



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

July 4, 2019

RE:

- 1. Request for examination of Minister Dominic LeBlanc's participation in decision-making processes for appointments of judges who have connections to him;**
- 2. Request that you recuse yourself from conducting inquiry and ruling on the above matter 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 before the House Ethics Committee in December 2017**

Dear Commissioner Dion:

I am writing concerning your role in enforcement of the *Conflict of Interest Act* ("COIA") generally, and also specifically concerning the actions of Minister Dominic LeBlanc in participating in the decision-making process concerning the appointment of judges who have connections to him.

Democracy Watch's position is that, if Minister LeBlanc did take part in the process, it raises questions concerning whether he violated section 4, subsection 6(1), section 9, and possibly also section 8, of the *Conflict of Interest Act*. Democracy Watch's position is also that you should recuse yourself from investigating and ruling on this matter. The reasons for these positions are set out below.

1. Request for investigation of Minister Dominic LeBlanc for participating in appointments of people connected to him as judges, in possible violation of sections 4 and 6, and 9, and possibly also 8, of the *Conflict of Interest Act* (“COIA”)

(a) The proper interpretation of applicable rules in the COIA

(i) COIA must be interpreted broadly to prevent conflicts of interest

The COIA is remedial legislation. The *Interpretation Act* requires that the COIA be “given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.” (*Interpretation Act*, R.S.C., 1985, c. I-21, section 12)

The primary purpose of the 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 *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*).

Subsection 6(1) of the COIA 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.”

Section 9 of the COIA states:

“Influence

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder’s private interests or those of the public office holder’s relatives or friends or to improperly further another person’s private interests.”

Section 8 of the *COIA* states:

“Insider information

8. No public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder’s private interests or those of the public office holder’s relatives or friends or to improperly further or to seek to improperly further another person’s private interests.”

(ii) COIA prohibits being in an apparent conflict of interest

Given that the subsection 6(1) of the *COIA* covers situations in which the public office holder “reasonably should know” that they would be in a conflict of interest, the *COIA* clearly covers situations involving an appearance of a conflict of interest. This conclusion is reinforced by the broad, comprehensive language used in the operative provisions of the *COIA*, which make it clear that it was intended to apply to real and apparent conflicts of interest. As noted above, section 3 of the *COIA* articulates among its purposes prevention and avoidance of “conflicts of interest” generally, without any limiting language that would confine it to “real” conflicts of interest.

Also reinforcing this conclusion is the fact that section 8 of the *COIA* prohibits the use of insider information not only to further private interests, but also to “seek to further” private interests, while section 9 prohibits the use of a public office holder’s position to “seek to influence a decision of another person so as to further” a private interest. In addition, subsection 11(1) of the *COIA* bans the acceptance of gifts and other advantages “that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.”

As L’Heureux-Dubé, J. wrote for the majority in *Hinchey*: “The need to preserve the appearance of integrity...” requires that the statutory provisions at issue in *Hinchey* be interpreted so as to prohibit actions “...which can potentially compromise that appearance of integrity” (para. 16). Justice L’Heureux-Dubé also noted: “...it is not necessary for a corrupt practice to take place in order for the appearance of integrity to be harmed. Protecting these appearances is more than a trivial concern” (para. 17).

In articulating the concept of an apparent conflict of interest, the *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens* (“Parker Commission”) emphasized the underlying objectives of conflict of interest rules as maintaining and enhancing trust and confidence in government and the importance of public perception that government business is being conducted in an “impartial and even-handed manner” (p. 31). To this end, the Parker Commission adopted this definition of an apparent conflict of interest:

“An apparent conflict of interest exists where there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.” (p. 35)

This definition drew upon the definitions set out in Supreme Court of Canada rulings, such as *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369, and *Old St. Boniface Residents Association Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170.

In a similar vein, the Federal Court of Appeal has ruled unanimously that the phrase "a conflict of interest" means a situation in which a public office holder has "competing loyalties" or "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties" that "might reasonably be apprehended to give rise to a danger of actually influencing the exercise of a professional duty" (*Democracy Watch v. Campbell*, [2010] 2 F.C.R. 139, 2009 FCA 79, para. 49, quoting from *Cox v. College of Optometrists of Ontario* (1988), 65 O.R. (2d) 461 (Div. Ct.)).

(iii) Friends in the COIA includes political friends

The words “friend” and “friends” are not defined in the COIA. Given the purpose of the COIA, and given that the purpose of ethics laws that apply to politicians generally is to prevent people in government from not only helping themselves, their family members, but also their friends including especially supporters of their party over others, the reasonable definition of “friends” in section 4 of the COIA must include political friends.

In fact, this principle of defining “friends” to include political friends is part of other sections of the COIA concerning giving government jobs to people. Subsection 14(4) prohibits ministers from entering “enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another minister of the Crown, minister of state or parliamentary secretary or party colleague in Parliament, except in accordance with an impartial administrative process in which the minister of the Crown, minister of state or parliamentary secretary plays no part.” Only the appointment as a member of ministerial staff or as a ministerial advisor is exempt from this prohibition (under subsection 14(5)).

Defining “friends” to include political friends does not mean that ministers would be prevented from appointing any member or supporter of the ruling party to any government position. It does, however, mean that ministers would be prevented from appointing former cabinet colleagues and other significant party members and supporters.

(iv) Improperly further another person’s interest applies very broadly

On page 8 of his February 8, 2002 ruling on the actions of then-Deputy Premier and Minister of Finance Jim Flaherty, then-Integrity Commissioner Coulter A. Osborne stated concerning the word “improperly”:

“that the qualification “improperly” is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black’s Law Dictionary definition of “improper”).”

You can see that ruling at:

<https://www.oico.on.ca/docs/default-source/commissioner%27s-reports/re-flaherty-minister-of-finance-feb-8-2002.pdf?sfvrsn=8>

As federal Conflict of Interest and Ethics Commissioner Mary Dawson stated in a June 2015 speech:

“The concept of “improper” by its very nature allows more latitude and discretion in interpreting it.”

That speech can be viewed at:

<http://ciec-ccie.parl.gc.ca/Documents/English/About%20the%20Commissioner/Presentations/Speaking%20Notes%20Annual%20General%20Meeting%204%20juin%202015%20EN.pdf>

with the above statement at the top of page 4.

(v) The COIA covers financial and other private interests

Nothing in the *COIA* restricts the definition of private interests to financial or pecuniary matters. In contrast to the *COIA*, the *Conflict of Interest Code for Members of the House of Commons* (“*MP Code*”) expressly defines furthering a private interest in financial terms. The differences between the two bodies of rules reinforces the notion that the *COIA* requires a broad definition of the meaning of private interest that goes beyond financial or pecuniary interest. It was open to Parliament to enact provisions in the *COIA* to limit the concept of private interest to financial or pecuniary interest. The fact that it did not do so suggests that Parliament’s intention was to cast a broad net in defining private interest. The implied exclusion rule of statutory interpretation may serve to assist the Court in this instance. The rule provides that where there is reason to believe that a legislature “had meant to include a particular thing within its legislation, it would have referred to that thing expressly.” (R. Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed., Lexis-Nexis, 2014, p. 248)

(vi) Appointment decisions are specific and so loophole in COIA doesn't apply

Finally, a decision concerning who will be appointed as a judge is not a decision of general application or a decision that affects Prime Minister Trudeau or Cabinet ministers as a few people in a broad class of persons – it affects the person appointed and their family very specifically. Therefore Minister LeBlanc's participation in appointment decisions is not exempted from being covered by the *COIA* under the huge loophole created by the definition of "private interest" in section 2 of the *COIA*.

(b) Questions re: Minister Dominic LeBlanc's participation in the judicial appointments processes

As a result, the questions to answer in the investigation concerning possible violations of sections 4, 6, 9 (and possibly also 8) of the *COIA* are as follows:

1. Did Minister Dominic LeBlanc participate in the appointment decision-making process for any of the appointments of Justice Charles LeBlond to the New Brunswick Court of Appeal, or Chief Justice Tracey DeWare or Justice Arthur Doyle or Justice Robert Dysart to the New Brunswick Court of Queen's Bench;
1. If Minister LeBlanc participated in any of the processes, was he in an appearance of a conflict of interest when participating because the appointee was in any way a personal or political friend at the time of the appointment?
2. If Minister LeBlanc participated in any of the processes, did he improperly further the interests of another person through his participation?

According to this *Globe and Mail* article:

<https://www.theglobeandmail.com/canada/article-four-of-six-judges-appointed-to-new-brunswick-federal-branch-have/>

Mr. LeBlond, Mr. Doyle and Mr. Dysart each donated \$400 in 2009 to help Minister LeBlanc pay down just over \$31,000 of debt from his 2008 Liberal Party leadership campaign, and all three have donated multiple times to the Liberal Party since.

According to this article:

<https://globalnews.ca/news/5451249/dominic-leblanc-family-donors-judicial-appointments/>

Mr. LeBlond has, among other donations to the Liberal Party since 2005, donated \$7,822.74 to the Beauséjour Federal Liberal Association which is Minister LeBlanc's electoral district association. Mr. Doyle has, among other donations to the Liberal Party since 2009, donated \$4,148.35 to the Beauséjour Federal Liberal Association even though he lives in Saint John which is approximately 100 kilometres away from Minister LeBlanc's electoral district.

And Mr. Dysert has, among other donations to the Liberal Party since 2008, donated a total of \$1,640.39 to the Beauséjour Federal Liberal Association.

These donations would make these justices political friends of Minister LeBlanc, but given that they also donated to pay down his leadership campaign debt, they are also likely his personal friends. In either case, the donations make it improper for him to participate in a decision that furthers their interests. A judicial appointment decision clearly furthers their private interests as they would not have been considered for the appointment unless they applied, and by applying they clearly demonstrated their interest in being appointed.

