



democracy Watch  
émocratie en surveillance

P.O. Box 821, Stn. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: [info@democracywatch.ca](mailto:info@democracywatch.ca) Internet: <http://democracywatch.ca>

Brenda Lucki, Commissioner of the RCMP  
RCMP National Headquarters  
73 Leikin Drive  
Ottawa ON K1A 0R2

July 27, 2020

**RE: Request for investigation of possible violation of section 122 of the *Criminal Code*, relating to Minister Morneau's participation in the approval of a sole-source contract to WE Charity, and relating to whether Minister Morneau, and/or persons acting on his behalf including his staff, deputy ministers/heads or associate deputy ministers/heads acting on his behalf, attempted to influence anyone's decision in favour of recommending that a sole-source government contract be awarded to WE Charity**

Dear Commissioner Lucki:

Based on the evidence that has been disclosed in the past couple of weeks, Democracy Watch requests that you initiate an investigation into whether Minister Morneau, and/or persons acting on his behalf in his ministerial office, and/or a deputy minister, associate deputy minister, deputy head or associate deputy head acting on his behalf, attempted to influence anyone's decision in favour of recommending a sole-source government contract be awarded to WE Charity to administer the new Canada Student Service Grant (CSSG) program.

## **I. The Evidence**

The following facts have been confirmed about the participation of Minister Morneau and his ministerial staff and officials acting on his behalf in the process that led to the sole-source government contract signed with the WE Charity.

According to the first few minutes of Minister Morneau's testimony on July 22, 2020 before the House of Commons Standing Committee on Finance, which begins at the 14.08 mark at:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>, he and his family took two WE

Charity trips in 2017, paying \$52,000 of the costs of the trips but not paying approximately \$41,000 of the costs of the trips;

Also according to the first few minutes of Minister Morneau's testimony, his wife donated \$50,000 to WE Charity in April 2018, and he and his wife donated \$50,000 to WE Charity in June 2020.

According to this article: <https://www.canadalandshow.com/finance-minister-bill-morneau-also-tied-to-we-charity/> Finance Minister Morneau's one daughter has spoken at a WE Charity event (also confirmed in this article: <https://www.thestar.com/entertainment/2016/10/09/17-year-old-clare-morneau-carves-her-own-path-through-advocacy-work-govani.html>), been honoured by the charity, and been supported publicly by one of the charity's co-founder endorsing her October 2016 book (as can be seen at: <https://www.amazon.ca/Kakuma-Girls-Sharing-Stories-Hardship/dp/1988025141>), and another daughter of Minister Morneau has worked at WE Charity since July 2019, and currently works for the charity.

According to Minister Morneau's testimony on July 22, 2020 before the House of Commons Standing Committee on Finance, which begins at the 14.08 mark in the video at:

<https://parl.vu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>, specifically the section from the 14.16 mark on, and most specifically the section from the 14.20 mark on to the 14.23 mark, Minister Morneau summarizes how he and his staff and officials, at his direction, participated in the decision to give the sole-source contract to WE Charity of up to \$43.5 million from April 5, 2020 on to June 3, 2020.

The participation is confirmed by the testimony on July 22, 2020 before the House of Commons Standing Committee on Finance of Michelle Kovacevic, Assistant Deputy Minister of Federal Provincial-Relations and Social Policy at the Department of Finance, which begins at the 15:27:33 mark in the video at:

<https://parl.vu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200722/-1/33603?Language=English&Stream=Video>. Ms. Kovacevic testified:

1. she and her team met with Minister Morneau in early April 2020;
2. at the 15:32 mark that she received on April 9, 2020 a document on stakeholder feedback prepared by Minister Morneau's office that included WE Charity as one of the stakeholders;
3. at the 15:32:11 mark that on April 16th during an email discussion:  
"I encouraged ESDC to include WE Charity in their analysis of potential delivery options."
4. at the 15:32:30 that on April 18th she informed Minister Morneau that ESDC was considering WE Charity as one of the delivery options;
5. at the 15:32:45 that her team held a joint tele-conference with ESDC staff at which WE Charity was considered as a delivery option;
6. at the 15:32:50 mark, that on April 19th she received a copy of WE Charity's April 9th social entrepreneurship program proposal that had been provided to various ministers already

