



Democracy Watch
démocratie 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

October 31, 2018

RE:

- 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**
- 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* generally, and specifically requesting an inquiry into Prime Minister Trudeau giving preferential treatment to the companies and/or organizations or other individuals represented by several Liberal Party donors by inviting those donors to a gala dinner in honour of Chinese Premier Li Keqiang in September 2016, as reported in the *Globe and Mail*.

Democracy Watch's position is that these invitations violated section 7 of the *Conflict of Interest Act*. Democracy Watch's position is also that you should

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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 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."

You can see the *Globe and Mail's* article about the September 22, 2016 event at:

<http://www.theglobeandmail.com/news/politics/trudeau-invited-liberal-donors-to-official-dinner-for-chinese-premier/article33343988/>.

According to the article, of the approximately 260 guests Prime Minister Trudeau hosted at a dinner in honour of Chinese Premier Li Keqiang last September, approximately 60 accompanied Mr. Li, and Mr. Trudeau was accompanied by several senior Cabinet ministers and staff. That means approximately 185 non-governmental people were invited to attend the event by Prime Minister Trudeau. Of those 185 people, 61 were Liberal Party donors (several of them top-level donors).

As the article details, several of the attendees who are Liberal Party donors represent companies that seek decisions from the federal government, and/or have lobbyists registered to lobby the federal government, including BMO Capital Markets, Huawei Technologies Canada Co., Power Corp., and Wealth One.

Only a full investigation would be able to determine whether there were other invitees who are Liberal Party donors and/or fundraisers or assist the Liberal Party in some other way(s), and also represent an individual, company and/or organization that seeks decisions from the federal government and/or has lobbyists registered to lobby the federal government.

In your December 13, 2016 letter to Conservative Party leader Rona Ambrose, you state that:

“In order to establish reasonable grounds that a contravention of section 7 may have occurred, I would need some information indicating that ... in the exercise of their official powers or duties, [a Liberal government Cabinet minister] gave preferential treatment...” to someone who attended a Liberal Party fundraising event.

As you know from the letter Democracy Watch sent you on September 17, 2018, Democracy Watch’s position disagrees with Commissioner Dawson’s interpretation of section 7 because it claims that being invited to an exclusive, invite-only fundraising event is not preferential treatment in and of itself. Democracy Watch’s position is that by hosting or attending invite-only fundraising events, Prime Minister Trudeau and his Cabinet ministers are violating section 7 because they are giving preferential treatment to whichever organization or person the people attending the event represent by selling the event ticket buyers exclusive access to the event, and to themselves as public office holders. The important factor is that these are invite-only events – members of the general public are not invited – and the invitation to have access to the minister is the preferential treatment that the invitees receive from whichever minister hosts or attends the event.

The September 22, 2016 event is an even more clear case of preferential treatment. Prime Minister Trudeau’s invitees were already Liberal Party donors, and were invited at least in part based on that being party of their identity.

Former Ethics Commissioner Dawson ruled in the Paradis ruling cited above (at p.22):

"I believe that Mr. Paradis assisted Mr. Jaffer because he wanted to help a former caucus colleague. This preferential treatment was therefore based on the identity of Mr. Jaffer."

With regard to the September 22, 2016 event, the ruling should be:

"Prime Minister Trudeau invited the representatives of various companies and organizations who attended the event because they were top-level Liberal Party donors. The preferential treatment was therefore based on their identity as donors."

Being a top-level donor is the same as being a former caucus colleague -- they are both identifiers of a person based on actions they took and roles they have.

Therefore, being invited by Prime Minister Trudeau to the event for Mr. Li amounts to "treatment more favourable than might be accorded to anyone else in similar circumstances."

The ratio of 61 out 185 (approximately 33 per cent) non-government attendees at the event being Liberal Party donors also crosses the line set out in section 7 of the *Act*. Liberal Party donors do not make up 33 per cent of Canadians, nor 33 per cent of Canadians who would be interested in meeting Mr. Li and his government associates, nor 33 per cent of Canadians who would be interested in having access to Prime Minister Trudeau and several senior Cabinet ministers.

Therefore, that such a high ratio of Liberal Party donors were invited to the event also amounts to "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 responsively) than anyone else based on the identity of the person or organization that is asking for help or contacting them.

More specifically, section 7 means that Liberal Cabinet ministers and their staff, and senior government officials, can't meet or communicate with, or help or give access to themselves or to others whom the federal government has access to, to Liberal Party members/donors/supporters/affiliated organizations more (or more responsively) than they can give those things to anyone else or to any other organization.

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.

Please contact Democracy Watch at the address above if you need any more information to delegate an inquiry into the September 22, 2016 event. Given that much of the information concerning the event has already been made public, we expect to receive a ruling very soon.

Sincerely,



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