



democracy Watch
émocratie en surveillance

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Office of the Conflict of Interest and Ethics Commissioner
ATTN: Mary Dawson, Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

Email: ciec-ccie@parl.gc.ca

December 16, 2016

RE: (a) Request for disclosure of whether you have applied to be reappointed for another term; (b) Request that if you have applied, that you recuse yourself from ruling on the matters addressed in this letter; (c) 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

Dear Commissioner Dawson:

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 on September, as reported in the *Globe and Mail* today, which I believe is a violation of section 7 of the *Conflict of Interest Act*.

(a) Request for disclosure of whether you have applied to be reappointed

I am writing to request first, as a few journalists have in the past month, that you disclose whether you have applied to the federal Cabinet to be reappointed to another term as Conflict of Interest and Ethics Commissioner (as is allowed under subsection 81(3) of the *Parliament of Canada Act*).

Your current term ends in early January. The deadline for applying to the position was November 21, 2016. It has recently been extended to January 9, 2017 but that extension was made after November 21st. As a result, you must know whether you have applied to be reappointed.

You must disclose whether you have applied to be reappointed because if you have you are in a financial conflict of interest currently concerning making rulings that affect Prime Minister Trudeau and members of his Cabinet or Liberal Party caucus.

You have this financial conflict of interest because your reappointment would mean either that you would receive either approximately \$100,000 (if you were reappointed under subsection 82(2) of the *Parliament of Canada Act* in an interim position for six months, as you have been since last July) or you would receive up to \$1.4 million (approximately \$200,000 annually for the 7-year term).

Whether you receive either of those amounts of money will be decided by the Cabinet (“Governor-in-Council”) which under subsection 81(1) of the *Parliament of Canada Act* decides whether to nominate you for reappointment, with approval by the House of Commons (where Liberal MPs hold a clear majority of the seats).

It is unclear in the *Parliament of Canada Act* whether the Cabinet even has to consult with the leaders of every recognized party in the House of Commons on your reappointment. Subsection 81(1) requires that consultation on first appointment, but subsection 81(3) states simply:

“Reappointment

81.(3) The Commissioner is eligible to be reappointed for one or more terms of up to seven years each.”

Democracy Watch’s position is that really you are in a conflict of interest when ruling on any matters that affect any MP, as the Liberals also have an interest in having opposition party MPs found guilty of violating of the *Conflict of Interest Act* or the *Conflict of Interest Code for Members of the House of Commons*, as those rulings would hurt the opposition parties’ profile and standing with the public.

Section 10 of the *Conflict of Interest Act* states:

“Offers of outside employment

10. No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.”

I believe you face an analogous situation – only it is your plans for continuing as Commissioner that create conflict of interest.

Clause 3(b) of the *Conflict of Interest Act* states:

“Purpose

...

3.(b) 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;

To fulfill this main purpose of the *Act*, you must disclose whether you have applied to be reappointed.

Given that you are an employee of the public, clearly the public also has a right to know whether you have applied to be reappointed.

(b) Recusal if you have applied to be reappointed

For all the reasons set out above in section (a), if you have applied to be reappointed either in an interim position for six months or for another 7-year term, you must recuse yourself from ruling on any matters concerning the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*.

(c) 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

If you have applied to be reappointed as Ethics Commissioner, please recuse yourself and refer the rest of this letter to another person for consideration and ruling (such as a provincial conflict of interest commissioner).

If you have not, and are not going to apply to be reappointed, please consider the rest of this letter and issue a ruling as soon as possible.

As noted above in section (b), 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*).

In many cases since 2007, most recently concerning fundraising events involving Cabinet ministers and/or their staff, you have not been interpreting or enforcing the *Act* with its main purpose in mind, nor have you been upholding the Supreme Court's standard.

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 your 2012 ruling on Conservative Minister Paradis giving preferential treatment to former Conservative MP Rahim Jaffer, you 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 today 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, Democracy Watch's position disagrees with your interpretation of section 7 because you claim 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 22nd 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.

You 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 22nd event, you should rule:

"I believe that 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.

Again, if you have applied to be reappointed as Ethics Commissioner, I request that you immediately refer this complaint to an independent decision-maker (such as a provincial ethics commissioner) so they can issue a ruling.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

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