

Court File No.: A-169-21



FEDERAL COURT OF APPEAL

<b>FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE</b>	
FILED	June 11, 2021
	E. Rabouin
DEPOSE	
<b>OTTAWA, ON</b>	<b>1</b>

DEMOCRACY WATCH

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

---

**NOTICE OF APPLICATION**

(pursuant to clauses 18.1(4), and clause 28(1)(b.1), of the *Federal Courts Act*)

---

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The relief claimed by the applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after


being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**Date:** June 11, 2021

**Issued by:**

  
\_\_\_\_\_  
(Registry Officer)  
SEAN CARR


I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of JUNE 11, 2021 A.D. 20 \_\_\_\_\_

Dated this 11TH day of JUNE 20 21

**Address of local office:**

Registries of the Federal Courts  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario  
K1A 0H9

  
\_\_\_\_\_  
SEAN CARR  
SENIOR REGISTRY OFFICER

**TO:**

Attorney General of Canada  
c/o Nathalie G. Drouin, Deputy Attorney General of Canada  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
Tel: 613-997-4998  
Fax: 613-954-0811

## APPLICATION

**THIS IS AN APPLICATION FOR JUDICIAL REVIEW** in respect of a decision of the Conflict of Interest and Ethics Commissioner (the “Ethics Commissioner”) appointed by the Governor in Council (“GIC”) under subsection 81(1) of the *Parliament of Canada Act* (R.S.C., 1985, c. P-1 – the “*PofC Act*”).

The date of the decision (the “Decision”) was May 14, 2021 in the form of a ruling, the *Trudeau III Report*, by the Ethics Commissioner Mario Dion under the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – the “*Cofl Act*”) concerning whether Prime Minister Justin Trudeau (“Prime Minister” or “PM”), violated subsection 6(1) (which incorporates section 4) and section 7 of the *Cofl Act* by participating in a decision to approve a government grant to WE Charity. The grant decision was a decision in which the PM had an opportunity to further the private interest of a friend (Craig Kielburger) and/or improperly further the private interest of another person or entity (Craig and Marc Kielburger (the “Kielburgers”) and/or their organization WE Charity). Both of these actions are prohibited by subsection 6(1). The grant decision was also an opportunity for the PM to give preferential treatment to a person or entity based on the representative (Craig Kielburger) of the person or entity, which is prohibited by section 7.

The Ethics Commissioner received petitions from two Members of Parliament (“MPs”) setting out reasons to believe that the Prime Minister had violated these provisions. Therefore, the Ethics Commissioner was required to conduct an examination and issue the Decision under section 44 of the *Cofl Act*. The Ethics Commissioner concluded in the Decision that the PM did not violate either subsection 6(1) or section 7 of the *Cofl Act*.

In making the Decision, the Ethics Commissioner erred in law, erred in fact, and failed to observe a principle of natural justice.

The Ethics Commissioner concluded that the PM was in a strong appearance of a conflict of interest when participating in the WE Charity grant decision. The Ethics Commissioner then erred in law by ignoring that being in an appearance of a conflict is prohibited by Annex B of the PM’s own *Open and Accountable Government* guidelines (“*PM’s Code*”). As a result, it was clearly improper for the PM to participate in the grant decision. Therefore, the Ethics Commissioner’s Decision erred in law as it should have found that the PM violated subsection 6(1) of the *Cofl Act* when he participated in the grant decision in which he had an opportunity to improperly further the interests of the Kielburgers and/or WE Charity.

The Ethics Commissioner also erred in law by failing to conclude that subsection 6(1) (which incorporates section 4) prohibits a public office holder from participating in a decision when in an appearance of a conflict of interest.

The Ethics Commissioner's Decision also erred in fact by concluding that the Prime Minister and Craig Kielburger were not friends when the PM participated in the WE Charity grant decision.

Furthermore, in making the Decision, the Ethics Commissioner violated a rule of natural justice as he had a reasonable apprehension of bias because he was selected through a process entirely controlled by the GIC. The Federal Court of Appeal has ruled that the GIC, headed by the PM, was biased when it appointed the Ethics Commissioner.

Therefore, given the two errors of law, the error of fact, and the violation of a rule of natural justice, the application seeks an order quashing the Ethics Commissioner's Decision.

