



1 Nicholas St., Suite 1510, P.O. Box 821, Stn. B, Ottawa K1P 5P9
Tel: 613-241-5179 Fax: 613-241-4758
Email: info@democracywatch.ca Internet: <http://democracywatch.ca>

Office of the Conflict of Interest and Ethics Commissioner
ATTN: Mary Dawson, Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

Email: ciec-ccie@parl.gc.ca

December 6, 2016

RE: (a) Request for disclosure of whether you have applied to be reappointed for another term; (b) Request that if you have applied, that you recuse yourself from ruling on any matter, especially matters concerning Cabinet ministers and their staff; (c) Request for a legally correct interpretation of the *Conflict of Interest Act* rules re: fundraising events that involve Cabinet ministers or their staff, and; (d) Request for an investigation and new ruling on those events

Dear Commissioner Dawson:

I am writing concerning several pressing and important matters with regard to the enforcement of the *Conflict of Interest Act* or the *Conflict of Interest Code for Members of the House of Commons*.

(a) Request for disclosure of whether you have applied to be reappointed

I am writing to request first, as a few journalists have in the past month, that you disclose whether you have applied to the federal Cabinet to be reappointed to another term as Conflict of Interest and Ethics Commissioner (as is allowed under subsection 81(3) of the *Parliament of Canada Act*).

Your current term ends in early January. The deadline for applying to the position was November 21, 2016. It has recently been extended to January 9, 2017 but that extension was made after November 21st. As a result, you must know whether you have applied to be reappointed.

You must disclose whether you have applied to be reappointed because if you have you are in a financial conflict of interest currently concerning making rulings that affect Prime Minister Trudeau and members of his Cabinet or Liberal Party caucus.

You have this financial conflict of interest because your reappointment would mean either that you would receive either approximately \$100,000 (if you were reappointed under subsection 82(2) of the *Parliament of Canada Act* in an interim position for six months, as you have been since last July) or you would receive up to \$1.4 million (approximately \$200,000 annually for the 7-year term).

Whether you receive either of those amounts of money will be decided by the Cabinet (“Governor-in-Council”) which under subsection 81(1) of the *Parliament of Canada Act* decides whether to nominate you for reappointment, with approval by the House of Commons (where Liberal MPs hold a clear majority of the seats).

It is unclear in the *Parliament of Canada Act* whether the Cabinet even has to consult with the leaders of every recognized party in the House of Commons on your reappointment. Subsection 81(1) requires that consultation on first appointment, but subsection 81(3) states simply:

“Reappointment

81.(3) The Commissioner is eligible to be reappointed for one or more terms of up to seven years each.”

Democracy Watch’s position is that really you are in a conflict of interest when ruling on any matters that affect any MP, as the Liberals also have an interest in having opposition party MPs found guilty of violating of the *Conflict of Interest Act* or the *Conflict of Interest Code for Members of the House of Commons*, as those rulings would hurt the opposition parties’ profile and standing with the public.

Section 10 of the *Conflict of Interest Act* states:

“Offers of outside employment

10. No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.”

I believe you face an analogous situation – only it is your plans for continuing as Commissioner that create conflict of interest.

Clause 3(b) of the *Conflict of Interest Act* states:

“Purpose

...

3.(b) minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise;

To fulfill this main purpose of the *Act*, you must disclose whether you have applied to be reappointed.

Given that you are an employee of the public, clearly the public also has a right to know whether you have applied to be reappointed.

(b) Recusal if you have applied to be reappointed

For all the reasons set out above in section (a), if you have applied to be reappointed either in an interim position for six months or for another 7-year term, you must recuse yourself from ruling on any matters concerning the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*.

(c) Request for legally correct ruling on fundraising events involving Cabinet ministers

If you have applied to be reappointed, please recuse yourself and refer the rest of this letter to another person for consideration and ruling (such as a provincial conflict of interest commissioner).

If you have not, and are not going to apply to be reappointed, please consider the rest of this letter and issue a ruling as soon as possible.

As noted above in section (b), the primary purpose of the *Conflict of Interest Act* in section 3 is to "minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise." That means the *Act* should be interpreted by the Conflict of Interest and Ethics Commissioner with this goal in mind.

The Supreme Court of Canada ruled in two cases in 1996 that "If democracies are to survive, they must insist upon the integrity of those who seek and hold public office" (*Harvey v. New Brunswick*), and; "given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe" and; "[t]he magnitude and importance of government business requires not only the complete integrity of government employees and officers conducting government business but also that this integrity and trustworthiness be readily apparent to society as a whole" (*R. v. Hinchey*).

In many cases since 2007, most recently concerning fundraising events involving Cabinet ministers and/or their staff, you have not been interpreting or enforcing the *Act* with its main purpose in mind, nor have you been upholding the Supreme Court's standard.

You have claimed since last spring that none of the sections in the *Conflict of Interest Act* apply to fundraising event situations that Prime Minister Trudeau and several Cabinet ministers have been involved in as guests or hosts.

This position is clearly legally incorrect. Section 7 of the *Act* states:

"Preferential treatment

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization."

