



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 27, 2020

RE:

- 1. Request for inquiry into whether Minister of Finance Bill Morneau, and/or anyone acting on his behalf, including his ministerial staff, or a deputy minister, associate deputy minister, deputy head or associate deputy head in the Government of Canada acting on his behalf, participated in the decision or attempted to influence the decision of anyone else to recommend that a sole-source contract be given to WE Charity, and/or used inside information in participating or attempting to influence that decision**
- 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 Minister of Finance Bill Morneau and/or persons acting on his behalf exercising an official function in announcing funding for WE Charity in August 2019, and participating in or trying to influence the spring 2020 decision-making process in favour of recommending the sole-source WE Charity contract to

administer the new Canada Student Service Grant (CSSG) program, as there is evidence that gives reason to believe that this occurred, and that Minister Morneau and/or persons acting on his behalf who are covered by the *Coff Act* therefore violated subsection 6(1), and sections 21 and 9 of the *Act* (and possibly also sections 7 and 8 of the *Act*).

Current requests from MPs do not request investigation into Minister Morneau and/or others acting on his behalf participating in WE Charity funding decision-making processes in 2019 or 2020

Democracy Watch is filing this request because your communications with MPs about the inquiry you are already conducting into Minister Morneau strongly suggest that you are only investigating one action by Minister Morneau, namely taking part in the Cabinet decision to give final approval for the WE Charity contract, as violations of only subsection 6(1) and section 21 of the *Coff Act*.

Your office's tweet on July 16, which can be seen on Twitter at:

<https://twitter.com/EthicsCanada/status/1283765866136514561>

strongly suggests this, and your July 21st letter to Democracy Watch which can be seen at: <https://democracywatch.ca/wp-content/uploads/LettFromECreMorneauJuly212020.pdf>

in response to Democracy Watch's July 13th letter to you, which can be seen at:

<https://democracywatch.ca/wp-content/uploads/LettToEthicsCommReMorneauAndWECharityContractJuly132020.pdf>

does not contain any information which suggests that you are examining more than Minister Morneau's action of taking part in the Cabinet decision to give final approval for the WE Charity contract.

As Democracy Watch set out in its July 13th letter to you, the evidence is already clear that Minister Morneau violated subsection 6(1) and section 21 of the *Coff Act* by participating in that Cabinet decision. Minister Morneau, like Prime Minister Trudeau, has essentially admitted that he violated those provisions of the *Coff Act* as he has apologized and acknowledged that he should not have participated in that Cabinet decision, as can be seen in this media article:

<https://www.ctvnews.ca/politics/trudeau-morneau-apologize-for-not-recusing-themselves-from-we-decision-1.5021910>.

As a result, Democracy Watch expects that you will issue a ruling very soon finding Minister Morneau, and Prime Minister Trudeau, violated subsection 6(1) and section 21 of the *Coff Act*.

In addition, on July 23rd, NDP MP Charlie Angus wrote to you in this letter:

https://69490847-1bbc-4d85-bb17-dc869f025e9a.filesusr.com/ugd/3c9b44_532d35d724a8430b86587eda21e7d76d.pdf

requesting only that you examine whether Minister Morneau accepted a gift from WE Charity of approximately \$41,000 in travel expenses that violates the *Coff Act*.

Also on July 23rd, Conservative MPs Michael Barrett, Pierre Poilievre and Michael Cooper wrote to you the letter contained in this tweet on Twitter: <https://twitter.com/MikeBarrettON/status/1286349414852898817> requesting only that you investigate the Morneau family's travel expenses covered by WE Charity as a gift from WE (as a violation of section 11 of the *Coff Act* re: prohibited gifts, and section 23 which requires disclosing gifts worth more than \$200, and possibly also section 12 (accepting flights on private aircraft, if any of Morneau's family's travel was on an aircraft chartered by WE), and finally Morneau failing to publicly declare past recusals (as required by subsection 25(1)).

All of these communications to date strongly suggest that you have not been requested by any MP to investigate, and are not investigating, two of the most important questions raised by this situation, namely:

Did Minister Morneau and/or anyone acting on his behalf in his office or the Office of the Privy Council, and/or a deputy minister, associate deputy minister, deputy head or associate deputy head in the Government of Canada acting on his behalf, exercise an official duty, power or function or attempt to influence anyone's decision to recommend a grant be given to WE Charity in August 2019, in violation of subsection 6(1) and section 21 (and possibly also sections 9, 7 and 8) of the *Conflict of Interest Act*?

