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October 25, 2016

RE: Request for investigation and ruling on lobbyist assisting with fundraising event for Finance Minister, and request that you recuse yourself from ruling on complaint

Dear Commissioner Shepherd,

I am writing on behalf of Democracy Watch to request an investigation and ruling on the situation reported in an article in the *Globe and Mail* today. According to the article, Barry Sherman, the chairman of generic drug manufacturer Apotex Inc., is assisting with selling tickets for a \$500-per-ticket fundraising event to be held in Toronto on November 7, 2016 featuring Finance Minister Bill Morneau.

Also according to the article, and I have verified this by searching the Registry of Lobbyists, Apotex is registered to lobby Finance Canada (with Mr. Sherman listed in the registration as one of its lobbyists), as are three consultant lobbyists registered on behalf of the company (two from StrategyCorp Inc. and one with Goodmans LLP). The most recent monthly communication with Finance Canada officials is by one of Apotex's consultant lobbyists StrategyCorp Inc. occurring on September 20, 2016.

The Federal Court of Appeal unanimously ruled on March 12, 2009 in the case *Democracy Watch v. Barry Campbell, the Attorney General of Canada and the Office of the Registrar of Lobbyists*:

“Where the lobbyist's effectiveness depends upon the decision maker's personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed. The conduct proscribed by Rule 8 is the cultivation of such a sense of personal obligation, or the creation of such private interests.” (para. 53)

That case concerned a lobbyist, Barry Campbell, who organized a fundraising event for a minister that he was registered to lobby, and was actively lobbying, around the same time as the event. The Federal Court of Appeal ruling makes it clear that lobbying and fundraising around the same time violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*.

Rule 6 of the *Lobbyists' Code of Conduct* states:

A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.

While the wording of Rule 6 is different than Rule 8, as you set out in your guidance statement on Rule 6 at: <https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01180.html> the standard is the same as the Federal Court Appeal set out in its ruling – lobbyists are not allowed to put any public office holder in even the appearance of a conflict of interest.

Buying a ticket to a political party's fundraising event is the same as making a donation to the party as allowed under the *Canada Elections Act*. However, selling tickets for the event does a greater favour for the minister who is the featured guest at the event, the star attraction and reason why many people would attend such an event.

It is true that the event that was at issue in the 2009 Federal Court of Appeal's ruling was a fundraising event for the minister's riding association, not for the minister's political party. However, it would be unreasonable and legally incorrect for you to distinguish the current fundraising event from the past event on that basis because money raised for political party can as directly assist the minister as money raised for a riding association. Parties and their riding associations often transfer funds between each other; the events and promotional activities that each party undertakes in between elections assists with the profile of each minister and candidate, and; the national election campaign run by each party assists every candidate with their re-election campaign.

It is also true that Barry Campbell, the lobbyist at issue in the 2009 Federal Court of Appeal's ruling was a consultant lobbyist, not an in-house lobbyist as Mr. Sherman is, and that Mr. Campbell was personally doing the lobbying. Again, however, it would be unreasonable and legally incorrect for you to distinguish the current fundraising event from the past event on that basis because doing so would create a technical loophole that would be exploited companies and organizations to undermine entirely the purpose and effect of Rule 6. Anyone working for or at a company that is registered to lobby a public office holder who gives or does anything for that office holder that is more than an average voter does puts that office holder in at least the appearance of a conflict of

interest (and possibly a real conflict of interest depending on the significance of what is given or done for the office holder).

Given that you have indicated to the *Hill Times/Power and Influence* magazine that you are interested in being reappointed as Commissioner of Lobbying for another term, and given that the consideration of whether you will be reappointed will take place very soon, with the federal Liberal Cabinet having to approve your reappointment (as well as a majority of MPs in the House of Commons and a majority of senators in the Senate), Democracy Watch's position is that you have at least the appearance of a conflict of interest in ruling on this complaint which alleges that a lobbyist has violated Rule 6 by putting a Liberal Cabinet minister in a conflict of interest.

Therefore, we request that you recuse yourself from investigating and ruling on this complaint, and request that instead you refer it to another similar commissioner in another jurisdiction. We would suggest referring it to the Conflict of Interest and Ethics Commissioner Mary Dawson, but given her very weak enforcement record (including approving in the past lobbyists doing things for Cabinet ministers that violate Rule 8 of the *Lobbyists' Code*) it is unlikely that she would make a legally correct ruling. As well, the consideration of whether she will be reappointed for another term by the federal Liberal Cabinet and MPs will also happen very soon, and so she would also be in at least the appearance of conflict of interest when ruling on this complaint.

Please let Democracy Watch know, first, if you will recuse yourself from ruling on this complaint and refer it to a similar commissioner in another jurisdiction.

You have an opportunity to uphold a key measure in a key democratic good government law in a legally correct manner. We hope you will not refuse to do this.

Democracy Watch looks forward to hearing from you soon concerning whether you will recuse yourself from ruling on this complaint, and what process will be used to investigate and rule on the complaint.

Please let us know if you need any more information to act on this request – Democracy Watch is happy to provide further details.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch