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Karen Shepherd, Commissioner  
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December 20, 2017

**RE:**

- (a) Request that Commissioner Karen Shepherd recuse herself from ruling on the matters addressed in this letter because she received 6-month contract worth approximately \$100,000 from the Trudeau Cabinet in mid-June;**
- (b) Request that new Lobbying Commissioner Nancy Bélanger recuse herself from ruling on the matters addressed in this letter because she was handpicked through a secretive, PMO-controlled process, and;**
- (c) Request for ruling that the Aga Khan violated the *Lobbyists' Code* by giving Prime Minister Trudeau and Liberal MP Seamus O'Regan the gifts of trips to his island home**

Dear Commissioner Shepherd,

I am writing on behalf of Democracy Watch to I am writing concerning enforcement of the *Lobbying Act* (“*Act*”) and *Lobbyists' Code* (“*Code*”) generally, and to request an investigation and ruling on the trip gifts the Aga Khan has given to Prime Minister Trudeau and MP Seamus O'Regan. Democracy Watch's position is that the Aga Khan violated Rules 6 and 10 of the *Code* by giving the trip gifts to the Prime Minister and to MP O'Regan.

**(a) Request that you recuse yourself from ruling on the matters addressed in this letter because you received 6-month contract worth approximately \$100,000 from the Trudeau Cabinet last June**

The details concerning why Democracy Watch's position is that the trip gifts violate Rules 6 and 10 of the *Code* are set out in the rest of this letter. First, however, Democracy Watch requests that you recuse yourself from investigating this matter. This request is being made because you received a contract in mid-June from the Trudeau Cabinet worth approximately \$100,000 as you were reappointed under subsection 4.1(4) of the *Lobbying Act* in an interim position for six months (as was done last December and in July 2016).

Your term ends on December 29th, and Democracy Watch is requesting that you do not make any decisions about this matter before then because your current contract causes at least the appearance of a conflict of interest for you – a reasonable apprehension of bias. This is caused by the fact that: the contract was given to you by the Cabinet as a sole-source contract, and; while the opposition party leaders may have been consulted on your interim reappointment last June, there is no requirement in the *Lobbying Act* that they be consulted and so your reappointment was entirely at the legal discretion of, and controlled by, the Cabinet.

As a result of your conflict of interest, as it has concerning other matters raised with you over the past year, Democracy Watch requests that you recuse yourself from investigating these situations, and all situations involving the Trudeau Cabinet, and that you refer the investigations to someone who is fully independent of the Cabinet and all federal political parties.

**(b) Request that new Lobbying Commissioner Nancy Bélanger recuse herself from ruling on the matters addressed in this letter because she was handpicked through a secretive, PMO-controlled process that violated consultation requirement**

Democracy Watch also requests that new Lobbying Commissioner Nancy Bélanger recuse herself from ruling on the matters addressed in this letter because she was nominated by Prime Minister Trudeau to the position, as set out at:

<https://pm.gc.ca/eng/news/2017/11/30/prime-minister-nominates-next-commissioner-lobbying>

after a process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO and the office of Treasury Board Minister Scott Brison who is responsible for the *Lobbying Act*, as detailed in this Democracy Watch news release:

<http://democracywatch.ca/headhunting-firms-confirm-pmo-and-cabinet-staff-on-watchdog-selection-committees/>

and in this news article:

<https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

The PMO- and Cabinet-controlled appointment process did not include consultation with opposition parties as required under subsection 4.1(1) of the *Lobbying Act*, which can be seen at:

<http://laws-lois.justice.gc.ca/eng/acts/L-12.4/page-2.html#h-5>

As well, given that the Office of the Commissioner of Lobbying is already investigating at least four situations involving Prime Minister Trudeau and other Cabinet ministers, which are summarized in subsection A1 at:

<http://democracywatch.ca/democracy-watches-government-ethics-complaints-and-court-cases-from-2016-on/>

there is a reasonable apprehension of bias on the part of the Trudeau Cabinet when it made the choice of new Lobbying Commissioner Nancy Bélanger.

As a result, Democracy Watch requests that new Lobbying Commissioner Nancy Bélanger recuse herself from investigating the matters addressed in this letter, and all situations involving the Trudeau Cabinet, and that she refer the investigations to someone who is fully independent of the Commissioner, the Cabinet, and all federal political parties.

**(b) Request for ruling that the Aga Khan violated the *Lobbyists' Code* by giving Prime Minister Trudeau and Liberal MP Seamus O'Regan the gifts of trips to his island home**

The media has reported most of the details concerning Prime Minister Trudeau's acceptance of the gift of a holiday at the Aga Khan's island home, and flight to and from the island on the Aga Khan's helicopter, both in December 2014 and December 2016. The media has also reported the same details concerning Liberal MP Seamus O'Regan's acceptance of the same gift from the Aga Khan in December 2016.

Conflict of Interest and Ethics Commissioner Mary Dawson ruled today that Prime Minister Trudeau violated the Conflict of Interest Act by accepting the gift from the Aga Khan. You can see a summary of that ruling, and a link to the entire ruling, at: <http://ciec-ccie.parl.gc.ca/EN/InformationFor/Pages/NewsRelease20122017.aspx>

Together, the media articles and the Ethics Commissioner's ruling provide ample evidence that give you reason to believe that an investigation is needed into whether the Aga Khan violated the *Lobbyists' Code of Conduct* rules that prohibit giving gifts to public office holders.

