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émocratie en surveillance

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June 27, 2019

**RE: Request for investigation and public ruling on Premier Ford's former Chief of Staff Dean French giving preferential treatment to family members and friends, and Premier Ford not ensuring ethical conduct by Mr. French, and possibly also violating the *Members' Integrity Act***

Dear Commissioner Wake:

I am writing requesting an investigation and public ruling on the actions of Premier Ford's former Chief of Staff Dean French giving preferential treatment to family members and friends by helping ensure they received government appointments. I am also requesting an investigation and public ruling on the actions of Premier Ford concerning ensuring Mr. French complied with provincial ethics rules, and possibly also violating the *Members' Integrity Act* ("*MI Act*") if he was involved in the selection of the appointees.

## **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 71, 72 and 73, and 94 to 98) and a regulation under that Act (*O.Reg. 382/07*).

Section 6 of regulation *O.Reg. 382/07* 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..."

Section 6 of this regulations sets out a very important rule -- it means that ministers' staff 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.

You have jurisdiction over Mr. French even though he has resigned his position as Chief of Staff, as several sections of *O.Reg. 382-07* continue to apply to him.

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 by Dean French**

Recent media reports have contained evidence of members of Dean French's family, as well as a friend of his son, receiving Governor of Ontario appointments. Taken together, the evidence in these media reports give you reason to believe that Mr. French has given preferential treatment to at least some of these people. The list of appointments Democracy Watch requests be investigated includes the following:

1. The appointment of Taylor Shields, second cousin of Dean French's spouse, as the government's "agent-general" in New York;
2. The appointment of Tyler Albrecht, friend of Dean French's sons who played on lacrosse teams they played on that Mr. French was involved with in various roles, as the government's "agent-general" in London;

NOTE: I cannot refer you to the Government of Ontario's news release concerning the appointments of Ms. Shield's and Mr. Albrecht because the Government has deleted the news release from this part of its website:

<https://news.ontario.ca/newsroom/en>

3. The appointment of Katherine Pal, Dean French's niece, as a part-time member of the Public Accountants Council, by Order-in-Council 1498/2018 which can be seen at: <https://www.ontario.ca/orders-in-council/oc-14982018>
4. The appointment of Andrew Suboch, friend of Dean French, to the Justices of the Peace Appointments Advisory Committee;
5. The appointment of Thomas Staples, whom Dean French coached as a lacrosse player, as staff person for Government Whip Bill Walker (Mr. Staples later became executive assistant and legislative affairs advisor to Mr. Walker when he became Minister of Government and Consumer Services;
6. The appointment of Earl Provost, former chief of staff for former Toronto Mayor Rob Ford (brother of Premier Ford), as the government's "agent-general" in Chicago, and;
7. The appointment of Jag Badwal, former Progressive Conservative Party of Ontario president, as the government's "agent-general" in Dallas.

The media reports concerning these appointments can be seen at:

<https://www.theglobeandmail.com/canada/article-doug-ford-gives-165k-appointments-to-insiders-and-lacrosse-player/>

and

<https://globalnews.ca/news/5413872/ford-government-appointment-advisor-nyc/>

and

<https://globalnews.ca/news/5413331/ontario-agents-general-appointed/>

and

<https://www.theglobeandmail.com/politics/article-premier-ford-revokes-two-new-appointments-after-personal-ties-to-chief/>

and

[https://www.huffingtonpost.ca/entry/doug-ford-earl-provost-ontario\\_ca\\_5d0cd201e4b0aa375f4b3e88](https://www.huffingtonpost.ca/entry/doug-ford-earl-provost-ontario_ca_5d0cd201e4b0aa375f4b3e88)

and

<https://www.theglobeandmail.com/politics/article-ford-government-facing-fresh-criticism-after-departure-of-another-dean/>

and

<https://ipolitics.ca/2019/06/26/dean-french-helped-get-former-lacrosse-player-government-job-source/>

### **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 concerning the appointment of Ron Taverner, long-time friend of Premier Ford, as OPP Commissioner, a ruling that 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, along with the recent appointments, and the fact that Mr. French resigned his position last Friday as opposed to being fired by Premier Ford, is evidence that Premier Ford did not "promote ethical conduct by public servants who work in the minister's office" concerning Mr. French's actions (as required by clause 67(b) of the *Act*). 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).

There is no provision in the *Act* prohibiting the Integrity 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 former Chief of Staff Dean French, Democracy Watch's opinion is that it has a right under the rules of natural justice to receive your rulings on this complaint.

