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Interim ethics chief could be in conflict of interest if he pursues full term, claims Conacher

The ethics office has been without a full-term commissioner since February.

JESSE CNOCKAERT

The co-founder of Democracy Watch says Konrad von Finckenstein, who was recently announced as Canada's interim federal ethics commissioner, could be in a conflict of interest regarding cases involving the Liberal government or opposition parties if he decides to apply to the position for a full-term.

"He must disclose whether he is applying for the permanent job. If he is, then he has to recuse himself from making any rulings on any issues during that process because he would have an incentive to please the [Justin] Trudeau government in order to get the job for seven years," said Duff Conacher.

The ethics office announced that von Finckenstein was appointed for a six-month term in the office's top spot in a statement posted online on Aug. 31. Von Finckenstein, a former chairman of the Canadian Radio-television and Telecommunications Commission (CRTC), fills a role at the ethics office that's been largely vacant for more than six months.

The previous ethics commissioner, Mario Dion, retired on Feb. 21, citing "persistent health issues." Martine Richard was then announced as interim commissioner on March 28, but she quickly resigned on April 19, following controversy due to her family ties to Public Safety, Democratic Institutions and Intergovernmental Affairs Minister Dominic LeBlanc (Beauséjour, N.B.).

Conacher told The Hill Times that von Finckenstein meets the qualifications to serve as ethics commissioner because his background includes serving as a former Federal Court judge and a former commissioner of Canada's Competition Bureau. However, Conacher said that if von Finckenstein were interested in occupying the role for a full seven-year term, he could potentially be biased—or have the appearance of bias—when it comes to issuing rulings on ethics breaches involving the Liberal government or opposition MPs. The promised salary for the federal ethics commissioner starts at \$228,900 and can reach up to \$269,200.

"You do have an appearance of bias be-

Konrad von Finckenstein, a former chair of the Canadian Radio-television and Telecommunications Commission, was announced as the interim federal ethics commissioner on Aug. 31. The Hill Times file photo

cause you would want to make rulings that would please the people who decide whether you get the job for seven years," said Conacher.

An interim ethics commissioner serving in the role for longer than the originally planned six-month term has happened previously.

Mary Dawson was appointed as ethics commissioner on July 9, 2007, as the Conflict of Interest Act came into force, and was reappointed to another three-year term in 2014. She was then appointed as an interim commissioner for six months on July 9, 2016, while a search for her replacement was conducted.

Dawson was later appointed for two more six-month terms, before finally leaving the ethics office on Jan. 8, 2018.

Conacher also said that it is possible the ethics office could receive complaints pertaining to people with whom von Finckenstein may have worked during his time at the CRTC. If that were to happen, von Finckenstein should also recuse himself from those investigations, according to Conacher. Von Finckenstein stopped working at the CRTC in early 2012.

“It’s only 12 years later, right? So, it’s possible that people that he worked with at CRTC moved on into a different division, and it’s possible that there are complaints against people that he knows, and if so, he would have to recuse himself from moving on those,” said Conacher. “It’s a possibility, but it’s unlikely.”

Von Finckenstein’s recent appointment has drawn some positive responses on social media. University of Ottawa law professor Michael Geist referred to von Finckenstein as “a great appointment, even if only interim” in a post on X (formerly known as Twitter) on Aug. 31.

The Internet Society Canada referred to von Finckenstein as “a perfect choice,” and Mark Goldberg, owner of Mark H. Goldberg & Associates Inc., a firm that provides consulting services to telecommunication companies, called von Finckenstein an “excellent choice,” in respective posts on X on Aug. 31.

Ian Stedman, an assistant professor in Canadian public law and governance in the School of Public Policy and Administration at Toronto’s York University, told The Hill Times that he expects that von Finckenstein could stay at the ethics office for longer than the six-month term, because of how long an ethics investigation can take.

“These investigations, if there are any that need to be conducted, that really take more than six months,” said Stedman. “You wouldn’t want to change a commissioner two-thirds of the way through an investigation, or 90 per cent of the way through. I would kind of expect that this is not just a six-month appointment; that this person would have to be there for a year.”

Stedman said that the workload at the ethics office may have piled up in Dion’s absence. The ethics office typically receives 40 to 50 investigation requests each year. Without a commissioner for the past six months, that could mean a backlog of investigation requests awaiting an interim commissioner once they start, according to Stedman.

“I don’t think you’re going to get the most efficient investigations at this time, because you’re not going to have the resources to be as efficient as you would if they were being done on an ongoing basis as it came in,” said Stedman. “That’s really going to slow down each of those ones because he’s going to have the resources stretched across multiple files.”

Robert Shepherd, a professor at the School of Public Policy and Administration at Carleton University in Ottawa, told The Hill Times that the longer the ethics office goes without appointing a full-term commissioner raises questions about how seriously the federal government takes the vacancy. He said the appointment process for ethics commissioner should have greater transparency.

“There’s absolutely no indication once you put in your application what happens to it after that. We don’t even have a sense of what the names are. There’s no process for even a limited amount of

public input into those into those individuals,” he said. “Even leaders of the opposition are not given the opportunity to comment on a shortlist ...[and] they have no insights into who else may have applied for that position, or an opportunity to provide their own thoughts on candidates.”

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Figure:

Duff Conacher, co-founder of Democracy Watch, says the interim ethics commissioner should disclose if he intends to apply for a full term in his role. Photograph courtesy of Duff Conacher

Ian Stedman, an assistant professor in Canadian public law and governance at York University, says ‘you wouldn’t want to change [an ethics] commissioner two-thirds of the way through an investigation, or 90 per cent of the way through.’ Photograph courtesy of Ian Stedman