



democracy Watch
émocratie en surveillance

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

July 10, 2020

RE: Request for investigation of possible violation of section 122 of the *Criminal Code*, relating to Prime Minister Trudeau's participation in the approval of a sole-source contract to WE Charity, and relating to whether Prime Minister Trudeau, and/or persons acting on his behalf in the Office of the Prime Minister or Office of the Privy Council, and/or 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 Prime Minister Trudeau, and/or persons acting on his behalf in the Office of the Prime Minister or Office of the Privy Council, 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 situation of the sole-source government contract signed with the WE Charity:

1. According to this article: <https://globalnews.ca/news/7153106/trudeau-we-charity-recuse/> Prime Minister Trudeau admitted that he participated in the decision by Cabinet to approve the sole-source contract with WE Charity to administer the CSSG, a program that was first announced by the Prime Minister on April 22, 2020, as mentioned in this Government of Canada

- news release <https://pm.gc.ca/en/news/news-releases/2020/04/22/support-students-and-new-grads-affected-covid-19> and then was launched on June 25, 2020 with this news release: <https://pm.gc.ca/en/news/news-releases/2020/06/25/prime-minister-announces-support-students-serving-their-communities> and this news release: <https://pm.gc.ca/en/news/backgrounders/2020/06/25/canada-student-service-grant>
2. According to this article: <https://www.canadalandshow.com/trudeau-family-paid-by-we-organization/> it is confirmed that Prime Minister Trudeau's mother Margaret Trudeau was paid \$312,000 for speaking events (-20% for a commission to her agency), and his brother Sacha Trudeau was paid \$40,000 for speaking events (-20% for a commission to his agency) from 2016 to 2020 by ME to WE, which according to its webpage at: <https://www.metowe.com/about-us/> and its webpage at: <https://www.metowe.com/about-us/faq/> is a directly affiliated and inter-connected partner organization with WE Charity.
 3. According to this article: <https://www.cbc.ca/news/politics/margaret-justin-trudeau-we-charity-1.5643586> Prime Minister Trudeau's spouse, Sophie Gregoire-Trudeau, is an "ambassador and ally" for WE Charity. According to this WE Charity page: <https://www.we.org/en-CA/we-stories/local-impact/sophie-gregoire-trudeau-inspires-positive-well> Ms. Gregoire-Trudeau is "more than an ambassador of WE Well-being, she is its mentor, booster and champion." And this is the webpage for the Well-being podcast that Ms. Gregoire-Trudeau hosts for WE Charity: <https://www.cbc.ca/news/politics/margaret-justin-trudeau-we-charity-1.5643586>. As the above linked article also mentions, Prime Minister Trudeau himself has appeared at WE Charity events several times. According to this article, WE Charity produced an advertisement that featured Prime Minister Trudeau in 2017: <https://nationalpost.com/news/critics-denounce-we-charity-campaign-style-ad-for-justin-trudeau-amid-pms-scandal-over-charity-links>. In sum, for several years Prime Minister Trudeau and his spouse have promoted WE Charity, and WE Charity has promoted Prime Minister Trudeau and his spouse.
 4. According to this article: <https://nationalpost.com/news/politics/we-charity-boss-said-pmo-called-to-award-900m-student-grant-program-day-after-it-was-announced> and video footage contained in that article, during a video-conference call on June 12, 2020 Marc Kielburger, the co-founder of WE Charity and ME to WE, stated that "'So myself, my team... had all watched this (April 22nd announcement), and the next day, the Prime Minister's Office kindly called us and said, 'you know that announcement we just made? Would you be interested in helping us actually implement it?'"
 5. According to this article: <https://www.cbc.ca/news/politics/we-charity-student-volunteer-program-1.5628610> Prime Minister Trudeau claimed that WE Charity is the only organization in Canada that could administer the CSSG program. According to this article: <https://www.cbc.ca/news/politics/trudeau-we-charity-volunteer-1.5635501>

several experts disagree, and point to Volunteer Canada, United Way, the Community Foundations of Canada, YMCA/YWCA, Boys and Girls Clubs of Canada, and 4-H Canada organizations with equal or greater capacity than WE Charity to administer the program. In addition, as that article points out, along with this article:

