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émocratie en surveillance

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Integrity Commissioner J. David Wake
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December 18, 2018

RE: Request for ruling on Premier Ford and Cabinet's appointment of Ian Todd as Trade Representative in Washington, D.C., and increase in Mr. Todd's salary

Dear Commissioner Wake:

I am writing requesting an investigation and ruling on the appointment of Ian Todd as Ontario's Trade Representative by Premier Doug Ford and his Cabinet ministers, as this raises questions concerning whether Premier Ford violated the *Members Integrity Act* (the "Act") by participating in the decision.

You can see in this Government of Ontario news release:

<https://news.ontario.ca/opo/en/2018/10/new-chapter-in-ontarios-relationship-with-the-united-states.html>

that it says "I am so happy to announce that we intend to appoint Ian Todd to be Ontario's Trade Representative in Washington," said Ford."

And you can see the Order in Council appointing Mr. Todd at:

<https://www.ontario.ca/orders-in-council/oc-11162018>

which states that he is responsible to Premier Ford.

In this news piece, it is reported that Mr. Todd was a campaign adviser for Mr. Ford:

<https://ipolitics.ca/2018/10/18/fords-man-in-washington-could-be-paid-more-than-canadas-ambassador/>

and in that news piece and this news piece it is reported that Mr. Todd will be paid \$75,000 more than his predecessor:

<https://www.cbc.ca/news/canada/toronto/ian-todd-doug-ford-washington-trade-1.4868311>

This situation raises the following factual questions:

1. Did Premier Ford and his Cabinet conduct a public, merit-based search for candidates this position?
2. Was there any consideration by someone or some entity that is independent of Premier Ford and his Cabinet of other candidates for this position?
3. Was there any consideration by someone or some entity that is independent of Premier Ford and his Cabinet of the pay rate for this position?

In answering these questions, it is important to note that all Cabinet ministers and Cabinet staff serve at the pleasure of the Premier, which means they share the Premier's appearance of bias given that they have full incentive to please the Premier in order to remain in Cabinet. As a result, a Cabinet minister or Cabinet staff person is not independent of Premier Ford.

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.”

Sections 2 and 4 of the *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."

Premier Ford participation in Mr. Todd's appointment raises the following legal questions:

1. Did Premier Ford violate the Preamble rules of the *Act* by participating in the appointment of his election campaign advisor Mr. Todd?
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 Mr. Todd in obtaining the job of Ontario's Trade Representative).

With regard question 1, given the Preamble rules set such a high standard of integrity and impartiality, Mr. Ford's participation in the appointment of his election campaign adviser seems to clearly be a violation of the Preamble rules. The appointment was in no way an impartial decision.

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 Mr. Todd's appointment decision because it 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 process that led to Mr. Todd's appointment. Mr. Todd was an adviser for Premier Ford's election campaign, and therefore 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 clearly improper.

The Government of Ontario's news release linked above reveals signs that the Premier and Cabinet knew it was improper to appoint Mr. Todd, as the release:

- lists Mr. Todd's past work but does not mention that he was Premier Ford's campaign adviser;
- attempts to excuse the increase in annual salary for Mr. Todd by claiming it matches the benefits received by his predecessor;
- also attempts to excuse the increase in Mr. Todd's salary by claiming he also has a second job (Special Advisor to the Premier) for which he will not be paid (in fact, his job as Ontario's Trade Representative is an adviser job, and involves advising the Premier, so he really doesn't have a second job at all);
- also attempts to excuse the increase in Mr. Todd's salary by making the very questionable claim he has an expanded role compared to his predecessor (there is

no evidence that his role has expanded at all, and the news release itself makes no mention of any expanded job description for the Trade Representative position, nor does the Order in Council appointing him), and that as a result the Government has ended retainer contracts with consulting firms that the previous government had signed.

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 very much questions whether Mr. Todd's appointment reflects the diversity of the people of Ontario, and also whether his appointment will ensure ethical decision-making, given that Mr. Ford's unethical bias is the basis for his appointment, and especially when Mr. Todd is serving at Mr. Ford's pleasure.

It also states in subsection 3.1 that:

“Remuneration that may be paid, if any, is intended to balance the importance of public service within a remuneration framework that demonstrates value for money.”

As the first news article linked above mentions, Mr. Todd will not only be paid more than his predecessor, he will also be paid more than Canada's Ambassador to the United States, who definitely has a role that is more expansive than Mr. Todd's role. It is difficult to believe, as a result, that Mr. Todd's annual salary “demonstrates value for money.”

You can see a fairly detailed framework of what a good government appointments process entails in following section of the Auditor General's 2016 Annual Report at: 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, Mr. Todd's appointment process 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 these reasons, Democracy Watch's position is that Premier Ford's appointment of Mr. Todd improperly furthered Mr. Todd's private interests – the appointment is objectionable, unsuitable and, in other ways detailed above, wrong.

Democracy Watch therefore requests that you issue a ruling on Premier Ford's participation in the process of Mr. Todd's appointment finding Mr. Ford in violation of 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 Ontario 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.

Finally, given the seriousness of this situation, as it concerns the appointment of one of Premier Ford's election campaign advisers to a top government job which, as detailed above, is improper in several ways, Democracy Watch's position is that you should recommend that the penalty for Premier Ford's violation be that Premier Ford's seat be declared vacant.

Premier Ford's participation in Mr. Todd's appointment raises concerns about violations of fundamental principles of democratic good government, including: avoiding conflicts of interest; ensuring appointments are merit-based; ensuring the independence of the public service, and; ensuring the public receives value for money spent in relation all government actions and decisions.

You have an opportunity to uphold key measures in a key democratic good government law, the *Members' Integrity Act*. 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,

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