



democracy Watch  
émocratie en surveillance

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Mr. Paul Dubé, Ombudsman  
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April 9, 2019

**RE: Request for investigation and public ruling on Premier Ford's staff, and deputy minister, and other Ontario public servants, violating the *Public Service of Ontario Act* in various ways**

Dear Ombudsman Dubé:

I am writing requesting an investigation and public ruling on the actions of Ontario government public servants, including members of Premier Ford's staff, and the Premier's former deputy minister (Secretary of the Cabinet), and other public servants, violating measures set out in the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A ("*PSOA*"), and regulations under the *PSOA*, and in one case violating government procurement rules.

Please see a summary of the public servants to be investigated, and their actions, and the laws and regulations that apply to them, including the details concerning why it is Democracy Watch's position that you have a clear mandate to investigate the actions of these public servants, set out below.

## A. Summary of public servants to be investigated

Specifically, I am requesting an investigation of the following actions of public servants in the Office of the Premier, the Ministry of Finance, and the Ministry of Community Safety and Correctional Services:

1. Premier Doug Ford's Chief of Staff Dean French, and former Secretary of the Cabinet Steve Orsini (deputy minister to Premier Ford), and Greg Orencsak, the Deputy Minister for the Ministry of Finance, and possibly other public servants in the Ministry of Finance, giving preferential treatment to Ron Taverner during the hiring process for an executive position at the Ontario Cannabis Store;
2. Mr. French and Mr. Orsini giving preferential treatment to Mario Di Tomasso during the selection process leading to his appointment as Deputy Minister of Community Safety and Correctional Services;
3. Mr. French and Mr. Orsini, and possibly also Mr. Di Tomasso, and possibly also other public servants (including Derek O'Toole, Senior Policy Advisor in Premier Ford's office, and Greg Harrington, Policy Advisor to Mr. French), giving preferential treatment to Ron Taverner during the selection process for the Ontario Provincial Police Commissioner (OPP Commissioner);
4. Mr. French giving preferential treatment to Chris Frogatt by connecting him, and him only, to Ron Taverner after he was appointed OPP Commissioner, and;
5. Premier Ford's staff intervening, in violation of OPP procurement rules, in the purchase and modification of a van for Premier's Ford's travel – the evidence of these interventions is summarized in the following media reports:  
<https://www.cbc.ca/news/canada/toronto/doug-ford-camper-van-1.5032704>  
and  
<https://www.theglobeandmail.com/canada/article-doug-ford-demanded-changes-to-his-opp-security-detail-according-to/>  
and  
<https://www.theglobeandmail.com/canada/article-fords-plan-for-mobile-office-van-has-not-moved-ahead-retrofit/>.

All of the “preferential treatment” actions by public servants listed above in #s 1-4 were mentioned in the ruling issued on March 20th by Integrity Commissioner J. David Wake concerning the appointment process for the OPP Commissioner, 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>.

However, Commissioner Wake has not fully investigated the actions of these public servants and, as summarized below in section B, he and Conflict of

Interest Commissioner Sydney Linden have refused to investigate and issue a public ruling concerning the actions of these public servants.

Section C below summarizes the evidence in Commissioner's Wake's report concerning preferential treatment by various public servants in the hiring and appointment processes listed above in #s 1-4.

Section D below summarizes the Ontario government's standards for open, merit-based hiring and appointment processes, and how preferential treatment definitely violates these standards.

Section E below summarizes the sections of the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A ("*PSOA*"), and regulations under the *PSOA*, that prohibit giving preferential treatment to anyone or any entity, including during hiring and appointment processes such as those listed above in #s 1-4.

Section E also makes it clear that Premier Ford's staff, and deputy ministers, are public servants and that their actions in question, and the actions of other public servants cooperating with them, were not deliberations or proceedings of the Executive Council, and therefore clearly fall within your jurisdiction for investigation under the *Ombudsman Act*, R.S.O. 1990, c. O.6.

## **B. Other commissioners refuse to investigate or acknowledge complaint**

On March 25, 2019, I filed, on behalf of Democracy Watch, a request for investigation with Integrity Commissioner J. David Wake, and with Conflict of Interest Commissioner Sydney Linden, concerning these same people and their actions in this same situation. The only actions not covered by that complaint were the actions of Premier Ford's staff concerning the purchase and modification of a van for Premier Ford's travel.

You can see request letter sent to the two commissioners at:

<https://democracywatch.ca/wp-content/uploads/LettToIntegrityAndConflictCommsReTavernerTreatmentMar252019.pdf>.

Commissioner Linden responded to my request with a letter stating that he would not investigate the situation. You can see Commissioner's Linden's letter at:

<https://democracywatch.ca/wp-content/uploads/LettFromCOICommMar282019.pdf>

Integrity Commissioner Wake has refused even to acknowledge receipt of my letter, even though I have emailed his office three times.

As a result, there is no other adequate remedy for this complaint other than this request to you, as Ombudsman, to investigate and rule on the situation. Further investigation is necessary because the actions of the people named above have not been investigated and ruled on in terms of compliance with provincial law and regulations.

The subject matter of this complaint is not trivial, as it involves fundamental issues of fairness and impartiality in the process of hiring people for Ontario government jobs. As a result, this complaint is clearly also not frivolous.

I am filing this complaint on behalf of Democracy Watch in good faith, for the same purpose I filed the complaint with the other two commissioners, simply to cause an investigation and public ruling on the actions of these people concerning compliance with fundamental good government rules that set standards for fairness and impartiality in the process of hiring people for Ontario government jobs.

As an organization focused on public interest advocacy for democratic good government across Canada for the past 25 years, Democracy Watch, and myself as co-founder of Democracy Watch and resident of Ontario, have a clear, significant interest in the subject matter of this complaint. Democracy Watch, with myself as the lead complainant, is filing this complaint in the public interest, and on behalf of people who applied for the OPP Commissioner job and who may have applied for the Ontario Cannabis Store executive position if the hiring process for that position had been open, transparent, and merit-based.

As a result, none of the reasons set out in subsections 17(1) and (2) of the *Ombudsman Act* that you are empowered use to refuse to investigate a complaint apply to this complaint.

Your broad mandate under subsection 14(1) of the *Ombudsman Act* is:  
“to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity.”

Given the above, and your broad mandate, Democracy Watch’s opinion is that you have a clear mandate to investigate this complaint.

If, in your opinion, you believe that Commissioner Wake and Commissioner Linden have a clear mandate to investigate the actions of these people, and refuse to investigate this complaint for that reason, Democracy Watch and myself request that you include that reason in the letter you send to Democracy Watch and myself informing us of your decision not to investigate, under your authority to do so as set out in subsection 17(3) of the *Ombudsman Act*. And, if you decide not to investigate this complaint, Democracy Watch and myself request that you inform us of the reasons in the letter you send.

### **C. Evidence of Preferential Treatment in Integrity Commissioner Ruling**

The ruling issued on March 20th by Integrity Commissioner J. David Wake 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 (pp. 21-24).

The evidence shows that Greg Orencsak, the Deputy Minister for the Ministry of Finance, and possibly other public servants in the Ministry of Finance, cooperated with Mr. Orsini's request and that an official offer was very quickly made to Mr. Taverner for the Ontario Cannabis Store executive position, at a salary of \$270,000 annually for four years. It appears that the salary amount was set arbitrarily.

The ruling also contains clear evidence that Mr. French and Mr. Orsini, and possibly also Mario Di Tomasso and other public servants (including Derek O'Toole, Senior Policy Advisor in Premier Ford's office, and Greg Harrington, Policy Advisor to Mr. French), 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 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 lines set out in the *PSOA* and

regulations. 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 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 the following evidence of preferential treatment given to Mario Di Tommaso:
  - a. On p. 33 (para. 127), Mr. French confirms that he suggested to Mr. Orsini that Mario Di Tommaso be made Deputy Minister to the Minister of Community Safety;
  - b. On p. 35 (para. 135), Mr. Orsini confirms that Mr. Di Tommaso was the only person he interviewed for the Deputy Minister of Community Safety position;
3. Commissioner Wake gathered all of the following evidence of preferential treatment given to Mr. Taverner through the OPP Commissioner appointment 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. 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);
  - d. 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."

- e. 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;
- f. 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;
- g. 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;
- h. 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;
- i. 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;
- j. 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);
- k. 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."
- l. 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;

- m. 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.
4. 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.

#### **D. Ontario government standards for appointment and hiring processes**

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

<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."

According to the Recruitment Philosophy of the Ontario Public Service at:

<https://www.gojobs.gov.on.ca/Pages/OurRecruitment.aspx>

"All our recruitment decisions are based on valid, practical and measurable approaches that ensure hiring on the basis of merit. This means hiring the candidate whose qualifications best meet the requirements to do the job." Also, the commitment made in the recruitment process is to ensure the "workforce represents the diverse communities" the government serves and that the process reflects the government's "mission to serve the public interest and uphold the public's trust."