<https://www.thechronicleherald.ca/news/canada/federal-government-wont-say-which-organizations-other-than-we-charity-it-considered-to-run-900-million-student-volunteer-grant-program-470281/> and this article (quoting the head of the Public Service Alliance of Canada):

<https://www.cbc.ca/news/politics/we-charity-pandemic-covid-coronavirus-trudeau-1.5635379> the federal government already has the Canada Service Corps program and the Canada Summer Jobs program, both of which are very similar to the CSSG program, and the public servants who run those programs very likely could have run the CSSG program through those programs. In other words, from all the evidence, the Prime Minister's claim that WE Charity is the only organization that could administer the CSSG program was a clearly false claim.

The following facts are in question in this situation:

1. According to this article: <https://www.cbc.ca/news/politics/trudeau-we-charity-1.5631278> Prime Minister Trudeau claimed that public servants at the Department of Employment and Social Development recommended that the WE Charity was the only organization that “had the capacity” to administer the CSSG program. No one in the federal public service or that Department has confirmed this claim.
2. According to this article: <https://nationalpost.com/news/politics/we-charity-boss-said-pmo-called-to-award-900m-student-grant-program-day-after-it-was-announced> Marc Kielburger claimed in an emailed statement on June 30, 2020, after a week during which many questions were raised about the sole-source WE Charity contract, that during the video-conference call on June 12, 2020: “Speaking loosely and enthusiastically, I incorrectly referred to the Prime Minister’s Office. In fact, the outreach came from unelected officials at Employment and Social Development Canada. To be specific, contact came to We Charity the week of April 26th from a Senior Assistant Deputy Minister, Skills and Employment Branch at Employment and Social Development Canada and various additional members of ESDC staff. In fact, all discussions came at the instigation of departmental officials and they led discussions with respect to contract and program parameters.” No one in the federal public service or that Department has confirmed this claim.
3. According to this article: <https://www.thechronicleherald.ca/news/canada/federal-government-wont-say-which-organizations-other-than-we-charity-it-considered-to-run-900-million-student-volunteer-grant-program-470281/> the Employment and Social Development Canada department of the Government of Canada claimed in a written statement that the department considered other organizations to administer the CSSG program, but the department has

refused to disclose any details, including the list of other organizations, proving that it considered other organizations.

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 investigated by the RCMP is:

Did Prime Minister Trudeau, and/or persons acting on his behalf in the Office of the Prime Minister or Office of the Privy Council, 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.

This question needs to be investigated by the RCMP because if the Prime Minister 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 Prime Minister, the staff of the Prime Minister's Office all of whom he appoints, the Clerk of the Privy Council whom the Governor in Council appoints under section 125 of the *Public Service Employment Act* ("PSEA" – S.C. 2003, c. 22, ss. 12, 13), and to other members of the senior staff of the Office of the Privy Council along with 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 – Prime Minister Trudeau is an official, and taking part in the Cabinet decision to approve the WE Charity contract was part of his official duties.

Parts 3-4 are also proven by the fact that the Prime Minister admitted that he took part in the Cabinet approval of the contract, as taking part in that decision clearly violates subsection 6(1) and section 21 of the *Conflict of Interest Act* (the "*Cofl Act*" -- (S.C. 2006, c. 9, s. 2), and the fact that the Prime Minister repeatedly defended the contract with the very questionable claim that WE Charity is the only organization that could oversee the CSSG program, which violates section 7 of the *Cofl Act*, 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. Given his spouse is formally associated with the WE Charity, and volunteers with it as an ambassador and champion of the organization and does a podcast for it, 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 the contract decision because the

