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émocratie en surveillance

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Integrity Commissioner J. David Wake
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November 12, 2018

RE:

- 1. Request for immediate disclosure of Public Disclosure Statements for Premier Ford and his Cabinet ministers;**
- 2. Request for ruling under section 13 that a so-called “blind” trust will be ineffective to prevent Premier Ford’s conflicts of interest;**
- 3. Request for ruling under section 13 that a fairness monitor is needed for all government transactions that affect, directly or indirectly, Premier Ford’s company and his company’s clients, and regular audits;**
- 4. Request that you recommend that the *Members’ Integrity Act* be changed to require the Premier, Cabinet ministers, and all MPPs, to recuse themselves on all matters, not just specific matters, when they have a financial conflict involving their investments, and;**
- 5. Request that you recommend that the *Act* be changed to ban trusts as a means of escaping the application of measures in the *Act*.**

Dear Commissioner Wake:

I am writing concerning the private interests of Premier Doug Ford and his Cabinet ministers, and also with regard to the rules and enforcement of the *Members Integrity Act* generally.

1. Request for immediate disclosure of Public Disclosure Statements for Premier Ford and his Cabinet ministers

I am writing first because I believe that more than enough time has passed for at least the Premier's and his Cabinet ministers' Public Disclosure Statements to be processed and posted online.

The Public Disclosure Statements are a key public accountability tool, allowing the media, the public, government employees, and opposition party MPPs, to track and monitor the private interests of other MPPs, most particularly the Premier and Cabinet ministers who hold the most decision-making power in the government.

The information in the Statements is needed by all of the above people to ensure that MPPs, again especially the Premier and Cabinet ministers:

1. are not taking part in any decision-making process that offers an opportunity, or using confidential information or their influence, "to further the member's private interest or improperly to further another person's private interest" (all of which are prohibited by sections 2-4 of the *Members' Integrity Act* ("Act"));
2. are not receiving a benefit from a government contract (as prohibited by section 7);
3. are not, if they are a member of Cabinet, engaged in employment or the practice of a profession (as prohibited in section 10);
4. do not, if they are a member of Cabinet, hold or trade in securities, stocks, futures or commodities (as prohibited, with loopholes, by section 11);
5. are not, if they are a member of Cabinet, engaged in the management of a business carried on by a corporation or carry on business through a partnership or sole proprietorship (as prohibited, with loopholes, by section 12);

The Premier and Cabinet ministers, 21 people in total, were required by subsections 20(1) and (2) of the *Act* to file their Private Disclosure Statement with your office by the end of August, and by subsection 21(3) to meet with you after filing that Statement. They had 60 days to prepare their statement.

More than two months has passed since then – more than enough time for your office to process and post the Public Disclosure Statements (as required under section 21 of the *Act*) for these 21 people.

These 21 people have made many major decisions since becoming Cabinet ministers, and the ongoing secrecy concerning their private interests makes it very difficult for the public to determine if they have furthered their own private interests by making any of those decisions.

There is no justification for any further delay in this disclosure. As a result, Democracy Watch requests that you immediately post the Public Disclosure Statements for these 21 people in the online registry at:

<http://pds.oico.on.ca/Pages/Public/PublicDisclosures.aspx>

2. Request for ruling under section 13 that a so-called “blind” trust will be ineffective for preventing Premier Ford’s conflicts of interest

In late August, media reports stated that Ford removed himself as sole director of his family company, Deco Labels & Tags Ltd., and named his wife and daughters as directors in his place. You can see one of the media reports at:

<https://www.qpbriefing.com/2018/08/29/premier-names-family-members-directors-of-his-company/>

As you know, under sections 7 and 10 through 12 of the *Act*, the Premier and Cabinet ministers are prohibited from taking part in various business, investment and commercial activities.

All of these activities are allowed, however, if you:

1. approve under subsection 13(3) the setting up of a trust by the Premier or a minister (under subsections 7(5), 11(3) or 12(2) and (3)) or any other arrangement and,
2. under subsection 13(2), if you are “satisfied that the activity, if carried on in the specified manner, will not create a conflict between the member’s private interest and public duty.”

Democracy Watch requests that you do not approve under section 13 Premier Doug Ford using a trust for his family business.

The Parker Commission recommended in 1987 that blind trusts be banned because they are a fiction as the Cabinet minister knows what assets they place in a blind trust (especially when it is a family company), and they choose the trustee(s) and the trustee(s) are allowed to give them an annual report. You can see a summary of that recommendation at:

<http://www.res.parl.gc.ca/Content/LOP/ResearchPublications/793-e.htm#frecommendationstxt>

For these same reasons, a trust will not be enough to shield Premier Ford from his and his family’s business interests (which, as far as we can tell, include Deco Labels & Tags Ltd., Deco Adhesive Products (1985) Limited; Wise Labels & Tags Ltd.; Doug Ford Holdings Inc.; Doug Ford Holdings Subsidiary Inc.).

Premier Ford will always know he still owns these companies. As well, Premier Ford is required, under subsection 20(4) of the *Act*, to update his private disclosure statement

with you within 30 days whenever there is a material change, which includes “a change in the income, assets or liabilities of the member or his or her spouse and minor children...” so he will receive updates from his spouse about changes in the company, his income, her income.

3. Request for ruling under section 13 that a fairness monitor is needed for all government transactions that affect, directly or indirectly, Premier Ford’s company and his company’s clients, as well as regular audits

Given that a so-called blind trust will be ineffective for Premier Ford, Democracy Watch requests that you require, under section 13, that the “specified manner” which you allow Premier Ford to continue to have an ownership stake in his family’s company includes other steps beyond setting up a trust, steps needed to ensure he and his Cabinet do not do anything to further the interests of his family companies, and any other companies he may have an interest in through his holding companies.

