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Office of the Conflict of Interest and Ethics Commissioner  
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April 24, 2023

**RE:**

- 1. Request for inquiry into Prime Minister Trudeau giving “special rapporteur” contract to his friend David Johnston**
- 2. Request that Interim Commissioner recuse themselves from conducting inquiry and ruling on the above matter if Trudeau Cabinet does not choose person jointly with opposition parties**

Dear Office of the Conflict of Interest and Ethics Commissioner:

I am writing concerning enforcement of the *Conflict of Interest Act* (the “COIA” -- (S.C. 2006, c. 9, s. 2) generally, and specifically requesting an inquiry into Prime Minister Trudeau’s giving the “special rapporteur” contract to his friend David Johnston, as there is evidence that gives reason to believe that this action violated subsection 6(1) and section 21 of the COIA. **See parts 1 and 2 below** for the evidence and legal arguments concerning this violation.

Democracy Watch’s position is also that whoever is chosen as Interim Ethics Commissioner should recuse themselves from the inquiry and ruling on this matter if they are chosen by the Trudeau Cabinet. The Interim Ethics Commissioner should only be considered independent, and without an apparent conflict of interest/bias, if the Trudeau Cabinet chooses the Commissioner jointly with the opposition parties, either through an all-party committee or through an independent appointments commission made up of people chosen by all parties. **See part 3 below** for more details of the reasons for this position.

**1. Prime Minister Trudeau participated in the decision to give the “special rapporteur” government contract to his friend David Johnston**

**a) Prime Minister Trudeau and David Johnston are friends**

In the interview aired on CTV’s Question Period show on June 5, 2016 that can be viewed at:

<https://www.ctvnews.ca/politics/trudeau-children-bring-rideau-hall-alive-gov-gen-says-1.2931963>

Mr. Johnston said that his spouse Sharon and Prime Minister Trudeau’s family “have become good friends, and our friendship with Mr. Trudeau goes back to children’s days when our five daughters and he and his two brothers skied together at Mont Tremblant.”

In this statement aired on September 28, 2017:

<https://globalnews.ca/video/3774739/trudeau-thanks-close-friend-david-johnston-for-service-as-governor-general>

Prime Minister Trudeau called Mr. Johnston a “family friend” and “friendly neighbour, quite literally”.

**b) Prime Minister Trudeau participated in decision to hire David Johnston**

All of the available evidence shows clearly that Prime Minister Trudeau participated in the decision to hire David Johnston as “special rapporteur”. Prime Minister Trudeau issued the following announcement on March 15, 2023 that says the government intends to hire Mr. Johnston, and includes a quotation from PM Trudeau:

<https://pm.gc.ca/en/news/news-releases/2023/03/15/prime-minister-announces-independent-special-rapporteur-to-help-protect>.

On March 21, 2023, PM Trudeau issued the following announcement setting out Mr. Johnston’s mandate, again including a quotation from PM Trudeau:

<https://pm.gc.ca/en/news/news-releases/2023/03/21/prime-minister-announces-mandate-of-independent-special-rapporteur>

On April 5, 2023, Order in Council 2023-0323 was issued by the Governor-in-Council “on the recommendation of the Prime Minister” hiring Mr. Johnston to be “special adviser to the Prime Minister” on a part-time basis, holding office at the pleasure of PM Trudeau until December 12, 2023 at a per diem rate of \$1,400 to \$1,600. This OIC can be viewed at:

<https://orders-in-council.canada.ca/attachment.php?attach=43486&lang=en>

and Order in Council 2023-0324, which contains the Schedule setting out details concerning Mr. Johnston’s conditions of employment and mandate can be viewed at:

<https://orders-in-council.canada.ca/attachment.php?attach=43487&lang=en>

**c) The contract furthers the interests of the PM’s friend Mr. Johnston**

The “special rapporteur” contract pays Mr. Johnston for his time spent fulfilling the mandate set out in OIC 2023-0324. As a result, the contract given to Mr. Johnston by the GIC on the recommendation of PM Trudeau furthers the financial interests of PM Trudeau’s self-described friend Mr. Johnston.

**2. Prime Minister Trudeau violated subsection 6(1) and section 21 of the COIA by participating in the decision to give the “special rapporteur” contract to his friend David Johnston**

**d) The *Conflict of Interest Act* (the “COIA”) must be interpreted broadly**

The *Conflict of Interest Act* (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*).

**e) Participating in a decision to award a government contract to a friend violates subsection 6(1) and section 21 of the COIA**

Subsection 6(1), combined with section 4 and the definition of private interest in subsection 2(1) of *Conflict of Interest Act* (the “COIA”), 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 *COIA* 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.

Paragraphs 288-292 of the *Trudeau II Report* (pages 45-46) by former Ethics Commissioner Mario Dion, 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%20II%20Report.pdf):

state that, under the *COIA*, “Private and public interests can take many forms, including financial, social or political.”

“Improper” is not defined in the *COIA*. However, in paragraphs 296-301 of the *Trudeau II Report* (pages 46-47), former Commissioner Dion defined “improper” actions as actions that are “incorrect, unsuitable or irregular” or “fraudulent or otherwise wrongful” and “lie on a spectrum, ranging from irregularity through inadvertence to willful fraud.”