7. at the 15:33:10 mark, that on April 19th in the evening her team providing a briefing update package to Minister Morneau's office that included WE Charity's proposal as an annex;
8. at the 15:33:20 mark, that on April 20 Minister Morneau's office "connected with" WE Charity to discuss their ability to deliver volunteer service, and that the record of that call states:  
"that WE Charity will re-work their 10-week summer program proposal to fully meet the policy objective of national service, and increase their current placements of 8,000 to double."
9. at the 15:33:47 mark, that on April 23rd her team met with ESDC and discussed WE Charity administering the Canada Student Service Grant (CSSG) program which had been announced by Prime Minister Trudeau on April 22nd, and that her team set up a meeting for the next afternoon with WE Charity;
10. at the 15:34 mark, that Finance and ESDC officials spoke with WE Charity on April 24 to discuss its capacity;
11. at the 15:34:27 mark, that on May 7 she received a copy from ESDC of WE Charity's May 4 proposal to administer the CSSG program;
12. at the 15:34:45 mark on, that her team continued to work with ESDC officials to develop the program, and that she continued to brief Minister Morneau's office as the proposal moved through the steps toward Cabinet approval, and WE Charity was discussed throughout until the recommendation was made by ESDC to give a sole-source contract to WE Charity to administer the CSSG program which (as she also states at the 15:52 mark on to the 15:53 mark) her team of Finance officials approved of and recommended Minister Morneau approve.

The participation of officials acting on behalf of Minister Morneau in this decision-making process from April 8, 2020 on has also been confirmed by the July 16, 2020 testimony before the House of Commons Standing Committee of Finance of Rachel Wernick, Senior Assistant Deputy Minister, Skills and Employment Branch, Department of Employment and Social Development, which can be seen on pages 14 on of the transcript of her testimony at:

<https://www.ourcommons.ca/Content/Committee/431/FINA/Evidence/EV10832083/FINAEV41-E.PDF>.

In her testimony, as set on page 14 of the transcript, and again on page 17, and again on pages 24-25 (especially just before the 1725 mark), Ms. Wernick states that she was asked by an unnamed Department of Finance official "to provide information, analysis and assessment of potential options for including service opportunities in the student package" and that she subsequently had discussions with "Department of Finance officials" and "asked my Department of Finance colleagues if they could help us flesh out the details" which they did provide to her.

To be clear, this testimony, especially the detailed testimony of Ms. Kovacevic, makes it very clear that the participation of Minister Morneau and his staff and officials were much more than just attending the Cabinet meeting on May 22,

2020 at which the WE Charity contract was approved, an action you are already investigating.

As Minister Morneau, Ms. Wernick and especially Ms. Kovacevic testified, Minister Morneau and his staff and officials acting on his behalf were involved throughout the process from April 5th to June 3rd when Minister Morneau, according to his testimony, signed off himself on the funding flowing to WE Charity. Most concerning is the April 20 contact between people in Minister Morneau's office with WE Charity which resulted in WE Charity re-working its initial proposal to meet the objectives of the CSSG program.

While an investigation is needed to establish exactly how many times Minister Morneau and his staff especially, and officials acting on his behalf, exercised an official power, duty or function and/or participated in and/or attempted to influence the decision that led to recommendation to Cabinet that up to \$43.5 million in sole-source funding to WE Charity, it is clear that they did exercise official powers, duties and functions, and did participate in and did attempt to influence that decision.

## **II. The Key Question Raised by the Evidence**

The key question raised by the confirmed facts, and the evidence in dispute, in this situation that needs to be fully investigated by the RCMP is:

Did Minister Morneau, and/or persons acting on his behalf in his ministerial office, and/or a deputy minister, associate deputy minister, deputy head or associate deputy head acting on his behalf (all of whom are appointed by Cabinet and serve at the pleasure of the Cabinet), attempt to influence anyone's decision in favour of recommending that a sole-source government contract be awarded to WE Charity to administer the new Canada Student Service Grant (CSSG) program.

There is already evidence that people in Minister Morneau's office, and officials acting on his behalf, did participate in and attempt to influence this decision.

This question needs to be investigated by the RCMP because if the Minister Morneau or anyone acting on his behalf did this, Democracy Watch's opinion is that their actions may amount to a violation of the section 122 breach of trust section of the *Criminal Code* (R.S.C., 1985, c. C-46), as detailed below.

## **III. The Law and its Application to the WE Charity Contract Situation**

Under section 118 of the *Criminal Code* (R.S.C., 1985, c. C-46), "official" is defined as anyone who "(a) holds an office, or (b) is appointed or elected to discharge a public duty." It is clear from this definition that section 118 applies to the Minister Morneau, the staff of his ministerial office all of whom he appoints,,

and deputy ministers, associate deputy ministers, deputy heads and associate deputy heads (and equivalent positions) whom the Governor in Council appoints under section 127.1 of the *PSEA*. See that section of the *PSEA* at: <https://laws-lois.justice.gc.ca/eng/acts/p-33.01/page-11.html#h-404798>.

Section 122 of the *Criminal Code*, which can be seen at: <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-31.html#docCont> prohibits fraud or a breach of trust by an official.

The five-part test for proving a breach of trust was set out by the Supreme Court of Canada in paragraph 58 of its ruling in *R. v. Boulanger*, 2006 SCC 32 (CanLII), [2006] 2 SCR 49, which can be seen at: <http://canlii.ca/t/1nwwj>:

1. the accused is an official;
2. the accused was acting in connection with the duties of his or her office;
3. the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. the accused's conduct represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. the accused acted with the intention to use his or her public office for a purpose other than the public good, for example, a dishonest, partial, corrupt, or oppressive purpose.

Parts 1-2 clearly apply based the facts that have been confirmed in this WE Charity contract situation – Minister Morneau is an official, and participating in the process that led to the WE Charity contract would be an exercise of his official function.

Parts 3-4 are also proven by the fact that the Minister Morneau's testimony and the testimony of Ms. Wernick, and especially Ms. Kovacevic, before the Finance Committee make it clear that Minister Morneau, and people in his office and government officials acting on his behalf, participated in the process and attempted to influence the decision to give a sole source contract worth up to \$43.5 million to WE Charity. As a result, they clearly violated subsection 6(1) and section 21 and section 9 of the *Conflict of Interest Act* (the "*Cofl Act*" -- (S.C. 2006, c. 9, s. 2), for the following reasons.

1. Subsection 6(1) of the *Cofl Act*, combined with section 4 and the definition of private interest in subsection 2(1) of that *Cofl Act*, prohibits a public office holder from making or participating in a decision "related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest." Section 4 states that a public office holder is in a conflict of interest when s/he "exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests."
2. "Private interest" is defined in subsection 2(1) of the *Cofl Act* as excluding only situations involving matters of general application (such as

- participating in passing a law that applies generally to many people or organizations) and a couple of other situations that do not apply in any way to the awarding of a sole-source contract.
3. “Family member” is defined in subsection 2(2) as including one’s spouse and dependent children (with “spouse” is defined in subsection 2(1) as a spouse who is not officially separated by a separation agreement or court order). “Relatives” is defined in subsection 2(3) as including people related to the office holder by “birth, marriage, common-law partnership, adoption or affinity” unless the Ethics Commissioner determines otherwise.
  4. Section 9 of the *Cofl Act* prohibits using “his or her position as a public office holder to seek to influence a decision of another person so as to further the public officeholder’s private interests or those of the public office holder’s relatives or friends, or to improperly further another person’s private interests.”
  5. The Conflict of Interest and Ethics Commissioner stated in paragraphs 245-248 of the *Trudeau II Report* (page 39), which can be seen at: [https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau II Report.pdf](https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau_II_Report.pdf):

“In order for there to be a contravention of section 9, there is no requirement that the alleged influence must lead to the desired result. Rather, the public office holder is prohibited from simply using his or her position to attempt to influence another person’s decision.”
  6. According to the part 2 Policy Statement of the Contracting Policy of the Government of Canada at: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494> contracting “shall be conducted in a manner that will:
    - a. stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds...” and, according to part 4.2.8, along with section 9 of the *Department of Public Works and Government Services Act* (S.C. 1996, c. 16), no other minister other than the Minister of Public Works are permitted to be involved in government contracting processes. By definition, then, it was improper if the Minister Morneau or anyone on behalf of Minister Morneau to participate in or attempt to influence the contracting process in favour of WE Charity.
  7. Given his family connections and donations to WE Charity, and that he and his family accepted a gift of more than \$41,000 in travel expenses from WE Charity in 2017, the approval of the WE Charity contract clearly was an opportunity for the Prime Minister to further her private interests and/or it was improper from him to take part in or try to influence the contract decision because the decision furthered the interests of WE Charity.
  8. As the Conflict of Interest and Ethics Commissioner (“Ethics Commissioner”) stated in paragraphs 288-292 of the *Trudeau II Report* (pages 45-46), which can be seen at: [https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau II Report.pdf](https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau_II_Report.pdf)

- [Report.pdf](#): “Private and public interests can take many forms, including financial, social or political.”
9. As the Ethics Commissioner stated in paragraphs 296-301 of that *Report* (pages 46-47), “improper” actions are “incorrect, unsuitable or irregular” or “fraudulent or otherwise wrongful” and “lie on a spectrum, ranging from irregularity through inadvertence to willful fraud.”
  10. Section 21 of the *Cofl Act* requires the public office holder to “recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.” As Prime Minister Trudeau did not recuse himself when he had a conflict of interest, he clearly violated section 21.
  11. These violations of subsection 6(1) and section 21, and section 9, of the *Cofl Act* alone are a serious and marked departure from the standards expected of the Minister Morneau in his position of public trust.

