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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

January 30, 2018

RE:

- (a) Request that you recuse herself from ruling on situations involving the Trudeau Cabinet and Liberals because you were appointed by the Cabinet through a process that violates the law;**
- (b) Request that you delegate all matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties**

Dear Commissioner Dion:

I am writing on behalf of Democracy Watch to request that you recuse yourself from decisions concerning the enforcement of the *Conflict of Interest Act* (“*Cofl Act*”) and *Conflict of Interest Code for Members of the House of Commons* (“*MP Code*”) for any situations involving the Trudeau Cabinet or Liberals, including decisions concerning any complaints that Democracy Watch may file with your office in the future.

To allow the investigations into these situations to continue, Democracy Watch also requests that you delegate the investigations and rulings on the situations to a provincial ethics/integrity commissioner who is not in any way under the control of, or connected to, you or the Trudeau Cabinet or any of the federal political parties.

Under section 89 of the *Parliament of Canada Act*, you can delegate to anyone the investigation of, and rulings on, any complaint.

(a) Request that you recuse herself from ruling on situations involving the Trudeau Cabinet and Liberals because you were appointed by the Cabinet through a process that violates the law

Democracy Watch requests that you recuse yourself from making any decisions about any investigations or rulings on situations involving the Trudeau Cabinet or Liberals because you were nominated by the Cabinet to the position of Conflict of Interest and Ethics Commissioner (“Ethics Commissioner”), as set out at:

<http://www.pco-bcp.gc.ca/oic-ddc.asp?lang=eng&Page=secretariats&txtOICID=&txtFromDate=&txtToDate=&txtPrecis=ethics+commissioner&txtDepartment=&txtAct=&txtChapterNo=&txtChapterYear=&txtBillNo=&rdoComingIntoForce=&DoSearch=Search+%2F+List&viewattach=35467&blnDisplayFlg=1>

after a process that was controlled by the Prime Minister’s Office (PMO) and Cabinet and involved officials from the Privy Council Office and the Treasury Board, including the Chief of Staff for Treasury Board Minister Scott Brison who as detailed in this Democracy Watch news release:

<http://democracywatch.ca/headhunting-firms-confirm-pmo-and-cabinet-staff-on-watchdog-selection-committees/>

and in the Hansard of the House Access, Privacy and Ethics Committee that reviewed your nomination, which can be seen at:

<http://www.ourcommons.ca/DocumentViewer/en/42-1/ETHI/meeting-84/evidence>

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*, which can be seen at:

<http://laws-lois.justice.gc.ca/eng/acts/p-1/page-17.html#h-59>

as the opposition parties made clear in several statements in the House of Commons, as well as in this article:

<http://leaderpost.com/news/politics/liberals-acted-unethical-in-secretive-appointment-of-new-ethics-commissioner-opposition-says/wcm/79fe96b0-56f9-4309-b828-0d9c2672ef41>

and in this article:

http://www.huffingtonpost.ca/2017/12/13/liberals-ignore-concerns-about-secrecy-and-officially-appoint-new-ethics-watchdog_a_23306625/

Democracy Watch recently 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, and the failure of the Cabinet to consult with opposition parties before making the appointment. The details concerning this application can be seen here:

<http://democracywatch.ca/democracy-watch-files-lawsuits-challenging-trudeau-cabinets-appointments-of-new-ethics-commissioner-and-lobbying-commissioner/>

You share this reasonable apprehension of bias because you were chosen through a process controlled by the Trudeau Cabinet, a process that failed to consult with opposition parties as required by subsection 81(1) of the *Parliament of Canada Act*. Your appointment was approved in the House of Commons only on division, as several MPs voted against your appointment.

You have already made at least one decision as Ethics Commissioner concerning the Trudeau Cabinet, and possibly more decisions that have not been made public. The one decision you have made public is to continue investigating the complaints filed by two MPs concerning Finance Minister Bill Morneau's involvement in discussions and decisions about Bill C-27.

You should not be investigating or making decisions about any matters involving the Trudeau Cabinet or Liberals because your appointment is analogous to a situation in which the Prime Minister and Cabinet are sued by someone, and they choose the judge who hears and decides the case. It is true that the Cabinet appoints federal judges, but only from a list proposed by selection committees that have representatives from non-governmental organizations (unlike the selection committee that chose you, which only had members from the PCO and Cabinet).

As well, neither the Prime Minister nor the Cabinet choose which judges will hear and decide which cases, especially not cases challenging the decisions or actions of the Prime Minister or other Cabinet ministers, as it would be a clear conflict of interest for them to do so.

With your appointment, the Prime Minister and Cabinet have chosen the person who will hear and decide all cases of situations involving compliance with the ethics rules by the Prime Minister and Cabinet ministers and government official and MPs for the next seven years. This appointment puts you in a conflict of interest – there is a reasonable apprehension of bias on your part given that you were chosen by people involved in situations you will judge in terms of whether violations of the *Cofl Act* and/or *MP Code* occurred.

Given the above, Democracy Watch requests that recuse herself from investigating all situations involving the Trudeau Cabinet or Liberals, and that you refer the investigations to someone who is fully independent of the yourself, the Trudeau Cabinet, and all federal political parties.

(b) Request that you delegate all matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties

There is no reason that your recusal should delay the handling and completion of the investigations and rulings on any situation. All that has to happen is for you

to contact provincial integrity/ethics commissioners and request that one of them handle each matter. All of the information gathered by your office can be easily transferred to a provincial commissioner, and they can continue the investigation to completion with a ruling.

You would then take their report and table it in Parliament.

A similar process has been used at the provincial level by ethics commissioners. For example, in 2016 Marguerite Trussler, Alberta's Ethics Commissioner, recused herself from investigating and ruling on a complaint because she was friends with two people involved in the matter. You can see details about this situation at:

<http://calgaryherald.com/news/politics/albertas-ethics-commissioner-cites-conflict-of-interest-removes-herself-from-review-of-tobacco-litigation-contract>

As Ethics Commissioner, you have an opportunity to ensure that situations being currently investigated by your office are investigated and ruled on in an impartial, legally correct manner, by recusing yourself. We hope it will do so.

Democracy Watch looks forward to hearing from you soon concerning whether you will recuse yourself from making these decisions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch