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Standing Committee on Access to Information, Privacy and Ethics
Sixth Floor, 131 Queen Street
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Ottawa, Ontario K1A 0A6

Via E-mail: ETHI@parl.gc.ca

March 21, 2023

RE: Commissioner of Lobbying Nancy Bélanger's March 3rd letter to the Committee, and summary of reasons to reject the Commissioner's proposed changes that will gut key ethical lobbying rules in the *Lobbyists' Code*, and to accept changes to gift/hospitality rules

Dear Committee members:

You are currently reviewing Commissioner of Lobbying Nancy Bélanger's proposed changes to the *Lobbyists' Code of Conduct*, including key ethical lobbying rules in the *Code*.

Commissioner Bélanger sent a [letter on March 3rd](#) to the Committee responding to testimony and submissions of witnesses before the Committee. This letter is in response to the Commissioner's letter, key dangerous effects of the Commissioner's proposed changes to the *Code* that the Committee has not really considered so far, and the false claims made by big business and big union lobbyists when they testified before the Committee about the proposed changes.

A. Commissioner's proposed gutting of key ethical rules in the *Code*

In the current *Code*, Rules 6 and 9 and a [guideline Commissioner Bélanger has issued concerning Rule 9](#) prohibit lobbying for at least 4 years (a "full election cycle" i.e. until after the next election) after anyone does any top-level or second-level campaigning or event organizing, or any fundraising, for a politician or party as a paid campaign staff person or as a volunteer, with no exceptions based on

the time they spend doing these activities or their level of interaction with candidates or party officials while doing the activities.

Commissioner Bélanger is proposing to gut current Code Rules 6 and 9 and allow lobbyists under a proposed new Rule 6 (and the definitions of “political work” and “other political work” in the Appendix of her proposed new Code):

1. To secretly campaign up to near-full-time, and fundraise unlimited amounts of money, for politicians and parties while lobbying them (as long as the campaigning/fundraising is done without frequent, extensive interaction with a candidate or party official – again, the current lobbying prohibition time period after these activities is at least 4 years);
2. To secretly be a second-level, full-time campaign staff person for a politician, riding association and/or party and then only be prohibited from lobbying for 1 year (i.e. before the next election – again the current lobbying prohibition time period is at least 4 years);
3. To secretly be a top-level, full-time campaign staff person for a politician, riding association and/or party and then only be prohibited from lobbying for 2 years (i.e. also before the next election – the current lobbying prohibition time period is at least 4 years);

and not only can all of this campaigning and fundraising be done in secret, but also the Commissioner is proposing to give herself the power to secretly reduce a lobbyist’s 1-2 year lobbying prohibition down to an even shorter time period.

You should have received the [Key Facts](#) document submitted February 16th by Democracy Watch to the Committee. **See Key Facts #25, 26 and 34-37** about the main dangerous effects of the above three ways Commissioner Bélanger is proposing to gut key ethical lobbying rules. And see below for other dangers.

B. Commissioner’s strange, misleading statements about gutting the rules

In her March 3rd letter Commissioner Bélanger makes very strange, misleading statements about proposed change #1 in the list set out above. The statement is on page 6 of the letter under the heading “Other partisan activities”.

Commissioner Bélanger’s claim is about the fact that proposed new Rule 6 would allow a lobbyist to secretly campaign up to near-full-time, and fundraise unlimited amounts of money, for politicians and parties while lobbying them (as long as the campaigning/fundraising is done without frequent, extensive interaction with a candidate or party official).

Commissioner Bélanger claims that these lobbyists would not be covered by Rule 6 and “could be addressed” by her under proposed new Rule 7, depending “on the factual circumstances at issue and made on a case-by-case basis.”

In fact, these lobbyists are clearly covered by proposed new Rule 6, which along with the definition of “other political work” sets out that anyone who does campaigning/fundraising near-full-time or with frequent, extensive interaction with a candidate or party official is prohibited from lobbying for one year and, therefore, anyone who does these activities less than near-full-time or without frequent, extensive interaction with a candidate or official is not prohibited from lobbying for any time period at all. Because they are covered by proposed new Rule 6, they would not be covered by proposed new Rule 7.

Even if the Commissioner’s very questionable claim about Rule 7 overriding Rule 6 for these activities was accepted, that would have bizarre and dangerously vague effects. It would mean that someone who spends less time campaigning than others for a candidate or party would be prohibited from lobbying until the “sense of obligation” created by the favours disappears. The Commissioner says nothing about how long it would take for that to disappear. Would it be longer than the proposed new cooling-off periods of 1-2 years? Would it be shorter? How short? Would it be longer in some cases but shorter in others? The Commissioner claims that the whole purpose of the proposed new *Code* is to make the rules clearer – but this would make the rules more vague. These questions, and questionable claims by the Commissioner, cannot be left unanswered.