Did Minister Morneau and/or anyone acting on his behalf in his office or the Office of the Privy Council, and/or a deputy minister, associate deputy minister, deputy head or associate deputy head in the Government of Canada acting on his behalf, exercise an official duty, power or function or participate in the public service's decision or attempt to influence the decision of anyone in the public service to recommend a sole-source contract be given to WE Charity in June 2020, in violation of subsection 6(1) and section 21 (and possibly also sections 9, 7 and 8) of the *Conflict of Interest Act*?

Democracy Watch's position is that there is reason to believe that Minister Morneau and/or anyone acting on his behalf exercised an official duty, power or function and/or participated in and/or attempted to influence both the 2019 and 2020 decisions to give the public's money to WE Charity and that, therefore, these two situations need to be investigated. **See part 1 below** for the reasons for Democracy Watch's request for these inquiries.

Democracy Watch's position is also that you should recuse yourself from investigating and ruling on this matter as you were handpicked by the Trudeau Cabinet, including Minister Morneau, through a secretive and dishonest process. **See part 2 below** for the reasons for this position.

Democracy Watch's position is also that you are effectively required to 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. **See part 3 below** for the reasons for this position.

- 1. Request for inquiries into actions of Minister Morneau, and/or anyone acting on his behalf, violating subsection 6(1) and/or section 9 of the *Coff Act* by exercising an official power, duty or function or attempting to influence anyone's decision to recommend and give funding WE Charity in 2019 and 2020 (and also section 21 for failing to recuse from the decision-making process, and possibly also section 7 if preferential treatment was offered, and also section 8 if secret information was used)**

(a) WE Charity has been one of Minister Morneau's private interests since at least the summer of 2017, and arguably since fall 2016

The evidence is clear that WE Charity and its related organizations have been a "private interest" of Minister Morneau as defined by the *Coff Act* since at least the summer of 2017, and arguably since fall 2016, as follows:

1. According to the first few minutes of Minister Morneau's testimony on July 22, 2020 before the House of Commons Standing Committee on Finance, which begins at the 14.08 mark at: <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>, he and his family took two WE Charity trips in 2017, paying \$52,000 of the costs of the trips but not paying approximately \$41,000 of the costs of the trips;
2. Also according to the first few minutes of Minister Morneau's testimony, his wife donated \$50,000 to WE Charity in April 2018, and he and his wife donated \$50,000 to WE Charity in June 2020.
3. 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 (also confirmed in this article: <https://www.thestar.com/entertainment/2016/10/09/17-year-old-clare-morneau-carves-her-own-path-through-advocacy-work-govani.html>), been honoured by the charity, and been supported publicly by one of the charity's co-founder endorsing her October 2016 book (as can be seen at: <https://www.amazon.ca/Kakuma-Girls-Sharing-Stories-Hardship/dp/1988025141>), and another daughter of Minister Morneau has worked at WE Charity since July 2019, and currently works for the charity.

(b) Minister Morneau and anyone acting on his behalf have therefore been prohibited by the *Cofl Act* from participating in or influencing decisions that specifically apply to or affect WE Charity since summer 2017

Given WE Charity has been one of Minister Morneau's private interests since at least summer 2017, and arguably since fall 2016, since then he and anyone acting on his behalf have been prohibited by the *Cofl Act* from participating in, or attempting to influence, decisions that specifically affect WE Charity.

The phrase "anyone acting on his behalf" in reference to Minister Morneau includes the following people, all of whom are covered by the *Cofl Act*, and all of whom Minister Morneau appoints and/or serve at his pleasure:

1. the staff of the Finance Minister's Office, all of whom he appoints;
2. all Department of Finance deputy ministers, associate deputy ministers, deputy heads and associate deputy heads (and equivalent positions) all of whom the GIC appoints under section 127.1 of the *PSEA*. See that section of the *PSEA* at: <https://laws-lois.justice.gc.ca/eng/acts/p-33.01/page-11.html#h-404798>.