This is essentially the same wording as the rule in the Prime Minister's Open and Accountable Government code that you and others have said does apply to the fundraising events (and that you have advocated be added to the Conflict of Interest Act). That rule, in Annex B Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries, states:

"There should be no preferential access to government, or appearance of preferential access, accorded to individuals or organizations because they have made financial contributions to politicians and political parties."

There is no need to add this rule to the *Act* – it is already in section 7 of the *Act* (minus the appearance part of the rule).

You may claim that attending a fundraising event is not an "exercise of official power, duty or function" but it clearly is because the Liberals themselves have said that they are at the events as ministers (for example, they said Finance Minister Bill Morneau's fundraising event in Halifax was part of his pre-budget consultation process).

In your 2012 ruling on Conservative Minister Paradis giving preferential treatment to former Conservative MP Rahim Jaffer, you wrote (on page 21), that "preferential treatment" means:

"The expression "preferential treatment" is not defined in the Act and was not defined in the predecessor 2006 Conflict of Interest and Post Employment Code for Public Office Holders. I believe, however, that its meaning is quite clear. I take note of the 1984 Report of the Task Force on Conflict of Interest, co-chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, entitled Ethical Conduct in the Public Sector, in which "preferential treatment" is defined as "treatment more favourable than might be accorded to anyone else in similar circumstances.""

To continue using Finance Minister Morneau's event as an example, who did Morneau giving preferential treatment in the situation "based on the identity of the person" -- each company that had a representative at the event because they (the person, or the person using the company's money) donated \$1,500 to attend, or each person at the event who donated \$1,500 to attend.

You ruled in the Paradis ruling (p.22):

"I believe that Mr. Paradis assisted Mr. Jaffer because he wanted to help a former caucus colleague. This preferential treatment was therefore based on the identity of Mr. Jaffer."

With regard to Minister Morneau's fundraising event (and all the other fundraising events involving Prime Minister Trudeau, Cabinet ministers or ministerial staff), you should rule:

"I believe that Mr. Morneau gave access to himself to the companies who had representatives at the event because they were top-level Liberal Party donors. The preferential treatment was therefore based on the identity of those donors."

Being a top-level donor is the same as being a former caucus colleague -- they are both identifiers of a person based on actions they took and roles they have.

Rule 7 is a very important rule -- it means that Cabinet ministers and their staff (and senior government officials who are appointed by Cabinet) can't meet or communicate with, or help, anyone more (or more responsively) than anyone else based on the identity of the person or organization that is asking for help or contacting them. More specifically, it means that Liberal Cabinet ministers and their staff, and senior government officials, can't meet or communicate with, or help, Liberal Party members/donors/supporters/affiliated organizations more (or more responsively) than anyone else or any other organization.

If you actually believe that Minister Morneau, Prime Minister Trudeau or the other ministers attend the events not as a Cabinet minister but instead as a private individual, then section 5 of the *Conflict of Interest Act* applies. Section 5 states:

"General duty

5. Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest."

Again, using Minister Morneau's event as the example, Minister Morneau attending an exclusive, high-priced event attended by a representative of at least one stakeholder (RBC Securities) of his department creates a conflict of interest, it doesn't prevent it, and that means Minister Morneau violated section 5 of the *Conflict of Interest Act*.

It is also very questionable for you as Commissioner to pretend that Prime Minister Trudeau or other ministers are not soliciting these donations personally -- which is prohibited under section 16 of the *Act*:

"Fundraising

16 No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest."

-- given that the ministers are named on the invitations and are the reason people attend the events.

Finally, it is also very questionable for you as Ethics Commissioner to ignore subsection 11(1) which states:

"Gifts and other advantages

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function."

It is true that Prime Minister Trudeau and the Cabinet ministers are not accepting the donations directly, but the donations are going to the Party which pays some of the expenses of every minister (such as the cost of traveling to attend the fundraising events or other party events) and so some of the money raised at the events goes back to them in the form of these expense reimbursements.

To clarify, if you as Ethics Commissioner corrected your interpretation and enforcement of the *Act* as set out above, this would still allow ministers to participate in large, low-cost, public, open fundraising events (as long as no one who was lobbying them either helped organize or host the event, as that would violate Rule 6 of the *Lobbyists' Code of Conduct*).

(d) Request for investigation of all the Liberal Party events, and new rulings

Given everything set out above in section (c), you have reason to believe that the *Conflict of Interest Act* has been violated by Prime Minister Trudeau and several Cabinet ministers. The Liberal Party has held approximately 90 high-priced, exclusive events since January 1, 2016 involving Prime Minister Trudeau and/or other Cabinet ministers.

I request, on behalf of Democracy Watch, that you (or, if you have applied to be reappointed, another independent designate) investigate all of these 90 events, and apply the legally correct interpretation of the sections of *Act* set out above in section (c), an interpretation that fulfills the purpose of the *Act* and the legal standard set out in the two Supreme Court of Canada rulings from 1996.

Please contact Democracy Watch at the address above if you need any more information to initiate the inquiries. We hopefully look forward to seeing your ruling very soon.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written over a light blue rectangular background.

Duff Conacher, Board member of Democracy Watch
On behalf of the Board of Directors of Democracy Watch