C. Commissioner’s very questionable, sole-sourced, secret legal opinion

Commissioner Bélanger also claims that a legal opinion her office paid one law firm (Goldblatt Partners) to do for her (under a very questionable sole source contract that was increased from [\\$11,300](#) to [\\$45,200](#) and then up to [\\$90,400](#)) says that the current 4-year prohibition on lobbying violates the *Charter* right to freedom of expression and would be rejected by the courts. Commissioner Bélanger refuses to make this opinion public.

You should have received on March 6th [the open letter](#) from 11 lawyers from 4 law firms (and also lawyers in private practice or other roles), and 21 law and political science professors from 14 universities in 8 provinces that calls on the Committee to reject the Commissioner’s proposed changes to these key ethical lobbying rules, and also to reject the Commissioner’s claim that the current 4-year lobbying prohibition violates the *Charter*. Several Supreme Court of Canada and other court rulings have clearly stated that *Charter* rights can (and must) be restricted to protect government integrity. **See Key Facts #1-4 and 38-39 about this.**

[Democracy Watch and 25 other citizen groups with a total membership of 1.5 million Canadians join](#) these lawyers and professors in calling on the Committee to reject Commissioner Bélanger’s proposed changes.

It is an entirely reasonable limit under the *Charter* to prohibit a person who does anything significant for any period of time (as a paid staff person or volunteer) to help a politician or political party from lobbying the politician, party leader and top party officials for at least 4 years. That prohibition ensures that lobbyists don't lobby people they have helped until after the next election – which helps ensure ethical lobbying and protects the integrity of government and policy-making.

D. Other dangerous effects of Commissioner's proposed changes

The Commissioner's proposed changes will allow secret, corrupt favour-trading between lobbyists and federal politicians, and the Committee has not paid attention or considered (at least not in any meeting held in public) several other dangerously undemocratic and unethical effects of the Commissioner's proposed changes, as follows:

1. **The first dangerous effect** that the Committee has not paid enough attention to is that because Commissioner Bélanger's proposed changes to the *Code* will allow lobbyists to campaign, fundraise and do favours for federal politicians while lobbying them, it will also make it legal under the ethics rules for federal politicians for them to return the favour to the lobbyist or their business, organization or client. **See Key Fact #30 about this.**
2. **The second dangerous effect** that the Committee has not paid attention to is that Commissioner Bélanger has said nothing, including nothing in her March 3rd letter to the Committee, about how her proposed changes apply to a situation in which someone works, volunteers, fundraises or does other favours for a political party headquarters (or the party's leader) during an election campaign or between elections. To prevent unethical lobbying, it must be specified in the *Code* whom they would be prohibited from lobbying during their cooling-off period. Given their assistance provided to the party helps all candidates and MPs in the party, the person should be prohibited from lobbying anyone in the party (including party caucus research staff) after providing the assistance to the party. **See Key Fact #28 about this.**
3. **The third dangerous effect** is that, at the bottom of page 5 and top of page 6 of her March 3rd letter, Commissioner Bélanger addresses her proposed change to Rule 6 of the *Code* that would allow her to secretly reduce any lobbyist's "cooling-off" lobbying prohibition period. She says only that she is "prepared to consider" publishing the names of lobbyists whose cooling-off periods she has reduced. To prevent unethical lobbying, the Commissioner must be required to issue a public notice every time she reduces a lobbyist's cooling-off period, with the lobbyist identified in the notice.

4. **The fourth dangerous effect** that the Committee has not paid enough attention to is that, as Commissioner Bélanger says on page 5 of her March 3rd letter, under her proposed changes if a person campaigned, fundraised or did favours for one candidate or politician (or riding association), afterwards they “would not be precluded from lobbying all other Members of Parliament for whom they did not do political work, Senators or public servants.” The Commissioner does not make it clear in her proposed changes (specifically in the definition of “associate” under the heading “Political Work” in the Appendix of the proposed new *Code*) that, if the politician is or becomes a Cabinet minister, then the person will be prohibited from lobbying anyone who works in the minister’s department on issues for which the minister has decision-making power. This will create a huge, unethical loophole in the *Code*, as lobbyists will be allowed to do favours for a minister and then lobby the minister’s Deputy Minister, Associate Deputy Ministers or Assistant Deputy Ministers or their staff (who will, of course, pass on the lobbyist’s demands to the Minister’s office). To prevent unethical lobbying, the rule must be that if you do favours for a minister, you can’t lobby anyone in the minister’s department during the cooling-off period about any issue for which the minister has decision-making power. **See Key Fact #27 about this.**
5. **Finally**, as the Commissioner says on page 5 of her March 3rd letter, the *Code* only applies to registered lobbyists. The many well-known, huge secret lobbying loopholes in the *Lobbying Act* that allow lobbying without registering really make even the current *Code* a sad joke that does little to stop secret, unethical lobbyist. If the Commissioner’s proposed changes go through, the current sad joke will become a dangerous threat to democratic good government and political integrity at the federal level in Canada. Parliament and the Committee have negligently failed to undertake the legally required review of the *Lobbying Act* for the past 10 years. This negligence must stop, and the Committee must as soon as possible issue a strong, comprehensive report that recommends closing all of the secret lobbying loopholes in the *Act*.

