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March 25, 2019

RE: Request for investigation and public ruling on Premier Ford's staff, and deputy minister, giving preferential treatment to Ron Taverner, Mario Di Tomasso, and Chris Frogatt, and on Premier Ford concerning ensuring his staff comply with provincial ethics rules

Dear Commissioner Wake and Commissioner Linden:

I am writing requesting an investigation and public ruling on the actions of Premier Ford's staff, and former deputy minister (Secretary of the Cabinet), giving preferential treatment to Ron Taverner, Mario Di Tomasso, and Chris Frogatt, and on Premier Ford concerning ensuring his staff comply with provincial ethics rules.

I am sending this letter also to you Conflict of Interest Commissioner Linden because under clause 62(1)4 of the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A, you are currently the “ethics executive” for the former Secretary of the Cabinet, whose actions Democracy Watch is requesting be investigated in addition to various members of Premier Ford’s staff. It is not entirely clear what happens on May 1, 2019 to this role when your two offices are merged, which is why I am sending this entire letter to both of you.

A. The provincial ethics law and regulations

As summarized on the website of the Integrity Commissioner at:

<http://www.oico.on.ca/home/ministers'-staff-ethical-conduct/overview>

ministers’ staff are subject to various ethics measures by the *Public Service of Ontario Act* (the “*Act*” – sections 2, 4, 66 to 69 and 94 to 98) and a regulation under that *Act* (*O.Reg. 382/07*).

Section 6 of the regulation prohibits giving “preferential treatment to any person or entity” and requires ministers’ staff to “endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity...”

For the Secretary of the Cabinet, it seems different parts of the *Act* apply (sections 56-65) and a different regulation (*O.Reg. 381/07*). In any case, that regulation has the same section 6 rules prohibiting preferential treatment, as set out on the website of the Conflict of Interest Commissioner at:

<http://www.coicommissioner.gov.on.ca/conflicts-of-interest/rules-at-a-glance/>

Section 6 of these regulations sets out a very important rule -- it means that ministers’ staff, the Secretary of the Cabinet, all deputy ministers, and all government employees, can't meet or communicate with, or help or give access to themselves, to anyone or any entity more (or more responsively) than to anyone else or any other entity.

This rule, and the requirement to endeavour to avoid even the appearance of preferential treatment, set a very high standard and broad duty of fairness.

Section 67 of the *Act* requires Premier Ford, like other ministers, to ensure his staff are familiar with the ethics rules, and to promote ethical conduct by his staff.

Premier Ford has the power to penalize his staff for violations of the ethics rules under section 70 of the *Act*.

B. Evidence of Preferential Treatment in Integrity Commissioner Ruling

Commissioner Wake's ruling issued last Wednesday concerning the OPP Commissioner appointment process, which can be seen at:

<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-doug-ford-premier-of-ontario-march-20-2019.pdf?sfvrsn=4>

contains clear evidence that Premier Ford's Chief of Staff Dean French, and former Secretary of the Cabinet Steve Orsini, provided preferential treatment to Mr. Taverner with regard to the offer Premier Ford made to Taverner of an executive job with the government's Ontario Cannabis store.

The ruling also contains clear evidence that Mr. French and Mr. Orsini provided preferential treatment to Mr. Taverner throughout the OPP Commissioner appointment process that resulted in Premier Ford's attempted appointment of his friend Mr. Taverner. In fact, Commissioner Wake concluded that anyone "would have serious doubts about the fairness of the process to the other candidates" (p. 63).

There is also evidence in Commissioner Wake's ruling that Mr. French and Mr. Orsini provided preferential treatment to Mario Di Tomasso by considering only him for the position of Deputy Minister of Community Safety, which helped ensure Mr. Taverner's appointment as OPP Commissioner given Mr. Di Tomasso was Mr. Taverner's former boss at the Toronto Police Service.

Finally, there is also evidence in Commissioner Wake's ruling that Mr. French provided preferential treatment to Chris Froggatt in connecting him (and him only) with Mr. Taverner after the Ford Cabinet appointed him as OPP Commissioner to have him give Mr. Taverner communications advice and assistance.

Further investigation is needed by Commissioner Wake to determine if the actions of Derek O'Toole, Senior Policy Advisor in Premier Ford's office, and Greg Harrington, Policy Advisor to Mr. French, also crossed the line in the ethics law. There is some evidence in Commissioner Wake's ruling that they also provided preferential treatment to Mr. Taverner.