- decision furthered the interests of the WE Charity for which his spouse acts as an ambassador, champion and podcaster.
5. 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): “Private and public interests can take many forms, including financial, social or political.”
 6. 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.”
 7. 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.
 8. The Prime Minister’s repeated defence of the sole-source WE Charity contract by making the very questionable claim that only WE was qualified to oversee the CSSG program violates of section 7 of the *Cofl Act* by giving preferential treatment to WE Charity, again whom his spouse represents. Section 7 prohibits office holders from, in the exercise of an official power, duty or function, giving “preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.” In this situation, section 7 would be violated whether the Prime Minister’s spouse or Marc Kielburger or Craig Kielburger are determined to be the representatives of WE Charity, given the Prime Minister has a long-term relationship with all of them.
 9. These violations of subsection 6(1), section 7, and section 21 of the *Cofl Act* alone are a serious and marked departure from the standards expected of the Prime Minister in his position of public trust.

Parts 3-4 of the five-part test for breach of trust may also possibly be met for the following reasons concerning evidence in dispute in this situation (which is, in part, why an investigation by the RCMP is needed):

1. The evidence in dispute, whether the Office of the Prime Minister actually initiated the granting of the contract to WE Charity (as Marc Kielburger claimed during the June 12, 2020 video-conference call) and/or whether the Prime Minister or anyone acting on his behalf attempted to influence anyone’s decision to favour recommending WE Charity be given a sole-source contract, are equally serious violations and serious and marked departure from the standards expected of the Prime Minister, and any other official whom may have acted on his behalf, in their positions of public trust.
2. An attempt by the Prime Minister or anyone acting on his behalf to influence anyone’s decision to favour WE Charity would be a violation of section 9 of the *Cofl Act*, which 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."
3. 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%20II%20Report.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."
 4. Given his spouse is formally associated with the WE Charity, and volunteers with it as an ambassador and champion of the organization and does a podcast for it, influencing the granting 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 the contract decision because the decision furthered the interests of the WE Charity for which his spouse acts as an ambassador, champion and podcaster.
 5. 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%20II%20Report.pdf): "Private and public interests can take many forms, including financial, social or political."
 6. 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."
 7. 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 Prime Minister or anyone on behalf of the Prime Minister attempted to influence the contracting process in favour of WE Charity.
 8. As well, the Prime Minister or anyone acting on his behalf attempting to influence the contracting process in favour of WE Charity would also clearly be a violation of section 7 of the *Cofl Act*. As noted in the above subsection, section 7 prohibits office holders from, in the exercise of an official power, duty or function, giving "preferential treatment to any person

or organization based on the identity of the person or organization that represents the first-mentioned person or organization.” As also noted in the above subsection, in this situation, section 7 would be violated whether the Prime Minister’s spouse or Marc Kielburger or Craig Kielburger are determined to be the representatives of WE Charity, given the Prime Minister has a long-term relationship with all of them.

NOTE: Sections 4-9 of the *Coff 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 Prime Minister and/or someone acting on his behalf violated section 122 of the *Criminal Code*.

There is evidence that the Prime Minister’s intent was for a purpose other than the public good. First, the Prime Minister has been found guilty by the Ethics Commissioner of violating the *Coff Act* twice, 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 the Cabinet meeting at which the sole-source contract was approved. This is *prima facie* evidence of an unethical intent on the part of the Prime Minister behind his action of participating in the decision.

Secondly, Prime Minister Trudeau repeatedly defended the sole-source contract with the very questionable, much-disputed, and very likely false claim that WE Charity is the only organization with the capacity to administer the CSSG program. This is *prima facie* evidence of a dishonest intent on the part of the Prime Minister behind his action of participating in the decision.

Thirdly, if the Prime Minister or anyone acted on his behalf attempted to influence anyone’s decision to favour recommending a sole-source contract for WE Charity, the charity’s ongoing ties to the Prime Minister’s family, and the mutual promotion the charity and his family have undertaken in the past and continue to undertake, would be *prima facie* evidence of a corrupt intent on the part of the Prime Minister (which, again, is why it is key for the RCMP to investigate whether the Prime Minister or anyone acting on his behalf attempted to influence the contract decision-making process).

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 Prime Minister and/or anyone acting on his behalf violated section 122 (or, in the case of individuals who may have assisted the Prime Minister, 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