While it is true that Mr. French has resigned, and a couple of the appointments have been rescinded, and one other appointee has resigned, none of this makes the question of whether Mr. French violated the law moot. Part II of *O.Reg. 382/07* continues to apply to Mr. French, and as a result you still have clear jurisdiction over his actions. No provision in the *Public Service of Ontario Act* states that a public servant can escape accountability for their actions as a public servant simply by resigning, retiring or being fired, and no provision prohibits you from investigating a former public servant's actions when they were a public servant.

In short, it would be simply negligent for you to refuse to investigate Mr. French's actions concerning the appointment of the seven people listed above.

As a result, Democracy Watch expects that you will issue public rulings in response to this complaint concerning each of the seven appointments listed above.

## **E. Premier Ford possibly also in violation of the *Members' Integrity Act***

### **(a) Possible violation of the Preamble and parliamentary conventions under the *Members' Integrity Act***

As you know, the Preamble to the *Members' Integrity Act* states in subsection (3) that:

“Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.”

and in subsection (4) that:

“Members are expected to act with integrity and impartiality that will bear the closest scrutiny.”

You suggest, by quoting them under the heading “Standards of Behaviour” on the webpage:

<http://www.oico.on.ca/home/mpp-integrity/resources-for-new-mpps>

that you consider the expectations set out in the Preamble to be as enforceable as all the other rules in the *Act*, as you state at the end of that section on that webpage that:

“The Act contains further rules and statements of values that must be adhered to by all MPPs.”

Historical interpretations and applications of the rule set out in section 30 of the *Act* that allows you to rule on a violation of “Ontario parliamentary convention” by a member of the legislature relate to the enforceability of the provisions in the Preamble of the *Act*. As you know, on pages 8 (paragraph 24) and 9 (paragraphs 25-26) of his December 12, 2002 ruling on the actions of Member Sandra Pupatello, then-Integrity Commissioner Coulter A. Osborne stated:

“[24]... The Act clearly incorporates the standards imposed by parliamentary convention within its necessarily general terms...

“[25] Parliamentary convention is not defined in the *Act*. A convention is a generally accepted rule or practice – established by usage or custom (see *Blacks Law Dictionary*). Parliamentary convention refers that which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the *Act* as set out in the *Act*’s preamble (the reconciliation of private interests and public duties).

“[26] I think it is accepted that there are limits on what members can do in their personal affairs and what they can do for friends, relatives, constituents etc. Some of those limits are established by parliamentary convention.”

You can see that report at:

<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-pupatello-purolator-courier-service-dec-12-2002-.pdf?sfvrsn=12>

On page 2 of your July 14, 2016 report on Patrick Brown, you repeated the point made in paragraph 25 of Commissioner Osborne’s report cited above, and also listed six parliamentary conventions that have been upheld in rulings by past commissioners. That report is at:

<http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-patrick-brown-mpp-for-simcoe-north-july-14-2016.pdf?sfvrsn=4>

If, during your investigation of Mr. French’s role in the seven appointments listed above, you determine that Premier Ford participated in the selection of the appointees or directed or approved of Mr. French’s actions, it raises the questions of whether Premier Ford violated the Preamble provisions and parliamentary conventions.

Given the Preamble rules set such a high standard of integrity and impartiality, Mr. Ford's participation in the appointment of at least the relatives and friends of Mr. French seems to clearly be a violation of the Preamble rules, and likely also the appointments of Mr. Provost and Mr. Badwal. The appointments were in no way impartial decisions.

Democracy Watch's position is also that there is an Ontario parliamentary convention that Cabinet ministers shall not appoint personal friends or friends of their political party to government jobs. The only exception to this convention is, in Democracy Watch's opinion, that the Premier and Cabinet ministers are allowed to hire anyone they want as their staff (other than family members). This exception exists as it is considered acceptable that, despite the fact Cabinet staff are paid for with the public's money, Cabinet ministers would want their staff all to be loyal supporters of the ruling party and themselves, and therefore should have the discretion to hire whomever they want (again, other than family members).

As a result of the above, Democracy Watch's position is that you should find that Premier Ford violated the Preamble rules, and this Ontario parliamentary convention, if he participated in the selection process for the seven appointees listed above, or directed or approved of Dean French's actions during the selection processes.

**(b) Possible violation of the sections 2 and/or 4 of the *Members' Integrity Act***

Sections 2 and 4 of the *Members' Integrity Act* state:

**"Conflict of interest**

**2** A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 2.

...

**Influence**

**4** A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4."

If, during your investigation of Mr. French's role in the seven appointments listed above, you determine that Premier Ford participated in the selection of the appointees or directed or approved of Mr. French's actions, it raises the following questions:

1. Did Premier Ford violate the Preamble rules of the *Act* by participating in the selection of these appointees?
2. Did Premier Ford violate section 2 and/or 4 of the *Act* by either participating in or trying to influence a decision that improperly furthered another person's private interest? (in this case, the interest of the seven appointees)?

With regard to question 2, the huge loophole in the *Act*, namely the definition in section 1 that says a "private interest":

"does not include an interest in a decision,  
(a) that is of general application,  
(b) that affects a member of the Assembly as one of a broad class of persons..."

would not allow Premier Ford to escape scrutiny for participating in the appointment decisions because each appointment was a specific decision, not a decision that applies generally or affects the Premier as one of a broad class of persons.

In this situation it is by definition "improper" for Premier Ford to participate in or try to influence the processes that led to the appointment of Mr. French's family members and friends.

It is arguably also "improper" for Premier Ford to hand government jobs to his brother's former chief of staff (Mr. Provost), and the former president of the PC Party (Mr. Badwal), as there is a reasonable apprehension of bias on the part of Mr. Ford, and his bias would taint his participation in the appointment process and, therefore, make it improper.

According to section 3 of the Government of Ontario's Agencies and Appointments Directive:

<https://www.ontario.ca/page/agencies-and-appointments-directive#section-5>

it states in subsection 3.1 that government appointments will "reflect the diversity of the people of Ontario and the need to deliver services and decisions in a professional, ethical and competent manner."

Democracy Watch questions very much whether the appointment of Dean French's family members and friends, and the appointments of Mr. Provost and Mr. Badwal, reflect the diversity of the people of Ontario, and also whether their appointments will ensure professional decisions given the lack of experience of some of the appointees. Democracy Watch also questions very much whether their appointments will ensure ethical decision-making in the government, given that Mr. French's unethical bias is likely the basis for the appointments of his family members and friends, and also possibly the basis for the appointments of Mr. Provost and Mr. Badwal.

You can see a fairly detailed framework of what a good government appointments process entails in section 4.02 of the Auditor General's 2016 Annual Report at:

[http://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1\\_402en16.pdf](http://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_402en16.pdf).

As you will see, key elements of a good process include an open, transparent, merit-based appointment process. From the evidence on record, the appointment processes for all seven of the appointees listed above lacked all of these key elements.

On page 8 of his February 8, 2002 ruling on the actions of then-Deputy Premier and Minister of Finance Jim Flaherty, then-Integrity Commissioner Coulter A. Osborne stated concerning the word "improperly":

"that the qualification "improperly" is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black's Law Dictionary definition of "improper")."

You can see that ruling at:

<https://www.oico.on.ca/docs/default-source/commissioner%27s-reports/re-flaherty-minister-of-finance-feb-8-2002.pdf?sfvrsn=8>

For all of the above reasons, Democracy Watch's position is that if, during your investigation of Mr. French's actions, you find that Premier Ford participated in the selection process for the seven appointees listed above, or directed or approved of Dean French's actions during the selection processes, you should issue a public ruling that Premier Ford improperly furthered the private interests of the seven appointees, as the appointments were objectionable, unsuitable and, in the other ways detailed above, wrong.

In other words, if you find Premier Ford participated in any of the appointments, you should issue a ruling on Premier Ford's participation violated section 2 (and possibly also section 4) of the *Members' Integrity Act*.

I understand that your position is that you cannot conduct an inquiry unless a Member of the Legislative Assembly or the Executive Council requests it under section 30 of the *Act*.

Democracy Watch's position is that, given undertaking an inquiry is a discretionary action by you (under subsection 31(1) and (5) of the *Act*), and given your general enforcement power as the administrative tribunal that enforces the *Act*, and specifically under sections 23.1 and 25 of the *Act*, you therefore have discretionary power to undertake an inquiry based on the information in this letter.

As well, while it is true that Mr. French has resigned, and a couple of the appointments have been rescinded, and one other appointee has resigned, none of this makes the question of whether Premier Ford participated in the appointments in violation of the *Members' Integrity Act* moot. Premier Ford continues to be a member of the legislature subject to that *Act*, and as a result it would be unreasonable for you to fail to investigate whether he participated in, directed or approved of Mr. French's actions concerning the appointments of the seven people listed above.

Finally, given the seriousness of this situation, as it concerns the appointments of several people with ties to Mr. French and Premier Ford to government jobs which, as detailed above, were improper in several ways, Democracy Watch's position is that if you find Premier Ford participated in the appointments, you should recommend that the penalty for Premier Ford's violation be that his seat be declared vacant.

Premier Ford's participation in any or all of these seven appointments would raise concerns about violations of fundamental principles of democratic good government, including: avoiding conflicts of interest; ensuring appointments are merit-based, and; ensuring the independence of the public service.

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 rulings issued very soon.

Sincerely,



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