Specifically, Democracy Watch’s position is that a fairness monitor, chosen by someone like yourself or the Auditor General or the Ombudsman of Ontario, is needed for all government transactions that affect, directly or indirectly, Premier Ford’s companies and his companies’ clients, including any companies he has an interest in through his holding companies.

The monitor must be empowered to receive from whomever is running Deco Labels and the other companies accurate, timely updates of all the companies’ clients whenever there is a change in the identity of the clients, and must also be empowered to exchange information with government departments and institutions to determine all policy-making, contracting and other decision-making processes that affect Deco Labels, the other companies, and/or the companies’ clients directly or indirectly.

As well, Democracy Watch requests that you or the fairness monitor must also conduct regular audits of the communications of Premier Ford and his office, again to ensure he does not do anything to try to influence decisions in a way that will further the interests of his companies or their clients.

All of Premier Ford’s Cabinet ministers serve at his pleasure, and so they have an incentive to please him. He can show his displeasure with their actions in ways that it would be very difficult for an outsider to detect, such as by effectively removing decision-making power away from them and assuming it himself or delegating it to someone else.

That is why the fairness monitor needs to be empowered to monitor processes and transactions government-wide, to ensure that Premier Ford does not use any Cabinet minister or ministerial staff as a proxy to try to influence decisions to favour his companies and/or their clients.

These measures are clearly needed because a so-called “blind” trust would be a charade for Premier Ford and so further, comprehensive, clearly effective measures are needed to prevent conflicts.

These measures are also clearly needed because when Mr. Ford was a Toronto city councillor he attempted to advance the interests of clients of his company in ways that violated the council’s ethics code. You can read the details about why Mr. Ford was found guilty of violating the code in the Toronto Integrity Commissioner’s report at: <http://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-99042.pdf>

4. Request that you enforce the rules in the Preamble of the *Members’ Integrity Act*, and that you recommend the *Act* be changed to require the Premier, Cabinet ministers, and all MPPs, to recuse themselves on all matters, not just specific matters, when they have a financial conflict involving their investments

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 these expectations 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.”

Democracy Watch first requests that you make it clear by issuing a clear Guidance statement (as you have for Gifts, and for Reference Letters) that gives notice to all MPPs that you consider those two rules in the Preamble to be as enforceable as every other rule in the *Act*.

Secondly, Democracy Watch requests that you publicly, and strongly, recommend that a huge loophole in the *Act* be closed as it undermines every other rule in the *Act*. The definition in section 1 of “private interest” says that it

“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...”

Fully 99 percent of MPPs decisions, including even Cabinet decisions, are of general application or affect MPPs as one of a broad class of persons.

As a result, the *Act* does not apply to 99 percent decisions made by MPPs or by Cabinet. The *Act* only applies to one percent of their decisions. It means that MPPs, and especially the Premier and Cabinet ministers, can actually have a direct financial interest in a situation, and still propose changes to a law or regulation, and debate and vote on those changes, even if they will profit from the changes.

This loophole, especially if you decide that the rules in the Preamble are not as enforceable as every other rule in the *Act*, undermines the *Act* entirely.

I have not read every report issued by the Integrity Commissioner since 1991, but I am very surprised that:

- there is no mention of this loophole on the Overview page at: <http://www.oico.on.ca/home/mpp-integrity/overview>
- there is no mention of this loophole on the Resources for new MPPs page at: <http://www.oico.on.ca/home/mpp-integrity/resources-for-new-mpps>, and;
- there is no Guidance document on your website defining what “general application” and “broad class of persons” mean, given that those phrases are central to drawing the line between when the *Act* applies to an MPP’s actions and when it doesn’t apply.

There are many other loopholes in the *Act* (I will send you another letter about those other loopholes), but this is probably the most serious loophole.

For all these reasons, Democracy Watch requests that you issue not only a Guidance document clearly defining “general application” and “broad class of persons” but also that you issue a clear, strong, public recommendation that these loopholes be closed by adding, at the end of both the “general application” and “broad class of persons” subsections of the “private interest” definition, the following words:

“(unless the decision affects any type of investment or business interest of the member)”

Making this change to the definition would ensure that members, again especially the Premier and Cabinet ministers, are prohibited by the *Act* from taking part in decisions that they will profit from unless most everyone in Ontario is also profiting. For example, it will not prohibit members from taking part in decisions such as income tax cuts that apply generally, but it will prohibit members from taking part in decisions such as specific tax cuts or subsidies aimed at companies or industry sectors in which the member has investments or other types of business interests.

5. Request that you recommend that the *Act* be changed to ban trusts as a means of escaping the application of measures in the *Act*.

Finally, as mentioned above, the Parker Commission recommended in 1987 that blind trusts be banned because they are a fiction as the Cabinet minister knows what assets they place in a blind trust (especially when it is a family company), and they choose the trustee(s) and the trustee(s) are allowed to give them an annual report.

As a result, setting up a trust should not be allowed as a means of escaping the application of various prohibitions in the *Act*.

Democracy Watch requests that you issue a clear, strong, public recommendation calling for the trust provisions in subsections 7(5), 11(3) and 12(2) and (3) be removed from the *Act*.

You have an opportunity to uphold key measures in a key democratic good government law, the *Members' Integrity Act*. I hope you will not refuse to do so, and I hope you will also recommend key changes to close blatant loopholes that undermine the *Act*.

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

We look forward to hearing back from you about these requests, and hopefully to seeing your public rulings issued very soon.

Sincerely,

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

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