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.”

What it means to be someone's “friend” is not defined in the *COIA* but has been defined in various rulings, most recently in *The Ng Report* issued on December 13, 2023 by former Ethics Commissioner Mario Dion, which can be seen at:

[https://ciec-ccie-parl.gc.ca/en/publications/Documents/InvestigationReports/Ng%20Report.pdf](https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Ng%20Report.pdf)

In the analysis section of that report from paragraphs 51 to 66, paragraph 56 states that a past ruling by former Ethics Commissioner Mary Dawson defined “friends” as individuals who have “a close bond of friendship, a feeling of affection or a special kinship”. Paragraph 57 says that Commissioner Dion in a past ruling stated that “more objective indicia could also be used in determining the existence of a friendship” including “the duration of, and motive for, the relationship; the nature, frequency and exclusivity of interactions; the sharing of meals and gifts in a personal setting; and mutual displays of trust, respect, affection or admiration.”

According to both criteria, and according to their own public statements, PM Trudeau and Mr. Johnston are friends.

As a result, by participating in the decision to give his friend Mr. Johnston a government contract that pays Mr. Johnston and, therefore, furthers his private

interest, PM Trudeau participated in a decision when he was in a conflict of interest as defined by the *COIA*. Therefore, PM Trudeau violated subsection 6(1) of the *COIA*.

By failing to recuse himself from the decision-making process to hand Mr. Johnston the contract, a decision-making process in which he had a conflict of interest, PM Trudeau also violated section 21 of the *COIA*.

**f) Participating in a decision to award a government contract to a family friend violates subsection 6(1) and section 21 of the *COIA***

Even if it was determined that PM Trudeau and Mr. Johnston were only “family friends” and that only direct friendship relationships are covered by the past Commissioners’ definitions of “friend” under the *COIA*, it was still improper (as former Commissioner Dion has defined it) for PM Trudeau to participate in the decision to give the government contract to Mr. Johnston for several reasons.

As noted in the above subsection 2(d), the combination of section 4 and subsection 6(1) of the *COIA* make it a violation to “improperly further another person’s private interests.” As set out above, PM Trudeau furthered Mr. Johnston’s private financial interests by participating in the decision to give him the contract.

Secondly, the fact alone that PM Trudeau gave a government contract to a “family friend” is improper. It is incorrect and unsuitable to give a government contract to a family friend, especially when the contract includes a mandate, as Mr. Johnston’s does, to judge the PM’s actions. According to OIC 2023-0324, Mr. Johnston is mandated to judge the steps the PM took “to defend against or otherwise deal with foreign interference in electoral processes.”

Third, Annex B of the PM’s own *Open and Accountable Government* guidelines (“*PM’s Code*”) requires the PM and all members of the GIC to “avoid conflict of interest, the appearance of conflict of interest and situations that have the potential to involve conflicts of interest” – in other words, it is improper for the PM to be in an appearance of a conflict of interest.

PM Trudeau clearly has, at the very least, an appearance of a conflict of interest when participating in a decision to give a government contract to a family friend. Therefore, by participating in the decision to give the contract to Mr. Johnston, PM Trudeau at the very least improperly furthered Mr. Johnston’s private interests, and so still violated subsection 6(1) and 21 of the *COIA*.

### **3. Request that Interim Ethics Commissioner recuse themselves if they are appointed by the Trudeau Cabinet, instead of jointly by the Cabinet and opposition parties**

This complaint letter is about PM Trudeau's actions. In *Democracy Watch v. Canada (Attorney General)*, 2020 FCA 28, the Federal Court of Appeal ruled unanimously that the federal Cabinet is biased when choosing the Ethics Commissioner, who enforces the COIA which applies to the federal Cabinet.

As a result, Democracy Watch's position is that any Interim Ethics Commissioner who is chosen by the Trudeau Cabinet alone will have an apparent conflict of interest/reasonable apprehension of bias in examining and ruling on this complaint, and so should recuse themselves.

This bias would be compounded if the Interim Ethics Commissioner is someone who is applying to be appointed as the full-time Ethics Commissioner – an appointment process the Trudeau Cabinet is also currently controlling completely. They would have this bias because they would have an incentive to please the Trudeau Cabinet in order to be appointed to a seven-year term as Commissioner.

This bias would only disappear if the Interim Ethics Commissioner is chosen either through an all-party committee that reaches a consensus on the person chosen, or through an independent appointments commission made up of people chosen by all federal parties that have seats in the House of Commons, with the commission doing a public search for candidates and then submitting a short list of qualified candidates to an all-party committee that would make the final choice by consensus.

If an all-party joint process is not used to choose the Interim Ethics Commissioner, then the Commissioner will be biased, and must recuse themselves and refer the examination and ruling on this matter 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.

Given that much of the information concerning the situation is already public, as summarized above, and given that Mr. Johnston is actively undertaking his mandate with a deadline of May 23, 2023 for producing a key report, 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