Democracy Watch questions very much whether the offer to Mr. Taverner of the executive position at the Ontario Cannabis Store was based on merit and reflects the diversity of the people of Ontario. Democracy Watch also questions very much whether hiring Mr. Taverner will ensure ethical decision-making at the Store, given that Mr. Ford's unethical bias is the basis for the job offer to Mr. Taverner.

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.

According to the Hiring Steps for the Ontario Public Service at:

<https://www.gojobs.gov.on.ca/Pages/HiringSteps.aspx>

the six-step process involves: 1. advertising the position; 2. application screening; 3. evaluation of candidates (including written tests and interviews); 4. assessment and rating of candidates to select the best-qualified candidate; 5. offer to the successful candidate, and; 6. position filled.

From the evidence on record, the process that led to Mr. Taverner being offered the executive position job at the Ontario Cannabis Store lacked all of these key elements. In fact, the process started at step five, with Premier Ford's direct offer of the job to Mr. Taverner and only Mr. Taverner.

As well, the Government of Ontario's Agencies and Appointments Directive at:

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

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.”

According to the evidence on record in your ruling on the OPP Commissioner appointment process, the offer of \$270,000 annual salary to Mr. Taverner for the Ontario Cannabis Store job had no basis in any assessment of value for money.

The actions summarized above in section C by Mr. French and Mr. Orsini, and others who cooperated with them, seem to clearly violate the standards set out above. As a result, Democracy Watch, with myself as lead complainant, request an investigation of those actions.

#### **E. The provincial law and regulations applicable to the public servants involved in giving preferential treatment**

The Ministry of Finance, and the Ministry of Safety and Correctional Services, are Ontario government institutions that are fall within your mandate under the *Ombudsman Act*. (subsection 1(1) “public sector body”; sections 13-14). They

are both listed in the institutions you oversee on your website's webpage entitled "Who We Oversee" at:

<https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>.

Government employees at these two ministries, as well as ministers' staff, are all public servants, and are subject to various ethics measures by the *Public Service of Ontario Act* (the "PSOA" – sections 2, 4, 66 to 69 and 94 to 98). Public servants at those ministries are subject to a regulation under the *PSOA* (O.Reg. 381/07), and ministers' staff are also subject to a regulation under the *PSOA* (O.Reg. 382/07).

Section 6 of those two regulations prohibit giving "preferential treatment to any person or entity" and requires them to "endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity..."

For the Secretary of the Cabinet (as a deputy minister), it seems different parts of the *PSOA* apply (sections 56-65) and a different regulation (O.Reg. 381/07). In any case, the Secretary of the Cabinet, and all deputy ministers, are public servants, and that regulation has the same section 6 rules prohibiting preferential treatment.

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.

#### **(i) Actions were not deliberations or proceedings of Executive Council**

Ministerial staff, deputy ministers, and (of course) government employees are all public servants. None of them are members of the Executive Council. As a result, the actions of all of these people are covered by the *Ombudsman Act*. Their actions in the situations raised in this letter of preferential treatment offered to Ron Taverner during the selection process for two government jobs (Ontario Cannabis Store executive position, and OPP Commissioner), and also to Mario Di Tomasso during the selection process for one of those jobs (OPP Commissioner), were not "deliberations and proceedings of the Executive Council or any committee thereof" and are not, therefore, exempt from the *Ombudsman Act* under the exemption set out in subsection 13(1)(b).

To be clear, the deliberations and proceedings of the Executive Council occurred after the selection process for the OPP Commissioner was completed. As Premier Ford himself has claimed many times, neither he nor any other member

of the Executive Council was involved in the selection process for the OPP Commissioner position.

In addition, the preferential treatment that Dean French offered to Chris Froggatt came after Mr. Taverner's appointment as OPP Commissioner was approved by the Executive Council. Again, these actions by Dean French were, therefore, clearly not deliberations or proceedings of the Executive Council.

As well, for the Ontario Cannabis Store position, it was the actions of ministerial staff and deputy ministers and other public servants that resulted in only Ron Taverner being considered for, and offered, that position. Based on the evidence on record, Executive Council deliberations and proceedings were not involved in that hiring process.

## **F. Conclusion**

Given the Integrity Commissioner's March 20<sup>th</sup> ruling contains clear evidence of preferential treatment in violation of provincial government ethics regulations in the hiring/appointment processes for two Ontario government jobs, and given the evidence of violations of provincial government standards that the actions of Premier Ford's staff involved in purchasing the Premier's van, I and Democracy Watch expect that you will be able to rule on the actions of Premier Ford's staff, and his former deputy minister, and other public servants who cooperated with them, very soon.

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