NOTE: Sections 4-9 of the *Cofl Act* can be seen at: <https://laws-lois.justice.gc.ca/eng/acts/c-36.65/page-2.html#h-92089>.

### **Re: Part 5 of the breach of trust test**

Given the above, Democracy Watch’s opinion is that really only part 5 of the five-part test for breach of trust – that the actions were undertaken with intent for a purpose other than the public good, for example, a dishonest, partial, corrupt, or oppressive purpose – needs to be proven to find that the Minister Morneau and/or someone acting on his behalf violated section 122 of the *Criminal Code*.

There is evidence that points to Minister Morneau’s intent being for a purpose other than the public good. First, the Minister Morneau has been found guilty by the Ethics Commissioner of violating the *Cofl Act* once for failing to disclose a private interest, as can be seen at:

<http://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/Declaration.aspx?DeclarationID=425d5023-69be-e711-8e4d-000e1e0776f0>

and has been investigated once for violating subsection 6(1), as can be seen at:

<https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Morneau%20Report.pdf>

and has a conflict of interest screen in place to remove him, supposedly, from specific decisions affecting his family’s company Morneau Shepell Inc., as can be seen at:

<http://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/Declaration.aspx?DeclarationID=23d802ea-70c4-e511-aefb-002655368060>

and so he is well aware of the provisions requiring that he recuse himself when he has an opportunity to further the private interests of his family, or improperly further another person’s private interest.

And yet he participated in, and directed people in his office and department to participate in, the process that led to the sole-source contract being awarded to

WE Charity, even though he knew that WE Charity was being considered for the contract from very early on in the contracting out process. This is *prima facie* evidence of an unethical intent on the part of Minister Morneau behind his action of participating in the decision.

Secondly, Minister Morneau and his family received a gift of more than \$41,000 in travel expenses from WE Charity in 2017. This is *prima facie* evidence of an unethical intent on the part of Minister Morneau behind his action of participating in the decision.

Thirdly, WE Charity's ongoing ties to Minister Morneau's family, and the mutual promotion the charity and his family have undertaken in the past and continue to undertake, is *prima facie* evidence of a corrupt intent on the part of Minister Morneau.

The situation needs to be investigated further by the RCMP to gather evidence re: intent, including examining all communications concerning the WE Charity contract (letters, faxes, emails, texts, pins, phone calls, virtual calls (Zoom, FaceTime, Skype etc.)) between the public service, any Cabinet ministers, ministerial staff or Cabinet appointees (including deputy ministers, associate deputy ministers, deputy heads and associate deputy heads) and the charity.

Further, as you know, section 24 of the *Criminal Code* makes it an offence to even attempt to violate another provision in the *Code*:

**“Attempts**

**24.** (1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

**Question of law**

(2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

R.S., c. C-34, s. 24.”

And sections 21 and 23.1 of the *Criminal Code* cover the actions of anyone who may have assisted Prime Minister in violating section 122 of the *Code*:

**“Parties to Offences**

**21.** (1) Every one is a party to an offence who  
actually commits it;  
(b) does or omits to do anything for the purpose of aiding any person to commit it; or  
(c) abets any person in committing it.

**Common intention**

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

R.S., c. C-34, s. 21.”

Section 23.1 of the *Criminal Code* states:

**“Where one party cannot be convicted**

**23.1** For greater certainty, sections 21 to 23 apply in respect of an accused notwithstanding the fact that the person whom the accused aids or abets, counsels or procures or receives, comforts or assists cannot be convicted of the offence.

R.S., 1985, c. 24 (2nd Supp.), s. 45.”

Given all of the above evidence, and the law concerning the section 122 breach of trust section of the *Criminal Code*, Democracy Watch’s opinion is that an investigation by the RCMP of the key questions at issue in the situation is warranted to determine whether the Minister Morneau and/or anyone acting on his behalf violated section 122 (or, in the case of individuals who may have assisted Minister Morneau, section 21) during the process of awarding the sole-source contract to WE Charity.

Please contact Democracy Watch at the address above if you need any more information to consider undertaking this investigation.

Democracy Watch’s position is also that the public deserves a full, public explanation of the conclusions of the RCMP’s decision to investigate, and investigation, and decision of Crown prosecutors considering the evidence gathered during that investigation, and how the law applies to that evidence, whether or not the decision is to proceed with an investigation and/or prosecution of anyone involved in the situation.

We look forward to seeing that full, public report of the decisions concerning the investigation we are requesting be undertaken.

Sincerely,



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