



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
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Ottawa, Ontario
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Email: ciec-ccie@parl.gc.ca

February 8, 2019

RE:

- 1. Request for inquiry into members of the Office of the Prime Minister trying to influence the Attorney General's decision concerning the prosecution of SNC-Lavalin**
- 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 "Act") generally, and specifically requesting an inquiry into whether members of the Office of the Prime Minister (PMO) tried to influence the decision of the Attorney General of Canada Jody Wilson-Raybould concerning intervening in the prosecution of SNC-Lavalin by the Public Prosecution Service of Canada, as reported today in print edition of the *Globe and Mail* and also the online edition at:

<https://www.theglobeandmail.com/politics/article-pmo-pressed-justice-minister-to-abandon-prosecution-of-snc-lavalin/>

Also published in the online edition of the *Globe* today is this article:

Canada's leading democratic reform and corporate responsibility organization

<https://www.theglobeandmail.com/politics/article-scheer-calls-for-full-disclosure-as-trudeau-denies-pmo-directed/>

in which Prime Minister Trudeau re-affirms the earlier statement issued by the PMO that neither the Prime Minister nor anyone in his office “directed” the Attorney General to intervene in the prosecution of SNC-Lavalin.

However, as the article makes clear, the Prime Minister did not answer the direct question concerning whether he or anyone in the PMO tried to influence the Attorney General’s decision not to intervene.

Democracy Watch’s position is that, if the Prime Minister or anyone from the PMO covered by the *Conflict of Interest Act* did attempt to influence the Attorney General’s decision in this situation, it would violate section 9 of the *Conflict of Interest Act* and, depending on the details of the situation, possibly also sections 7 and 8 of the *Act*. Democracy Watch’s position is also that you should recuse yourself from investigating and ruling on this matter. The reasons for these positions are set out below.

1. Request for inquiry into Prime Minister Trudeau giving preferential treatment to the companies and/or organizations or other individuals represented by Liberal Party donors by inviting those donors to a gala dinner in honour of Chinese Premier Li Keqiang on September 22, 2016

The primary purpose of the *Conflict of Interest 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*).

Section 9 of the *Conflict of Interest Act* states:

“Influence

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder’s private interests or those of the public office holder’s relatives or friends or to improperly further another person’s private interests.”

It is clearly improper for the Prime Minister or any member of the PMO to try to influence a decision of the Attorney General of Canada not to intervene in the decision of the Public Prosecution Service of Canada (PPSC) concerning a prosecution. The PPSC was established explicitly to prevent the Attorney General, who is also the Minister of Justice and a member of the Cabinet, from controlling prosecution decisions in order to protect those decisions from political influence.

The private interest in this situation is clear – SNC-Lavalin’s interest in not being prosecuted.

And although “person” is not defined in the Act, “person” is generally defined in law as including corporations. Former Ethics Commissioner Mary Dawson stated this clearly on page 5 of her January 13, 2010 report referred to as the “Discontinuance Report” which you can see at:

<http://ciec-ccie.parl.gc.ca/Documents/English/Public%20Reports/Examination%20Reports/The%20Discontinuance%20Report.pdf>

As a result, if the Prime Minister or anyone in the PMO covered by the *Conflict of Interest Act* attempted to influence the Attorney General’s decision not to intervene in the prosecution of SNC-Lavalin, it was an attempt “use his or her position as a public office holder to seek to influence a decision of another person so as to... improperly further another person’s private interests.” Therefore, it was clearly a violation of section 9 of the *Act*.

Section 8 of the *Act* states:

“Insider information

8. No public office holder shall use 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.”

According to the Globe article referenced above:

“Since the beginning of 2017, representatives of SNC-Lavalin met with federal government officials and parliamentarians more than 50 times on the topic of “justice” and “law enforcement,” according to the federal lobbyists registry. This includes 14 visits with people in the PMO. Those they met included Gerald Butts, principal secretary to the Prime Minister, and Mathieu Bouchard, Mr. Trudeau’s senior adviser on Quebec – whom they met 12 times. Mr. Trudeau’s senior policy adviser, Elder Marques, also met with company representatives.”

If, during these meetings, members of the PMO obtained secret information not available to the public, and then used that information to try to influence the Attorney General’s decision, then they also violated section 8 of the *Act*.

Section 7 of the *Act* states:

"Preferential treatment

7. No public office holder shall, in the exercise of an official power, duty or function, give 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 of the *Act* 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.

A full investigation is needed to determine whether anyone representing SNC-Lavalin has a relationship with anyone in the PMO that would have caused them to give SNC-Lavalin preferential treatment by trying to influence the Attorney General's decision.

Democracy Watch's position is that the information in the *Globe* articles, though they rely on "sources who were granted anonymity to speak directly about what went on behind-the-scenes in the matter" is enough to give you reason to believe that a public office holder has contravened at least section 9 (and possibly also section 7 and/or 8) of the *Conflict of Interest Act*.

As this is the threshold for initiating an examination under the *Act*, Democracy Watch requests an examination of whether a member of the PMO has violated sections 7, 8 and/or 9 of the *Act*.

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.

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 *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 *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 *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.

Sincerely,



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