleWebpageAug312016.jpg>

As you can see, the webpage describes a new fundraising class – called the Leader’s Circle – as offering from April 2016 until at least the end of August 2016 “recognition opportunities” for Liberals who recruit a minimum of 10 persons annually into the Laurier Club (which is the top level of Liberal donors who contribute the *Canada Elections Act* maximum of \$1,525 each annually).

The webpage states:

“With limits on political fundraising, donor networking and bundling are of the utmost importance to growing the Party. Leader’s Circle members play an essential role in the mission to grow the Liberal movement and promote Liberal values across the country.”

And the webpage also states:

“Leader’s Circle members can look forward to a variety of recognition opportunities including an annual dinner with the Leader and invitations to events and discussions with leaders within the party.”

Only a full investigation would be able to determine whether Leader’s Circle members (or any similar top donor/fundraising group the Liberal Party may be operating) represent an individual, company and/or organization seeking a decision from the federal government and/or an individual, company or organization that has lobbyists registered to lobby the federal government.

In Ethics Commissioner Dawson’s December 13, 2016 letter to Conservative Party leader Rona Ambrose, she stated that:

“In order to establish reasonable grounds that a contravention of section 7 may have occurred, I would need some information indicating that ... in the exercise of their official powers or duties, [a Liberal government Cabinet minister] gave preferential treatment...” to someone who attended a Liberal Party fundraising event.

As you know from the letter Democracy Watch sent you dated September 17, 2018, Democracy Watch's position disagrees with Commissioner Dawson's interpretation of section 7 of the *Conflict of Interest Act* because her interpretation claims that being invited to an exclusive, invite-only fundraising event is not preferential treatment in and of itself. Democracy Watch's position is that by hosting or attending a Leader's Circle event (or any similar events the Liberal Party may have held to which top donors or fundraisers have been invited that give them access to public office holders), the PM, Cabinet ministers and any other public office holder would violate section 7. They would violate section 7 because they would be giving preferential treatment to whichever organization or person the people attending the event represent by giving them exclusive access to the event, and to themselves as public office holders.

The important factor is that these are invite-only events only for Leader's Circle members – members of the general public are not invited nor are other Liberal Party members or donors or fundraisers – and the invitation to have access to the minister or other public office holder is the preferential treatment that the invitees receive from whichever public office holder hosts or attends the event.

The Leader's Circle members are invited because they are "bundler" fundraisers for the Liberal Party – they are invited based on that being part of their identity.

Former Ethics Commissioner Dawson ruled in the Paradis ruling cited above:

"I believe that Mr. Paradis assisted Mr. Jaffer because he wanted to help a former caucus colleague. This preferential treatment was therefore based on the identity of Mr. Jaffer." (p. 22)

With regard to the Leader's Circle appreciation events (or any similar events the Liberal Party may have held to which top donors or fundraisers have been invited that give them access to public office holders), the ruling should be:

"Prime Minister Trudeau invited the representatives of various companies and organizations who attended the event because they were top-level Liberal Party "bundler" fundraiser. The preferential treatment was therefore based on their identity as top fundraisers for the Liberal Party."

Being a top-level fundraiser for the Party is the same as being a former caucus colleague -- they are both identifiers of a person based on actions they took and roles they have.

Therefore, being invited to Leader's Circle events (or any similar events the Liberal Party may have held) amounts to "treatment more favourable than might be accorded to anyone else in similar circumstances" of seeking a decision from the federal government and/or registered to lobby the federal government.

To be entirely clear, Democracy Watch's position is that a public office would be a violation of section 7 of the *Act* even by agreeing to attend an event to which a Leader's Circle member is invited because the invitation alone would constitute

preferential treatment. The Leader's Circle member would not have to attend the event for the public office holder to have extended preferential treatment to them.

Section 7 of the *Act* sets out a very important rule -- it means that Cabinet ministers and their staff (and senior government officials who are appointed by Cabinet) can't meet or communicate with, or help or give access to themselves or to others whom the federal government has access to, to anyone more (or more responsibly) than anyone else based on the identity of the person or organization that is asking for help or contacting them.

More specifically, section 7 means that Liberal Cabinet ministers and their staff, and senior government officials, can't meet or communicate with, or help or give access to themselves or to others, to Liberal Party fundraisers/ members/ donors/supporters more (or more responsibly) than they can give those things to anyone else or to any other organization.

In case you are thinking of taking the position that attending a Leader's Circle event is not an "exercise of an official power, duty or function" – which is part of the language of section 7, Democracy Watch submits that this would be an unreasonable position. The Prime Minister, ministers and other public office holders meet and communicate with people seeking decisions from the government as part of the functions. Meeting and communicating with people at a Leader's Circle event would be exactly the same exercise of this function.

