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December 15, 2006

Mr. Duff Conacher  
Coordinator  
Democracy Watch  
420 - 1 Nicholas Street  
P.O. Box 821, Station B  
Ottawa, ON K1P 5P9

Dear Mr. Conacher:

Further to your letter of November 10, 2006, I have had an opportunity to consider your request that I conduct an investigation into the statements and activities of Prime Minister Stephen Harper and Finance Minister Jim Flaherty concerning taxing income trusts.

First, you alleged that there has been a violation of both the *Conflict of Interest Code for Members of the House of Commons* (Members' Code) and the *Conflict of Interest and Post-Employment Code for Public Office Holders* (POH Code). As you can appreciate, prior to undertaking any inquiry, it is necessary to determine whether the events in question are within the purview of the POH Code or Members' Code.

In light of the foregoing, Section 4 of the Members' Code addresses the issue of its application. Section 4 states:

"The provisions of this Code apply to conflicts of interest of all Members of the House of Commons when carrying out the duties and functions of their office as Members of the House, including Members who are ministers of the Crown or parliamentary secretaries."

This section specifies that the Members' Code, rather than the POH Code, applies to Members of the House of Commons when carrying out the duties and functions of their office as Members (i.e., parliamentary duties and functions). Section 4 also mentions that the Members' Code does apply to ministers and parliamentary secretaries, but only as it relates to conduct associated with the carrying out of their duties and functions of office





as a Member, as opposed to the carrying out of their duties and functions as a Minister or Parliamentary Secretary. In order for the provisions of the Members' Code to apply to a particular situation, it necessarily follows that the conduct in question must be related to the carrying out of the duties and functions of the Office as a Member.

Since the statements and actions described in your letter do not relate to the carrying out of duties and functions as a Member, I do not have any statutory authority to proceed with an inquiry with respect to the application of the Members' Code.

I would also like to point out that Subsection 72.08(1) of the *Parliament of Canada Act* allows me to undertake examinations under the *Conflict of Interest and Post-Employment Code for Public Office Holders* at the request of a member of the Senate or the House of Commons only in relation to the conduct of Ministers of the Crown, Ministers of State and Parliamentary Secretaries. As I am sure you are well aware, I do not as Ethics Commissioner have any authority, pursuant to the *Parliament of Canada Act* to self-initiate an examination against a Minister of the Crown, Minister of State or Parliamentary Secretary.

Since this request is not from a member of the Senate or the House of Commons, I do not have any statutory authority to proceed with an examination into the conduct of the individuals named above, with respect to the application of the POH Code.

Accordingly, and in keeping with the foregoing, I cannot proceed with your request for an investigation into the conduct of Prime Minister Harper and Finance Minister Flaherty.

Cordially



Bernard J. Shapiro  
Ethics Commissioner