**THE APPLICANT MAKES APPLICATION FOR:**

1. An order quashing the part of the Ethics Commissioner's Decision that concluded the Prime Minister did not violate subsection 6(1) of the *Coff Act*, in accordance with the Directions of this Honourable Court;
2. An order finding that the Ethics Commissioner had an appearance of bias when making the Decision, and remitting the matter back to an independent, impartial decision-maker, in accordance with the Directions of this Honourable Court;
3. Costs, and;
4. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE APPLICATION ARE:**

**A. The Applicant Democracy Watch has public interest standing**

1. The Prime Minister participated in a decision in spring 2020 to approve a government grant worth tens of millions of dollars to WE Charity, the Kielburgers' organization;
2. Two MPs filed petitions with the Ethics Commissioner setting out reasons to believe that the PM violated subsection 6(1) and section 7 of the *Coff Act*. As a result, the Ethics Commissioner was required under section 44 to examine the matter and issue a public ruling, which the Commissioner did on May 14, 2021 in the Decision. The Decision found that the PM did

not violate the provisions of the *Cofl Act*.

3. The Decision is justiciable because the Commissioner was required by the *Cofl Act* to examine the matter and issue the Decision, and is subject to review by the courts because the Decision interpreted and applied statutory provisions. The issues raised in the Decision are serious as they involve the compliance of the PM with government integrity rules in a situation involving tens of millions of dollars of the public's money.
4. The Applicant Democracy Watch, as an organization that has applied for judicial review of several decisions of the Ethics Commissioner, and has been granted public interest standing by the courts in several applications concerning government integrity, has a genuine interest in the issues raised by the Decision;
5. This application is a reasonable and effective way to bring the issues to court. The MPs who filed the petitions have not filed applications for judicial review of the Decision. No MP has ever filed an application for judicial review of any decision of the Ethics Commissioner;
6. The Ethics Commissioner's Decision found that the PM did not violate the *Cofl Act*, and the PM is therefore highly unlikely to apply for a judicial review of the Decision;
7. As a result, the Applicant is likely the only interested party having the experience and ability to initiate legal proceedings to ensure that the Ethics Commissioner and the PM comply with their statutory obligations;

**B. First error of law in interpreting subsection 6(1) of the *Cofl Act***

8. Because of the extensive ties and relationships between the PM, his spouse, his brother and his mother and the Kielburgers and WE Charity, the Ethics Commissioner concluded in his Decision that the PM had a strong appearance of a conflict of interest when participating in approving the grant decision to WE Charity (pages 36-37, paragraphs 248-251);
9. Subsection 6(1) of the *Cofl Act* prohibits a public office holder like the PM 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 of the *Cofl Act* defines "conflict of interest" as exercising "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";

10. Together subsection 6(1) and section 4 prohibit a public office holder from participating in an official decision that provides an opportunity either: 1. to further his or her private interests or those of his or her relatives or friends, or; 2. to improperly further another person's private interests;
11. Annex B of the *PM's Code* requires the PM and all members of the GIC to "avoid conflict of interest, the appearance of conflict of interest and situations that have the potential to involve conflicts of interest" – in other words, it is improper for the PM to be in an appearance of a conflict of interest;
12. Given the Ethics Commissioner concluded that the PM was in a strong appearance of a conflict of interest when he participated in the WE Charity grant approval decision, it was clearly improper for the PM to participate in the grant decision;
13. The Decision concludes that "Mr. Trudeau has acknowledged publicly that he should have recused himself because of the appearance of conflict. While it is always advisable to recuse oneself and inform the Commissioner promptly when facing an apparent conflict of interest, there is no requirement to do so under the Act. Section 21 provides that recusal is required in instances where the public office holder is in a potential conflict of interest" (page 41, paragraph 269).
14. The PM should have recused himself, and as the Ethics Commissioner stated it is always advisable to recuse oneself when in an apparent conflict of interest, because it is improper to be in an appearance of a conflict;
15. Therefore, the Ethics Commissioner's erred in law in his Decision as he should have concluded that the PM violated subsection 6(1) of the *Cofl Act* by participating in the grant decision in which he had an opportunity to improperly further the interests of the Kielburgers and/or WE Charity.