E. False claims by big business and big union lobbyists about the changes

Beyond these dangerous effects of the Commissioner’s proposed changes to key ethical lobbying rules in the *Code*, the members of the Committee should not allow themselves to be fooled by the false claims that big business and big union lobbyists made in their testimony and submissions to the Committee about the proposed changes to the *Code*:

1. **First, these lobbyists made the false claim** that the proposed changes would prohibit “everyone” including low-level campaign volunteers, from lobbying for one year after their volunteering. In fact, under current Rule 6 and 9 in the *Code*, and under Commissioner Bélanger’s proposed new

Rule 6 (as the Commissioner makes clear on pages 4-5 of her March 3rd letter to the Committee), if a person only makes a donation, volunteers occasionally on a campaign, attends a fundraising event or puts an election sign on their lawn, they are not prohibited from lobbying at all, because many voters engage in these same low-level political activities. **See Key Facts #20-24 about this.**

2. **Secondly, these lobbyists also made the false claim** that they would not be able to make representations to MPs if Commissioner Bélanger's proposed limits of \$40 per MP for each gift or hospitality, and \$80 annually, were made (on pages 2-4 of her March 3rd letter the Commissioner says that she is considering increasing the total to \$100 annually). In fact, the Ethics Commissioner currently prohibits MPs from receiving gifts or hospitality from any lobbyist that is worth more than those amounts because even small gifts have been proven by psychological studies to influence decisions. Also in fact, in Ottawa and across Canada (except in some remote areas), catered receptions and meal events cost only \$17-\$40 per person on average, and coffee meetings only \$10. As well, MP salaries are in the top 5% in Canada, and they are given expense accounts to cover the cost of almost all their hospitality expenses, so they can simply pay themselves to go to receptions and other events held by lobbyists. As a result, Commissioner Bélanger's changes to the gifts and hospitality are entirely reasonable. **See Key Facts #5-9 about this.**

F. Conclusion – reject some proposed changes, accept others

For all these reasons, Democracy Watch calls on the Ethics Committee to loudly and clearly reject Commissioner Bélanger's proposed changes to Rules 6 and 9 in the current *Lobbyists' Code* (she proposes to replace them with proposed new Rule 6), and to accept Commissioner Bélanger's proposed changes to the gifts and hospitality rules in the *Code*.

Commissioner Bélanger has repeatedly claimed that proposed new Rule 6 has been "carefully crafted" to ensure ethical lobbying while protecting *Charter* rights. This is a ridiculous claim as new Rule 6 will clearly allow for rampant unethical lobbying that will undermine the integrity of federal government and federal policy-making processes in ways that actually violate the *Charter's* section 3 guarantee of equal opportunity for equal participation in all political processes. **Again, see Key Facts #1-4 and 38-39 about this.**

Whether the Committee calls on the Commissioner to leave current Rules 6 and 9 in the *Code* in their current form, or to adapt them to the context of the proposed new *Code*, the Committee should call on the Commissioner to:

1. Keep in the *Code* the current loophole-free Rule 6 that prohibits lobbying anytime there is an appearance of a conflict of interest;
2. Increase the cooling-off periods in proposed new Rule 6 for both top-level and second-level campaign activities (for pay or as a volunteer, and no matter how extensive the interaction with a candidate or party official), and any fundraising to at least 4 years (and preferably longer – instead of lowering it to 1-2 years);
3. Allow lobbying right away after political activity only if the lobbyist only canvasses or volunteers no more than a couple of times during a campaign, and;
4. Don't allow reductions of any of the cooling-off periods.

Democracy Watch is happy to answer any questions that any member of the Committee, or the Committee's researchers, have about anything set out above.

Sincerely,



Duff Conacher, Co-founder

On behalf of the Board of Directors of Democracy Watch