



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 13, 2020

RE:

- 1. Request for inquiry into whether Minister of Finance violated the Conflict of Interest Act by participating in the decision approving the sole-source contract for WE Charity**
- 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 enforcement of the *Conflict of Interest Act* (the “*Cofl Act*” -- (S.C. 2006, c. 9, s. 2) generally, and specifically requesting an inquiry into the actions of Finance Minister Bill Morneau participating in the Cabinet decision to approve the sole-source WE Charity contract to administer the new Canada Student Service Grant (CSSG) program, as that would violate subsection 6(1) and section 21 of the *Cofl Act* (**See part 1 below** for details).

1. Request for inquiry into Finance Minister Bill Morneau's actions, which there is reason to believe violate ss. 6(1) and s. 21 of the *Coff Act* – the evidence is clear that Minister Morneau violated these sections

Subsection 6(1), combined with section 4 and the definition of private interest in subsection 2(1) of the *Coff Act*, prohibits a public office holder from making or participating in 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.” Section 4 states that a public office holder is in a conflict of interest when s/he “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.”

“Private interest” is defined in subsection 2(1) of the *Coff Act* as excluding only situations involving matters of general application (such as participating in passing a law that applies generally to many people or organizations) and a couple of other situations – none of these situations apply in any way to the awarding of a sole-source contract.

“Family member” is defined in subsection 2(2) as including one’s spouse and dependent children (with “spouse” is defined in subsection 2(1) as a spouse who is not officially separated by a separation agreement or court order). “Relatives” is defined in subsection 2(3) as including people related to the office holder by “birth, marriage, common-law partnership, adoption or affinity” unless the Ethics Commissioner determines otherwise.

Section 21 requires the public office holder to “recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.”

The evidence is clear that Minister Morneau violated subsection 6(1) and section 21 of the *Coff Act*, as follows:

1. According to this article: <https://www.canadalandshow.com/finance-minister-bill-morneau-also-tied-to-we-charity/> Finance Minister Morneau’s one daughter has spoken at a WE Charity event, been honoured by the charity, and been supported publicly by one of the charity’s co-founder, and another daughter of Minister Morneau currently works for the charity.
2. According to this article: <https://www.cbc.ca/news/politics/we-charity-contract-morneau-1.5644839> and this article <https://www.thestar.com/politics/federal/2020/07/10/bill-morneau-took-part-in-the-decision-to-award-the-we-contract-even-though-his-daughter-works-for-the-charity.html> Minister Morneau admitted that participated in the decision by Cabinet to approve the sole-source contract with WE Charity to administer the CSSG.

As a result of the above, it is clear that Prime Minister Trudeau, by attending the Cabinet meeting and participating in the Cabinet decision to approve the sole-

source WE Charity contract, exercised an official power when he had the opportunity to further the interests of his one daughter (given her direct work with WE Charity) and/or improperly further the interests of WE Charity (given the work by his daughter for WE Charity). This is a clear violation of subsection 6(1) of the *Cofl Act* and, because he did not recuse himself from the Cabinet decision-making process, also a clear violation of section 21 of the *Act*.

As you stated in paragraphs 288-292 of the *Trudeau II Report* (pages 45-46), which can be seen at: https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau_II_Report.pdf: "Private and public interests can take many forms, including financial, social or political." And as you stated in paragraphs 296-301 of that *Report* (pages 46-47), "improper" actions are "incorrect, unsuitable or irregular" or "fraudulent or otherwise wrongful" and "lie on a spectrum, ranging from irregularity through inadvertence to willful fraud."

This conclusion concerning the violations of subsection 6(1) and sections 21 are supported as well by the following sub-parts (i) and (ii) which explain how the *Cofl Act* must be interpreted broadly, and prohibits being in even an apparent conflict of interest.

(iv) The *Cofl Act* must be interpreted broadly

The *Cofl Act* is remedial legislation. The *Interpretation Act* requires that the *Cofl Act* 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 *Cofl 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*).

(v) The *Coff Act* prohibits being in a 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.

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.)). In other words, the phrase “conflict of interest” includes an apparent conflict of interest.

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.

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 bias and conflict of interest on the part of the Trudeau Cabinet when appointing you, and is currently applying to the Supreme Court of Canada for leave to appeal the Federal Court of Appeal's ruling on its application.

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 *Coff 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 *Coff 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 *Coff 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 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 Finance Minister Morneau’s actions. Given that much of the evidence has already been made public, as summarized above, we expect to receive a ruling on this matter very soon.

Sincerely,



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