Subsection 6(1) of the *Cofl Act*, combined with section 4 and the definition of private interest in subsection 2(1), prohibit 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 *Cofl 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 or funding to a specific organization.

"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."

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](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.”

As well, Minister Morneau and anyone acting on his behalf are prohibited by section 9 of the *Act* from using “his or her position as a public office holder to seek to influence a decision of another person so as to further the public officeholder’s private interests or those of the public office holder’s relatives or friends, or to improperly further another person’s private interests.”

In addition, Section 8 of the *Cofl Act* prohibits an office holder from using “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.”

With regard to the participation in or influencing of any decision that would affect WE Charity being improper for Minister Morneau or anyone acting on his behalf, according to the part 2 Policy Statement of the Contracting Policy of the Government of Canada at: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494> contracting “shall be conducted in a manner that will: a. stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds...” and, according to part 4.2.8, along with section 9 of the *Department of Public Works and Government Services Act* (S.C. 1996, c. 16), no other minister other than the Minister of Public Works are permitted to be involved in government contracting processes. By definition, then, it would be improper if Minister Morneau or anyone on behalf of the Minister Morneau participated in or attempted to influence a funding process in favour of WE Charity.

According to the Prime Minister’s *Open and Accountable Government* guide, Annex E, sub-annex E.3, at: https://pm.gc.ca/en/news/backgrounders/2015/11/27/open-and-accountable-government#Support_to_Ministers ministerial staff act at the direction of ministers, and while they do not have legal authority over public servants, and would be acting improperly if they tried to direct any public servant to do anything, under the Annex I: Code of Conduct for Ministerial Exempt Staff at: https://pm.gc.ca/en/news/backgrounders/2015/11/27/open-and-accountable-government#Code_of_Conduct this does not in any way preclude or prevent a situation in which a staff person for the Prime Minister or any other minister attempts to influence a public servant. As well, according to this Treasury Board report on responsibilities and accountabilities of ministers and senior officials,

subsection 3.2 at <https://www.tbs-sct.gc.ca/report/rev-exa/ar-er-eng.pdf>: “the minister is accountable for anything done in his or her name by exempt staff.”

Finally, Section 7 of the *Coff Act* prohibits a public office holder, in the exercise of an official power, duty or function, giving “preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.”

In former Ethics Commissioner Mary Dawson’s [2012 ruling](#) on Conservative Minister Paradis giving preferential treatment to former Conservative MP Rahim Jaffer, Commissioner Dawson wrote (on page 21), 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.””

Section 7 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.

(c) The *Coff Act* must be interpreted broadly

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

(d) The *Coff Act* 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.

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.

(e) Inquiry and ruling needed as there is reason to believe Minister Morneau violated subsection 6(1) and section 21 of the *Coff Act* by announcing the \$3 million in funding to WE Charity in August 2019 (and possibly also violated sections 9, 7 and 8)

On August 21, 2019, Minister Morneau announced \$3 million in funding from the Government of Canada to WE Charity, as confirmed by this August 20, 2019 Government of Canada Media Advisory:

<https://www.canada.ca/en/employment-social-development/news/2019/08/minister-morneau-will-visit-we-charity-to-highlight-the-government-of-canadas-commitment-to-youth.html>

and this August 21, 2019 Government of Canada news release:

<https://www.canada.ca/en/employment-social-development/news/2019/08/government-of-canada-supports-social-enterprises-led-by-young-people.html>

and this August 21, 2019 media article:

https://www.huffingtonpost.ca/entry/we-charity-federal-donation-kielburger_ca_5d5dd4f0e4b02cc97c8807d7

and this August 21, 2019 tweet by Minister Morneau:

https://twitter.com/Bill_Morneau/status/1164251551306829825

The \$3 million in funding is the second listed grant on this Government of Canada webpage:

https://search.open.canada.ca/en/gc/?sort=score%20desc&page=1&search_text=WE%20Charity.

Given it was announced in a Government of Canada Media Advisory and News Release, announcing the funding was clearly an exercise of an official function by Minister Morneau. As a result, given WE Charity has been one of Minister Morneau’s private interests since at least summer 2017, and arguably since fall 2016, Minister Morneau clearly violated subsection 6(1) of the *Coff Act* by making the decision to participate in the announcement, and, because he did not recuse himself from making the decision, he also clearly violated section 21 of the *Act*.

According to his July 22, 2020 testimony before the House of Commons Finance Committee which begins at the 14.08 mark at:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/>

[-1/33603?Language=English&Stream=Video](https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video), specifically from the 14:29:30 mark on to the 14:31:21 mark, Minister Morneau is questioned about the announcement he made. At around the 14:30:30 mark, and again at the 14:31:19 mark, Minister Morneau claims that he was not involved in the development of the program funding that he announced.

However, Democracy Watch's position is that given he announced the funding, and given (as set out below in subsection (e)) he and his office participated in the spring 2020 decision-making process that led to giving sole-source funding to WE Charity, an investigation is warranted into whether Minister Morneau or anyone acting on his behalf also participated in the decision-making process or attempted to influence the process that led to the funding decision, in violation of subsection 6(1), and section 21, or section 9 of the *Coff Act* (and possibly also sections 7 and 8).

To be complete, the inquiry must examine all communications concerning the WE Charity funding (letters, faxes, emails, texts, pins, phone calls, virtual calls (Zoom, FaceTime, Skype etc.)) between and amongst everyone involved: public servants, Cabinet ministers, ministerial staff or Cabinet appointees (including deputy ministers, associate deputy ministers, deputy heads and associate deputy heads), and representatives of WE charity.

(f) Inquiry and ruling needed as there is reason to believe Minister Morneau violated subsection 6(1) and section 21, and section 9 of the *Coff Act* in spring 2020 by participating in and/or attempting to influence and/or having his staff and officials participate in and/or attempt to influence, the decision to give sole-source contract to WE Charity of up to \$43.5 million (and possibly also sections 7 and 8)

According to Minister Morneau's testimony on July 22, 2020 before the House of Commons Standing Committee on Finance, which begins at the 14.08 mark in the video at:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>, specifically the section from the 14.16 mark on, and most specifically the section from the 14.20 mark on to the 14.23 mark, Minister Morneau summarizes how he and his staff and officials, at his direction, participated in the decision to give the sole-source contract to WE Charity of up to \$43.5 million from April 5, 2020 on to June 3, 2020.

The participation is confirmed by the testimony on July 22, 2020 before the House of Commons Standing Committee on Finance of Michelle Kovacevic, Assistant Deputy Minister of Federal Provincial-Relations and Social Policy at the Department of Finance, which begins at the 15:27:33 mark in the video at:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>. Ms. Kovacevic testified:

1. she and her team met with Minister Morneau in early April 2020;

2. at the 15:32 mark that she received on April 9, 2020 a document on stakeholder feedback prepared by Minister Morneau's office that included WE Charity as one of the stakeholders;
3. at the 15:32:11 mark that on April 16th during an email discussion:
 - "I encouraged ESDC to include WE Charity in their analysis of potential delivery options."
4. at the 15:32:30 that on April 18th she informed Minister Morneau that ESDC was considering WE Charity as one of the delivery options;
5. at the 15:32:45 that her team held a joint tele-conference with ESDC staff at which WE Charity was considered as a delivery option;
6. at the 15:32:50 mark, that on April 19th she received a copy of WE Charity's April 9th social entrepreneurship program proposal that had been provided to various ministers already
7. at the 15:33:10 mark, that on April 19th in the evening her team providing a briefing update package to Minister Morneau's office that included WE Charity's proposal as an annex;
8. at the 15:33:20 mark, that on April 20 Minister Morneau's office "connected with" WE Charity to discuss their ability to deliver volunteer service, and that the record of that call states:
 - "that WE Charity will re-work their 10-week summer program proposal to fully meet the policy objective of national service, and increase their current placements of 8,000 to double."
9. at the 15:33:47 mark, that on April 23rd her team met with ESDC and discussed WE Charity administering the Canada Student Service Grant (CSSG) program which had been announced by Prime Minister Trudeau on April 22nd, and that her team set up a meeting for the next afternoon with WE Charity;
10. at the 15:34 mark, that Finance and ESDC officials spoke with WE Charity on April 24 to discuss its capacity;
11. at the 15:34:27 mark, that on May 7 she received a copy from ESDC of WE Charity's May 4 proposal to administer the CSSG program;
12. at the 15:34:45 mark on, that her team continued to work with ESDC officials to develop the program, and that she continued to brief Minister Morneau's office as the proposal moved through the steps toward Cabinet approval, and WE Charity was discussed throughout until the recommendation was made by ESDC to give a sole-source contract to WE Charity to administer the CSSG program which (as she also states at the 15:52 mark on to the 15:53 mark) her team of Finance officials approved of and recommended Minister Morneau approve.

The participation of officials acting on behalf of Minister Morneau in this decision-making process from April 8, 2020 on has also been confirmed by the July 16, 2020 testimony before the House of Commons Standing Committee of Finance of Rachel Wernick, Senior Assistant Deputy Minister, Skills and Employment Branch, Department of Employment and Social Development, which can be seen on pages 14 on of the transcript of her testimony at:

<https://www.ourcommons.ca/Content/Committee/431/FINA/Evidence/EV10832083/FINAEV41-E.PDF>.

In her testimony, as set on page 14 of the transcript, and again on page 17, and again on pages 24-25 (especially just before the 1725 mark), Ms. Wernick states that she was asked by an unnamed Department of Finance official “to provide information, analysis and assessment of potential options for including service opportunities in the student package” and that she subsequently had discussions with “Department of Finance officials” and “asked my Department of Finance colleagues if they could help us flesh out the details” which they did provide to her.

To be clear, this testimony, especially the detailed testimony of Ms. Kovacevic, makes it very clear that the participation of Minister Morneau and his staff and officials were much more than just attending the Cabinet meeting on May 22, 2020 at which the WE Charity contract was approved, an action you are already investigating.

As Minister Morneau, Ms. Wernick and especially Ms. Kovacevic testified, Minister Morneau and his staff and officials acting on his behalf were involved throughout the process from April 5th to June 3rd when Minister Morneau, according to his testimony, signed off himself on the funding flowing to WE Charity. Most concerning is the April 20 contact between people in Minister Morneau’s office with WE Charity which resulted in WE Charity re-working its initial proposal to meet the objectives of the CSSG program.

While an investigation is needed to establish exactly how many times Minister Morneau and his staff especially, and officials acting on his behalf, exercised an official power, duty or function and/or participated in and/or attempted to influence the decision that led to recommendation to Cabinet that up to \$43.5 million in sole-source funding to WE Charity, it is clear that they did exercise official powers, duties and functions, and did participate in and did attempt to influence that decision.

As a result, it is clear that the participation of Minister Morneau, and any of his staff or officials in the Department of Finance acting on his behalf (whom he does not name during his testimony) who are also covered by the *Cofl Act*, violated subsection 6(1) and 21 of the *Cofl Act* and also section 9 of the *Act*.

It is also possible that Minister Morneau and/or his staff or officials acting on his behalf, violated section 7 of the *Act* by communicating only with WE Charity concerning the possibility of administering the CSSG program, thereby giving preferential treatment to WE based on Minister Morneau’s relationship with the co-founders of WE Charity. It is also possible that Minister Morneau and/or his staff or officials acting on his behalf, violated section 8 of the *Act* by using inside information to further the interests of WE Charity and/or improperly further its interests.

For all these reasons, Democracy Watch requests that you ensure an investigation into the actions of Minister Morneau and everyone who acted on his behalf during this decision-making process.

To be complete, the inquiry must examine all communications concerning the WE Charity contract (letters, faxes, emails, texts, pins, phone calls, virtual calls (Zoom, FaceTime, Skype etc.)) between and amongst everyone involved: public servants, Cabinet ministers, ministerial staff or Cabinet appointees (including deputy ministers, associate deputy ministers, deputy heads and associate deputy heads), and representatives of 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

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, 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 *Cofl Act*. During the hearing, the transcript of which you can see at:

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 *Cofl 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 *Cofl 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 whether the Minister Morneau, or anyone acting on his behalf, exercised an official power duty or function and/or participated in and/or attempted to influence anyone's decision to recommend that WE Charity be awarded a sole-source contract to administer the CSSG program.

Given that much of the information concerning the situation has already been made public, as summarized above, we expect to receive a ruling on this matter very soon.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', is positioned above the typed name.

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