Democracy Watch has been waiting all through 2017 for any sign that Commissioner Shepherd was launching an investigation of the Aga Khan's gift. Unfortunately, consistent with her weak enforcement record since 2008, including ignoring the gifts of

sponsored travel that many lobbyists have given MPs and senators through that time period, there has been no sign that Commissioner Shepherd was investigating these situations.

With this letter, Democracy Watch is requesting an investigation of the Aga Khan's gift to Justin Trudeau of a holiday at the Aga Khan's island home, and flight to and from the island on the Aga Khan's helicopter, both in December 2014 and December 2016, and of the Aga Khan's gift of the same holiday to Liberal MP Seamus O'Regan in December 2016.

According to the federal Registry of Lobbyists, the Aga Khan Foundation Canada (AKFC) was registered to lobby the Prime Minister's Office and the House of Commons at both of these times.

According to the AKFC website, the Aga Khan is a member of the Board of Directors of the AKFC and "The Board has overall statutory governance responsibility for AKFC and maintains an active role in setting AKFC's long-term strategy." Indeed, board members of any incorporated entity like the AKFC are legally required to further its interests.

Subsection 10.4(1) of the *Lobbying Act* states:

"Investigation

10.4 (1) The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable."

The "Code" referred to in that subsection is the federal *Lobbyists' Code of Conduct*. The subsection requires you to investigate if you have reason to believe that an investigation is necessary to ensure compliance with the *Code* (or *Act*). This wording makes it clear that you do not need evidence of a violation – that your investigations are also required when a situation simply raises questions concerning compliance with the *Code* and the investigation is required to ensure compliance with the *Code* (or *Act*).

In other words, you are required to investigate when you have a reasonable belief that an investigation will prevent a violation by ensuring compliance.

Your own "Guiding principles and criteria for recommending compliance measures" document states:

"It is the role of the Office of the Commissioner of Lobbying (OCL) to support this mandate by conducting administrative reviews of suspected, alleged, or known contraventions of the Act and Code, recommending appropriate enforcement measures and, where the Commissioner deems necessary, conducting formal investigations under subsection 10.4 of the Act."

All that is needed is a suspected violation to trigger an administrative review and, it is Democracy Watch's position, subsection 10.4(1) of the *Act* also requires an investigation of all suspected violations that raise questions concerning compliance.

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 creating that “personal sense of obligation” violates Rule 8 (now Rule 6) of the *Code*.

Rule 6 of the *Code* 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.

Your guidance on Rule 6, cited above, also makes it clear that a gift given to a public office holder in violation of Rule 10 of the *Code* is also a violation of Rule 6.

Rule 10 of the *Code* states:

“Gifts

10. To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.”

As your guidance document concerning Rule 10 at:

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01183.html>

states:

“If a lobbyist is actively lobbying or will lobby a public office holder, gifts, including meals and tickets to events... are most likely unacceptable.”

It is true that Barry Campbell, the lobbyist at issue in the 2009 Federal Court of Appeal's ruling was a consultant lobbyist, not a board member of a company or organization that lobbies the federal government, and that Mr. Campbell was personally doing the lobbying. However, it would be unreasonable and legally incorrect for you to treat

differently a person who is directly and significantly associated with a company or organization and who gives a gift to a politician at the same time or before their company or organization lobbies the politician involved in the event. Doing so would create a technical loophole that would be exploited companies and organizations to undermine entirely the purpose and effect of Rule 6 and Rule 9 of the *Code*, as they would simply have non-registered executives or board members assist give gifts to politicians and do them favours, while other company or organization representatives do the lobbying.

To be legally correct and reasonable, taking into account the purpose of the *Code* and the Principles set out in the *Code* that emphasize integrity and observance of the highest ethical standards to protect the public interest, your position must be that anyone working for or associated with a company that is registered to lobby a public office holder who gives to or does anything for that office holder (or that office holder's political party or riding association) that is more than an average voter does (e.g. an average voter may post a sign on their lawn, or make a donation or vote) puts that office holder in an apparent conflict of interest (and possibly a real conflict of interest depending on the significance of what they give or do).

Therefore, the activities of the person who works for or is associated with the company or organization, in this case the Aga Khan, cause the company or organization to be in violation of Rule 9 of the *Code* if it lobbies the public office holder in the next five years.

To follow the rules of natural justice, you must inform Democracy Watch as the complainant of any decisions you make concerning this complaint, and give Democracy Watch an opportunity to respond to any decision you make. Specifically, given that subsection 10.4(1) of the Lobbying Act states that you are required to conduct an investigation if you have reason to believe "that an investigation is necessary to ensure compliance with the Code", Democracy Watch therefore has, under the rules of natural justice, a right to know if you decide not to conduct an investigation or if you cease an investigation into its complaint.

The Office of the Commissioner of Lobbying has an opportunity to uphold a key measure in a key democratic good government law in a legally correct manner. We hope it will do so.

Democracy Watch looks forward to hearing from the Office soon concerning what process will be used to investigate and rule on this complaint. Please let us know if you need any more information to act on this request – Democracy Watch is happy to answer any questions you may have.

Sincerely,



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