The following sets out the references to this clear evidence of preferential treatment in Integrity Commissioner Wake's ruling:

1. On pp. 21-24 of his ruling (paras. 78-90), Commissioner Wake details how Premier Ford offered his friend Ron Taverner a job on the executive of the government's new Ontario Cannabis Store, and how Dean French also made the offer to Mr. Taverner, and how Mr. French and Steve Orsini made the offer process happen officially, at a salary of \$270,000 annually

for four years, through the Deputy Minister for the Ministry of Finance – all of which is clear evidence that Mr. Taverner was given preferential treatment;

2. Commissioner Wake gathered all of the following evidence of preferential treatment given to Mr. Taverner through the OPP Commissioner appointment process, and also to Mario Di Tomasso during that process:
 - a. On p. 30 of his ruling, in the transcript of Commissioner Wake’s interview with Dean French, Premier Ford’s Chief of Staff, Mr. French says both he and Premier Ford both recommended to then-Secretary of the Cabinet Steve Orsini (who serves at the pleasure of Premier Ford) that Ron Taverner be considered for the OPP Commissioner job (and then French corrects himself to say that only he recommended that to Orsini);
 - b. On p. 31 (para. 115), Mr. French is cited as saying to Mr. Orsini that the Premier held Taverner “in high regard” and (para. 116) that he recommended to Taverner that he apply for OPP Commissioner;
 - c. On p. 33 (para. 127), Mr. French confirms that he suggested to Mr. Orsini that Mario Di Tomasso be made Deputy Minister to the Minister of Community Safety;
 - d. Also on pp. 33-34 (paras. 129-132), former Deputy Minister to the Minister of Community Safety Matt Torigian (who was pushed out of his position by Mr. French, as detailed on pp. 31-32) says Mr. Orsini told Mr. Torigian that he was being “pressured” to find a job for Mr. Taverner (and Mr. Orsini confirms some aspects of this conversation);
 - e. On p. 35, Deputy Attorney General Paul Boniferro states that Mr. Orsini told him that “...the Premier’s Office had suggested Mr. Taverner for a role at the OCS in the summer and that he thought that the Premier’s Office would also suggest Mr. Taverner for the deputy minister role. Mr. Boniferro stated that the Secretary thought that it would be more appropriate for Mr. Taverner to apply for the OPP Commissioner position.”
 - f. Also on p. 35 (para. 135), Mr. Orsini confirms that Mr. Di Tomasso was the only person he interviewed for the Deputy Minister of Community Safety position;
 - g. On pp. 37-40 (paras. 139-152), it is detailed that Mr. Orsini reached out to Mr. Taverner, met with him, and let Sal Badali of Odgers Berndtson (the search firm contracted to assist with the OPP Commissioner appointment) know that Mr. Taverner was interested in the OPP position;
 - h. On pp. 43-44 (paras. 165-168), it is detailed that Mr. French called Mr. Orsini to request that the rank requirement in the OPP Commissioner job notice be changed;
 - i. On pp. 44-45 (paras. 169-171), Derek O’Toole, Senior Policy Advisor in Premier Ford’s office, and Greg Harrington, Policy

Advisor to Mr. French, confirm that they both spoke to Mr. Orsini about changing the rank requirements in the OPP Commissioner job notice;