To pretend that when they are attending a Leader's Circle event (or any similar events the Liberal Party may have held to which top donors or fundraisers have been invited that give them access to public office holders) as a private individual and not as a public office holder would be absurd. They are always a public office holder, and always acting as a public office holder, whenever they are meeting or communicating with any member of the public – the only exception being private, personal time spent with members of their family. To create an exception for Liberal Party events would create a huge loophole in the *Act* that would be exploited by lobbyists constantly.

Given all of the above, Democracy Watch's position is that you have ample evidence that gives reason to believe that a public office holder has violated section 7 of the *Conflict of Interest Act* and, therefore, you should initiate an examination of the situation under subsection 45(1) of the *Act*.

2. Request that you recuse yourself from conducting inquiry and ruling on the above matters because you were appointed by the Trudeau Cabinet, and also because of your statements showing bias against effective enforcement

On January 30, 2018, Democracy Watch sent you a letter that can be seen at: <https://democracywatch.ca/wp-content/uploads/LettToEthicsCommReApptBiasComplaintsJan302018.pdf>

requesting that you recuse yourself from investigating and ruling on all matters concerning the Trudeau Cabinet and Liberal MPs because you were nominated for the position of Ethics Commissioner after a secretive process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO, Privy Council Office and the Treasury Board.

The PMO- and Cabinet-controlled appointment process did not include consultation with opposition parties as required under subsection 81(1) of the *Parliament of Canada Act* as the opposition parties made clear in several statements in the House of Commons. As you know, Democracy Watch filed an application for judicial review of your appointment in Federal Court based on the reasonable apprehension of bias and conflict of interest on the part of the Trudeau Cabinet when appointing you.

Democracy Watch's position is that you share this reasonable apprehension of bias because you were chosen through this Cabinet-controlled process. Your appointment was approved in the House of Commons only on division, as several MPs voted against your appointment.

As well, Democracy Watch's position is that you made statements when testifying on December 12, 2017 before the House of Commons Standing Committee on Access to Information, Privacy and Ethics that show a bias toward weak and incorrect enforcement of the *Act*. During the hearing, the transcript of which you can see at:

<http://www.ourcommons.ca/Content/Committee/421/ETHI/Evidence/EV9337990/ETHIEV84-E.PDF>

you stated that:

"I believe that people are fundamentally honest, that people do not get up in the morning with the intent of breaching the law." (p. 2)

and that: "People are fundamentally honest." (p. 10)

It is impossible for anyone to know whether everyone is fundamentally honest, and your assumption that everyone is honest means you have created a reasonable apprehension that, when faced with someone claiming to have made an honest mistake while the evidence shows that they violated the *Act*, you will favour finding them not guilty because they did not "intend" to violate the *Act*.

Given that the intent of an alleged violator is irrelevant to a legally correct assessment of whether they violated the *Act*, your statement creates a reasonable apprehension of bias against legally correct enforcement of the *Act*. For the above reasons, Democracy Watch requests that you recuse yourself from investigating and ruling on this matter, and that you refer the investigation and ruling to someone qualified and independent from all federal political parties, such as a provincial ethics commissioner who has no ties to any federal political party or the provincial wing of any federal political party.

3. Request that you ensure this and other Democracy Watch complaints will be investigated and ruled on, given the commitment you made before the House Ethics Committee in December 2017

During your testimony referred to above before the House of Commons Standing Committee on Access, Privacy and Ethics on December 12, 2017, you stated the following (at page 11):

“The common point that comes to mind is accessibility, the need for a truly accessible office to make sure that people who want to make a complaint know that the office exists and know the parameters of filing a complaint. That's what the Office of the Public Sector Integrity Commissioner did. It promoted the office and the parameters of what it regulates and what it does. This is one of the things I would like to do.

The philosophy focuses on accessibility, giving full force to the act and providing every opportunity for the spirit of this legislation to be upheld. There are not many complaints. At her last appearance in 2014, Commissioner Dawson said she was surprised to find that only one-quarter to one-third of the files she was studying were complaints. The other files were about issues she had decided to investigate on her own.

Complaints are a way of self-regulation. A truly accessible office is another way of ensuring that MPs and public office holders remain honest, as a complaint might be filed at any time.”

Democracy Watch's position is that these statements give rise to a legitimate expectation that you will ensure that all complaints filed by Democracy Watch will be properly reviewed, and that a public ruling will be issued for each complaint.

Please contact Democracy Watch at the address above if you need any more information to delegate an inquiry into the Leadership Circle events (or any similar events the Liberal Party may have held to which top donors or fundraisers have been invited that give them access to public office holders). Given that the Liberal Party must have a list of these events, and invitees to, and attendees at, these events (including any public office holders who attended), and given the inquiry powers of the Ethics Commissioner under clause 48(1)(b) of the *Conflict of Interest Act* that include issuing a subpoena for those event lists, we expect to receive a ruling very soon.

Sincerely,



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