**C. Second error of law in interpreting subsection 6(1) of the *Cofl Act***

16. Together subsection 6(1) and section 4 prohibit a public office holder like the PM from participating in a decision when in "conflict of interest";
17. Section 3 of the *Cofl Act* sets out its purposes, including "(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" and "(c) provide the Conflict of Interest and Ethics Commissioner with the mandate to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of this Act has occurred";

18. The purpose section 3 of the *Coff Act* refers to “conflicts of interest” and nothing in the *Coff Act* limits its application only to real and potential conflicts of interest. The phrase “conflicts of interest” includes apparent conflicts of interest.
19. The Ethics Commissioner concluded that the PM was in a strong appearance of a conflict of interest, but then erred in law by concluding that the *Coff Act* does not prohibit a public office holder from being in an appearance of a conflict (pages 37-40, paragraphs 252-268).
20. In addition, the evidence set out in the Ethics Commissioner’s Decision strongly supports the conclusion that the PM was in a real conflict of interest when he participated in the WE Charity grant approval decision, given the extensive ties and ongoing relationships between the PM’s family and the Kielburgers and WE Charity, most particularly that the PM’s spouse was a WE ambassador and podcaster at the time of the grant approval decision;

#### **D. Error of fact – Craig Kielburger and the Prime Minister are friends**

21. The Ethics Commissioner ignored clear evidence, including public statements by both Craig Kielburger and the PM in 2015 stating that they are friends, in concluding in his Decision that they are not friends (page 35, paragraphs 239-241);
22. The PM participated in WE Charity events for years before the government grant approval decision, as have his spouse (including an event in March 2020), his mother and his brother. The PM’s spouse is a WE ambassador and podcaster.
23. By any reasonable definition, the PM and Craig Kielburger are friends. Subsection 6(1) and section 4 of the *Coff Act* together prohibit a public office holder like the PM from participating in a decision “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”;
24. Therefore, the Ethics Commissioner should have concluded in his Decision that the PM violated subsection 6(1) by participating in the WE Charity grant approval decision that furthered the interests of his friend Craig Kielburger.

#### **E. Apprehension of bias on the part of the Ethics Commissioner**

25. The appointment by the GIC of Mario Dion for his first seven-year term as the new Ethics Commissioner created a reasonable apprehension of bias for him as Ethics Commissioner when making the Decision about a situation involving PMO staff, the Clerk, members of the GIC and their staff because the GIC controlled the selection process, including establishing a partisan appointment advisory committee made up only of people who served and/or served at the pleasure of the GIC;
26. The GIC choosing Mario Dion as Ethics Commissioner to make the Decision is analogous to a situation of the GIC choosing the specific judge who would hear a case concerning whether the PM and other members of the GIC acted in a way that violates a federal law;
27. This Honourable Court concluded that the GIC was biased when it appointed Mr. Dion as Ethics Commissioner;
28. Therefore, the Ethics Commissioner had an appearance of bias when making the Decision concerning the PM's participation in the WE Charity grant approval decision, in violation of a principle of natural justice and procedural fairness;

#### **F. This Honourable Court has jurisdiction to issue orders for the relief sought**

29. The Ethics Commissioner's Decision, based on two errors of law, an error of fact, and a violation of a rule of natural justice, set a precedent that allows public office holders, when in a conflict of interest, to approve handing the public's money to their friends and their organizations. The Decision was thereby unlawful as it failed to comply with the main purposes and clear provisions of the *Conflict of Interest Act* that prevent and prohibit public office holders from taking part in decisions when in any conflict of interest or when doing so would be improper in any way;
30. While a privative clause in the *Cofl Act* applies to decisions of the Ethics Commissioner, the Federal Court of Appeal has jurisdiction to issue orders in response to this application for the relief sought based on the ground that this part of the Ethics Commissioner's Decision was unlawful and/or failed to observe a principle of natural justice and procedural fairness;
31. *Parliament of Canada Act*, R.S.C., 1985, c. P-1;
32. *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2;
33. *Federal Courts Act*, R.S.C., 1985, c. F-7;



34. Section 66 of the *Conflict of Interest Act*;
35. Subsection 18.1(4) and clause 28(1)(b.1) of the *Federal Courts Act*;
36. *Federal Court Rules*, 1998, SORJ98-106, and;
37. Such further and other grounds as counsel may advise and this Honourable Court may accept.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL**

1. The affidavit of Duff Conacher or such other affidavit as counsel may advise;
2. The May 14, 2021 Decision of the Conflict of Interest and Ethics Commissioner, and;
3. Such further material as counsel may advise and this Honourable Court may permit.

DEMOCRACY WATCH REQUESTS, pursuant to Rule 317, the Office of the Conflict of Interest and Ethics Commissioner to send a certified copy of all documents related to the relevant parts of the Ethics Commissioner's May 14, 2021 Decision (the *Trudeau III Report*).

June 11, 2021



---

Duff Conacher, Executive Director  
Democracy Watch  
P.O. Box 821, Stn. B  
Ottawa, ON K1P 5P9

Tel: 613-241-5179  
Fax: 613-241-4758  
Email: [info@democracywatch.ca](mailto:info@democracywatch.ca)