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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
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Email: ciec-ccie@parl.gc.ca

April 24, 2017

RE:

- (a) Request that you recuse yourself from ruling on the matters addressed in this letter because you received 6-month contract worth approximately \$100,000 from the Trudeau Cabinet in mid-December;**
- (b) Request for ruling on whether former Attorney General and Minister of Justice Peter MacKay violated subsection 6(1) of the *Conflict of Interest Act* by appointing his friends as judges, including previous Attorney General and Minister of Justice Vic Toews**

Dear Commissioner Dawson:

I am writing concerning your role in enforcement of the *Conflict of Interest Act* (“COIA”) generally, and also specifically concerning the actions of former Minister of Justice Peter MacKay in appointing judges.

(a) Recusal 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\$100,000, and you are now serving at the pleasure of the Cabinet as that Order-in-Council appointment can be rescinded at any time for any reason by the Cabinet (and also possibly can be extended by the Cabinet for another six months), you are therefore in a financial conflict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) Request for ruling on whether former Minister of Justice Peter MacKay violated subsection 6(1) of the *Conflict of Interest Act* by appointing his friends as judges, including previous Attorney General and Minister of Justice Vic Toews

According to a media report that you can see at:

<http://www.cbc.ca/beta/news/canada/nova-scotia/peter-mackay-s-friends-colleagues-make-up-6-of-9-judge-appointees-1.2956696> then-Attorney General and Minister of Justice Peter MacKay appointed some of his friends as judges in Nova Scotia.

In March of 2014, Minister MacKay also appointed the previous Minister of Justice Vic Toews to Manitoba's top trial court, an event you can see described in this media report: <http://www.theglobeandmail.com/news/politics/former-conservative-public-safety-minister-vic-toews-named-to-manitoba-court/article17368609/>.

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.”

A decision concerning who will be appointed as a judge is not a decision of general application or a decision that affects the 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 MacKay’s appointment decisions were 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*.

In the media article linked above, the relationship between Minister MacKay and some of the people he appointed to be judges in Nova Scotia describes them as friends.

If this is their relationship, then Minister MacKay was required to recuse himself from making those appointment decisions or participating in making those decisions, and to declare that recusal publicly within 60 days as required under subsection 25(1) of the *COIA*. There is no evidence available that Minister MacKay recused himself from those appointment decisions.

Therefore, again if their relationship was as “friends,” and if Minister MacKay participated in the decisions to appoint them, then it seems that he clearly violated

subsection 6(1) of the *COIA* as he took part in a decision in which he had an opportunity to further the private interests of his friends by giving them a permanent job as a judge.

With regard to the appointment of Vic Toews as a judge in Manitoba, Minister MacKay and Minister Toews were Cabinet colleagues from October 9, 2007 until Minister Toews left federal politics in July 2013. Their time together in Cabinet included several years when Mr. MacKay was Minister of National Defence and Mr. Toews was Minister of Public Safety, two portfolios that are closely linked and would have required the ministers to work together on several files.

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 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.

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

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 all of 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