- j. On p. 45 (para. 173), the Executive Assistant to the General Counsel for Mr. Orsini confirms that Mr. Orsini told her that Mr. French had asked him to change the job notice, and also told her that “he suspected that Mr. Taverner called Mr. French to notify him that he would not be able to apply to the job” unless the rank requirement was changed;
 - k. On p. 52 (paras. 203-204), it is confirmed that Mr. French requested to be on the selection committee for OPP Commissioner and be involved “early in the process” and that Mr. Di Tomasso (Mr. Taverner’s former boss in the Toronto Police Service) was also on the selection committee;
 - l. On pp. 53-54 (paras. 205-207), it is confirmed that Mr. Orsini texted Mr. French to let him know Mr. Taverner was on the short list of candidates for OPP Commissioner, and that Mr. French responded by texting that was the “Best news all day” and that Mr. Orsini knew “they were interested in” Mr. Taverner (with “they” very likely referring to the Premier and Mr. French);
 - m. On pp. 55-56 (paras. 215-216), it is confirmed that Mr. Orsini sent a text to Mr. French to let him know the “Great news” that Mr. Taverner was one of three candidates approved after the first round of interviews and that “It is now up to the second panel of you, Mario, Sal and I to recommend to the Premier.”
 - n. On pp. 56-59 (paras. 219-229), it is confirmed that Mr. French, Mr. O’Toole and Mr. Harrington all attended a meeting before the second round of interviews with Mr. Badali, Mr. Di Tomasso and Mr. Orsini (all members of the selection committee), and that subsequently Mr. French (after meeting again with Mr. Orsini, and after talking with Premier Ford) finally recognized the clear conflict of interest resulting from his involvement in the selection process up to that point, and so he finally withdrew from the second-round selection committee interview process the evening before it took place;
 - o. On pp. 62-3 (paras. 239-242, and see also paras. 260-261), Mr. Wake concludes that; the selection process was not independent of Premier Ford; Mr. Orsini knew that Premier Ford wanted to give Taverner a government job and had taken actions to ensure Taverner applied for the OPP Commissioner job, and; Mr. Orsini had communications with Mr. French during the selection process that favoured Mr. Taverner, and the result was the selection process was unfairly tilted in favour of Mr. Taverner.
3. There is also evidence Dean French gave Chris Froggatt preferential treatment by contacting him (and him only) to connect him with Ron

Taverner after he was appointed OPP Commissioner to give Taverner communications advice and assistance, as documented on p. 68 (paras. 262-263) and on pp. 75-76 (paras. 282-283) of the Integrity Commissioner's ruling.

C. Premier Ford not ensuring ethical conduct by his staff

As noted above, section 67 of the *Act* requires Premier Ford, like other ministers, to ensure his staff are familiar with the ethics rules, and to promote ethical conduct by his staff.

After the Integrity Commissioner's ruling was made public, which raised "serious doubts" concerning the fairness of the actions of Premier Ford's Chief of Staff Dean French, Premier Ford was asked by a member of the media about those actions. His response was:

"What actions? I have one of the greatest chief of staffs that anyone could ever ask for."

This is evidence that Premier Ford does not "promote ethical conduct by public servants who work in the minister's office" (as required by clause 67(b)). A further investigation is needed to determine whether Premier Ford has done anything to promote ethical conduct, and to ensure that his staff are familiar with the ethics rules set out in the regulations under the *Act* (as required by clause 67(a)).

Democracy Watch's opinion is that the Integrity Commissioner has jurisdiction to issue a public ruling concerning whether Premier Ford is complying with section 67 of the *Act*, given that such a ruling would be directly connected to, and relate directly, to the investigation and ruling on the actions of Premier Ford's staff requested in this complaint.

D. The requirement for public rulings on this complaint

Under subsection 69(7) of the *Public Service of Ontario Act*, the Integrity Commissioner shall notify the minister responsible (in this case Premier Ford) of any determination made concerning a violation of the ethics rules set out in *O.Reg. 382/07* after inquiries under subsection 69(4) and (5).

Under subsection 65(9) and (10) of the *Act*, the Conflict of Interest Commissioner shall notify the minister responsible (in this case Premier Ford) of any determination made concerning a violation of the ethics rules set out in *O.Reg. 381/07* after inquiries under subsections 65(4) and (5).

There is no provision in the Act prohibiting the Integrity Commissioner, or the Conflict of Interest Commissioner, from making their rulings under these sections public. As a result, the provincial parliament expressed no intent that your rulings be kept secret.

The public has a right to see your rulings on this complaint under the quasi-constitutional right to access to government information, as articulated by the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, paragraphs 59 to 63.

As well, as the public interest complainant concerning the actions of Premier Ford's staff, and the former Secretary of the Cabinet (Premier Ford's former Deputy Minister), Democracy Watch's opinion is that it has a right under the rules of natural justice to receive your rulings on this complaint.

As a result, Democracy Watch expects that you will issue public rulings in response to this complaint.

Given the Integrity Commissioner's March 20th ruling contains clear evidence of preferential treatment, Democracy Watch expects that you will be able to rule on the actions of Premier Ford's staff, and his former deputy minister, very soon.

As well, Democracy Watch expects that only a brief investigation will be needed to determine of Premier Ford has, as required by the *Act*, promoted ethical conduct by his staff.

Please let me know if you need any more information to act on this request as Democracy Watch is happy to provide further details.

We look forward to hearing back from you about this request, and hopefully to seeing your public ruling issued very soon.

Sincerely,



Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch