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November 27, 2019

**RE:**

- 1. Request for immediate updating of Premier Ford's Disclosure Statement;**
- 2. Request for ruling under subsection 12(2) (referring to clause 11(3)(1)) that a so-called "blind" trust is ineffective for preventing Premier Ford's conflicts of interest**
- 3. Request for ruling under subsection 12(2) (referring to clause 11(3)(1)) 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 also with regard to the rules and enforcement of the *Members Integrity Act* generally.

## 1. Request for immediate updating of Premier Ford's Disclosure Statement

I am writing first because Democracy Watch's position is that 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 (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 was required by subsections 20(1) and (2) of the *Act* to file his Private Disclosure Statement with your office by the end of August 2018, and by subsection 20(3) to meet with you after filing that Statement.

The Premier is also required by subsection 20(4) of the *Act* to update you: "...within 30 days after a change in the income, assets or liabilities of the member or his or her spouse and minor children or an event that causes a person to become or to cease to be a member of the member's family, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed."

Your office is required under section 21 of the *Act* to prepare and post the Public Disclosure Statement for Premier Ford.

According to this article in the *Globe and Mail*:

<https://www.theglobeandmail.com/canada/article-ontario-premier-ford-still-listed-as-president-of-family-labelling/>

Premier Ford's family company changed its name to Deco Flexible Packaging Ltd. on August 9, 2019. Premier Ford's current Disclosure Statement says that he was earning a salary from Deco Adhesive Products (1985) Limited, and from Deco Labels & Tags Ltd.

Has Premier Ford updated you concerning the name change of his family company? Is he still receiving a salary from either of the two listed companies?

If so, soon after whatever date Premier Ford updated you about either the name change or the salary change (if any), why did you not update his Public Disclosure Statement dated June 7, 2018 which can be found in the online Registry at:

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

so that everyone in government, and the public, would be informed of his current financial interests?

If Premier Ford did update you, and your position is that his Public Disclosure Statement has not been updated because you only update MPP's statements annually, that position is not only contradicted by the fact that Premier Ford's June 7, 2018 statement has an update re: his management trust being established on August 28, 2018, but is also a position that means everyone in the Ontario government could be denied accurate information concerning the current financial interests of MPPs, including the Premier and Cabinet ministers, for up to a year.

If Premier Ford did not update you on the name change, and possible salary change, then will you investigate him for violating subsection 20(4) of the *Act*?

We would appreciate an explanation of which of the above two possible series of events actually occurred or if another series of events occurred.

As well, clause 21(2)(d) of the Act:

<https://www.ontario.ca/laws/statute/94m38#BK25>

requires the Disclosure Statement you prepare to "list the names of any private companies mentioned in the private disclosure statement..." Doug Ford's Disclosure Statement dated June 7, 2018 states that he received (or receives) a salary from Deco Adhesive Products (1985) Limited, and Deco Labels & Tags Ltd., but it does not separately list the names of companies mentioned in Premier Ford's private disclosure statement. Will you add such a list to his Public Disclosure Statement?

## **2. Request for ruling under subsection 12(2) (referring to clause 11(3)(1)) that a so-called "blind" trust is ineffective for preventing Premier Ford's conflicts of interest**

In late August 2018, 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/>

These two recent *Globe and Mail* articles:

<https://www.theglobeandmail.com/canada/article-ontario-premier-ford-still-listed-as-president-of-family-labelling/>

and

<https://www.theglobeandmail.com/amp/canada/article-ontario-premier-ford-says-he-has-no-involvement-in-family-labelling/>

raise the same concerns that were raised in August 2018 concerning Premier Ford's ongoing interest in his family's company.

As well, the first of the above recent *Globe* articles quotes Ms. Michelle Renaud of your office as stating that:

"The Integrity Commissioner is currently meeting with every member, including the Premier, to review and discuss their own 2019 private disclosure statements. Through this process, the Commissioner ensures that each MPP's financial holdings are in compliance with the relevant sections of the Act."

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/or;
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."

As well, if the member is not taking part in the prohibited activities, under clauses 7(5)(1), 11(3)(1) or 12(2) you can still approve directly the provisions of a trust established under subsections 7(5), 11(3) or 12(2) of the *Act*.

Democracy Watch requests that you reverse the approval you gave last year under section 12(2) (referring to clause 11(3)(1)) to the management trust that Premier Doug Ford established for his family business.

The Parker Commission recommended in 1987 that so-called "blind" trusts be banned because they are a fiction as the Cabinet minister knows what assets they place in a such 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 and, as a result, the trust is not "blind" at all. You can see a summary of that recommendation at:

<http://publications.gc.ca/Collection-R/LoPBdP/BP/bp362-e.htm#C.%20Divestmenttxt>

And see also pages 7-8 at:

[https://www.toronto.ca/ext/digital\\_comm/inquiry/inquiry\\_site/cd/gg/add\\_pdf/77/Conflict\\_of\\_Interest/Electronic\\_Documents/Cdn\\_Governments/Federal/Federal\\_Canada\\_description.PDF](https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/cd/gg/add_pdf/77/Conflict_of_Interest/Electronic_Documents/Cdn_Governments/Federal/Federal_Canada_description.PDF)

For these same reasons, a trust is not 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 (possibly now both operating under the

name Deco Flexible Packaging Ltd.); Wise Labels & Tags Ltd.; Doug Ford Holdings Inc.; Doug Ford Holdings Subsidiary Inc.).

Premier Ford will always know he still owns these companies. As cited above in section 1, 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 receives updates from his spouse about changes in the company, his income, and her income.

In addition, under clause 11(3)(4) of the *Act*, Premier Ford receives regular updates from the trustees concerning the value of his family companies, and a year-end report of the companies’ net income for the year. And under clause 11(3)(5), Premier Ford also receives annually from the trustees “sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada).”

In short, Premier Ford’s trust does not remove from him, in any way, knowledge about key information concerning his family companies and, as a result, it does nothing to prevent him from being in a conflict of interest.

**3. Request for ruling under subsection 12(2) (referring to clause 11(3)(1)) 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 is ineffective for Premier Ford, Democracy Watch requests that you require, under clause 11(3)(1) of the *Act*, that the “provisions” of the trust through which you allow Premier Ford to continue to have an ownership stake in his family’s company must include 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 yourself or the Auditor General or the Ombudsman, 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 is 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 Guidance statement (as you have for Gifts at: <http://www.oico.on.ca/home/mpp-integrity/guidance-on-the-gift-rule>, and for Reference Letters at: <http://www.oico.on.ca/home/mpp-integrity/guidance-on-letters-of-reference>) that gives notice to all MPPs that you consider those two rules in the Preamble to be as enforceable as other rules 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*, 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 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,



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