Also according to the *Globe* article linked above, Chief Justice Tracey DeWare is married to Jacques Pinet, who also contributed \$400 to pay down those debts and has since made multiple donations to the Liberals. As well, according to this CBC article:

<https://www.cbc.ca/news/canada/new-brunswick/judicial-appointments-dominic-leblanc-family-friends-political-patronage-1.5191054>

Mr. Pinet and Ms. DeWare bought a seaside property in Grande-Digue, New Brunswick from Minister LeBlanc in 2013 for \$430,000, a property that is next to Minister LeBlanc's own summer house.

This is reasonable evidence that Chief Justice DeWare is at least a political friend of Minister LeBlanc, and also likely a personal friend.

As well, Minister's LeBlanc's Public Registry webpage at:

<http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Client.aspx#k=6be1eb88-257d-e111-970b-002655368060>

shows that sometime in 2017, a Jacques Pinet, Vice-President, Assumption Life Insurance Co. located in Moncton, New Brunswick, gave Minister LeBlanc a gift of 3 days hospitality at Ledges Lodge, Doarktown, New Brunswick. If this is the same Jacques Pinet who is married to Chief Justice DeWare, it would only compound the appearance of conflict of interest for Minister LeBlanc.

As a result of this conflict, it would also be improper for Minister LeBlanc to have participated in the judicial appointment decision noted in this June 4, 2019 Government of Canada news release:

<https://pm.gc.ca/eng/news/2019/06/04/prime-minister-announces-appointment-new-chief-justice-court-queens-bench-new>

as that would further Ms. DeWare's private interests.

Minister LeBlanc is clearly aware of the duty to recuse himself from participating in appointment decisions involving family members or friends or other people for which it would be improper for him to participate, and to declare that recusal publicly within 60 days as required under subsection 25(1) of the *COIA* as, according to the above-linked *Globe and Mail* article, he declared that he recused himself from participating in the appointment of another judge, Queen's Bench Justice Marie-Claude Bélanger-Richard, because she is a relative of his. That

recusal statement can be seen in Minister LeBlanc's page in the Public Registry at:

<http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Client.aspx#k=6be1eb88-257d-e111-970b-002655368060>

As the *Globe and Mail* reported on April 24, 2019, the office of Prime Minister Trudeau (PMO) uses a Liberal Party of Canada database to review candidates for judicial appointments:

<https://www.theglobeandmail.com/politics/article-pmo-vets-potential-judges-with-liberal-database/>. This process, along with the concerns expressed by the former Minister of Justice Jody Wilson-Raybould about the involvement of the PMO in judicial appointments, as reported in this February 22, 2019 *Globe and Mail* article:

<https://www.theglobeandmail.com/politics/article-wilson-raybould-sought-to-limit-pmo-involvement-in-judicial/>

raise serious questions about political interference in federal judicial appointments.

This political interference, of course, raises serious concerns about whether the constitutional principles of judicial independence and the rule of law are being upheld.

2. Request that you recuse yourself from conducting inquiry and ruling on the above matter 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*.

In addition, your senior lawyer Martine Richard:

<https://geds-sage.gc.ca/en/GEDS?pgid=015&dn=cn%3DRichard%5C%2C+Martine%2Cou%3DCIECILS-CCIEESL%2Cou%3DCIEC-CCIE%2Co%3DGGC%2Cc%3DCA>

who heads the Investigations and Legal Services division

<https://geds-sage.gc.ca/en/GEDS?pgid=014&dn=ou%3DCIECILS-CCIEESL%2C+ou%3DCIEC-CCIE%2C+o%3DGGC%2C+c%3DCA>

of your office:

[http://ciec-](http://ciec-ccie.parl.gc.ca/EN/AboutUs/WhoWeAre/Pages/OrganizationalChart.aspx)

[ccie.parl.gc.ca/EN/AboutUs/WhoWeAre/Pages/OrganizationalChart.aspx](http://ciec-ccie.parl.gc.ca/EN/AboutUs/WhoWeAre/Pages/OrganizationalChart.aspx)

has a sister Jolène who is married to Trudeau Cabinet minister Daniel LeBlanc, as noted here:

https://www.nosorigines.qc.ca/GenealogieQuebec.aspx?genealogie=Richard_Guy&pid=1348421

and here:

https://en.wikipedia.org/wiki/Dominic_LeBlanc#Personal_life.

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 before the House of Commons Standing Committee on Access, Privacy and Ethics on December 12, 2017, you stated (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.

Overall, Democracy Watch’s position is that the information provided in this letter is enough to give you reason to believe that Minister Dominic LeBlanc has contravened at least sections 4 and 6, and 9 (and possibly also section 8) of the *Conflict of Interest Act*.

As this is the threshold for initiating an examination under the *Act*, Democracy Watch requests an examination of whether Minister LeBlanc has violated sections 4 and 6, and 9 (and possibly also section 8) of the *Act*. However, as detailed above, Democracy Watch’s position is that there is a reasonable apprehension of bias on your part, and that therefore you must delegate the investigation to someone independent of you, and all political parties.

Please contact Democracy Watch at the address above if your office needs any more information to initiate an inquiry into Minister LeBlanc’s participation in these judicial appointments.

Sincerely,



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