



democracy Watch  
émocratie en surveillance

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November 23, 2017

**RE: Request for performance audit of Commissioner of Lobbying Karen Shepherd, and also the RCMP, concerning enforcement of *Lobbying Act* and *Lobbyists' Code of Conduct***

Dear Auditor General Ferguson:

With this letter, Democracy Watch is requesting a performance audit of the Commissioner of Lobbying Karen Shepherd, and also the RCMP, concerning enforcement of the *Lobbying Act* and *Lobbyists' Code of Conduct* since April 1, 2008. This audit would be similar to the audit the Auditor General conducted into Public Sector Integrity Commissioner Christiane Ouimet in 2009-2010. You can see the report on that audit at:  
[http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201012\\_e\\_34448.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201012_e_34448.html)

The three grounds for Democracy Watch's request are as follows:

**1. Very weak record of catching and holding violators accountable**

From April 1, 2008 to March 31, 2017, according to Commissioner of Lobbying Karen Shepherd's annual reports, she and the RCMP and Crown prosecutors have secretly decided not to penalize or prosecute 88 of the 105 lobbyists (84%) who have been caught violating the *Lobbying Act* or the *Lobbyists' Code* (when you violate the *Act* you automatically violate the *Code*).

The details of why those 88 have been let off the hook are not disclosed by the Commissioner, the RCMP or Crown prosecutors. The fact that they have been let off is

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mainly the Commissioner's fault because the Commissioner is the front-line enforcer of the Act who decides whether to refer any case to the RCMP and Crown prosecutors for possible prosecution.

For the 88 people who were caught but have been let off the hook, the Commissioner has kept their identity secret and has only given them warnings or required them to write an essay or be educated about the law and monitored by the Commissioner's office for a year or so after their violation. Summary information about how the Commissioner has dealt with these cases is disclosed in the reports you can see at: [https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h\\_00831.html](https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00831.html)

Since 1988, only four people have been found guilty of violating the *Act* (Andrew Skaling, Bruce Carson and Jamie Carroll (see also here re: Carroll) and Hervé Pouts). As well, only 13 people have been found guilty of violating the *Code*.

Commissioner Shepherd took from July 2008 until November 2011 to issue the first valid ruling on a violation of the *Code*, and two of the 13 (Réné Fugère and André Nollet) were only found guilty after the Commissioner was forced to issue a ruling under a court order that Democracy Watch won. Commissioner Shepherd has not found anyone guilty of violating the *Code* since 2012.

Using the likely very conservative estimate that, since 2008, 10,000 different people have lobbied the federal government in ways that would have required them to register under the *Lobbying Act*, the Commissioner and her predecessors and the RCMP have caught only 1% of those people violating the *Act* or the *Code*.

On May 27, 2015, as she has in the past, Commissioner Shepherd testified before the House of Commons Standing Committee on Access, Ethics and Privacy and stated that her only enforcement action concerning unregistered communications between lobbyists and government institutions and officials is "monitoring the media." She didn't do any random auditing – which experts in law enforcement agree is necessary for effective law enforcement – until the 2015-2016 fiscal year and since then has only audited communication reports filed by registered lobbyists. To catch unregistered lobbying, obviously the phone, email, and PIN communications of ministers and top government officials must be audited.

Given the weak enforcement practices, approach, attitude and record of Commissioner Shepherd and the RCMP, it is reasonable to assume that only 5% of violators are likely caught, and therefore that actually about 2,100 people have violated the *Lobbying Act* and *Lobbyists' Code of Conduct* since 2008.

## **2. Delay in issuing rulings**

Democracy Watch has reviewed the Commissioner of Lobbying's reports on the Administrative Reviews and Investigations – Compliance Statistics page of her website at: [https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h\\_00831.html](https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00831.html).

The review revealed that of the 189 cases that the Commissioner reports on, it took 3 or more years for the Commissioner to issue rulings in 59 of the cases (31.2% of the cases), as follows:

- a) Of the 27 cases reported on in the 2016-2017 report: 1 was from 2010; 1 was from 2012; 6 were from 2013; 5 were from 2014; 5 were from 2015, and; 9 were from 2016 (which means rulings on 8 cases took 3 years or more);
- b) Of the 14 cases reported on in the 2015-2016 report: 1 was from 2010; 2 were from 2012; 7 were from 2014, and; 4 were from 2015 (which means rulings on 3 cases took 3 years or more);
- c) Of the 20 cases reported on in the 2014-2015 report: 1 was from 2008; 4 were from 2009; 1 was from 2010; 1 was from 2011; 1 was from 2012; 7 were from 2014, and; 4 were from 2015 (which means rulings on 7 cases took 3 years or more);
- d) Of the 22 cases reported on in the 2013-2014 report: 1 was from 2007; 3 were from 2008; 4 were from 2009; 1 was from 2011; 5 were from 2012; 6 were from 2013, and; 1 was from 2014 (which means rulings on 8 cases took 3 years or more);
- e) Of the 27 cases reported on in the 2012-2013 report: 4 were from 2006; 6 were from 2007; 2 were from 2008; 1 was from 2009; 3 were from 2010; 1 was from 2011; 7 were from 2012, and 2 were from 2013 (which means rulings on 13 cases took 3 years or more);
- f) Of the 33 cases reported on in the 2011-2012 report: 5 were from 2004; 1 was from 2005; 3 were from 2007; 4 were from 2008; 3 were from 2009; 2 were from 2010; 11 were from 2011, and; 4 were from 2012 (which means rulings on 13 cases took 3 years or more);
- g) Of the 31 cases reported on in the 2010-2011 report: 2 were from 2004; 1 was from 2005; 2 were from 2006; 2 were from 2007; 4 were from 2009; 17 were from 2010, and; 3 were from 2011 (which means rulings on 7 cases took 3 years or more);
- h) Of the 9 cases reported on in the 2009-2010 report: 4 were from 2007; 3 were from 2008, and; 2 were from 2009 (which means very few rulings were made that year, even though there was a backlog of more than 35 cases at the beginning of that fiscal year, 15 of which were 3 or more years old), and;
- i) Of the 6 cases reported on in the 2008-2009 report: 1 was from 2006; 2 were from 2007, and; 3 were from 2008 (which means very few rulings were made that year, even though there was a backlog of more than 30 cases at the beginning of that fiscal year, 9 of which were 3 or more years old).

### **3. Specific delay in issuing rulings in the past two years since the Liberals were elected**

As well, Commissioner Shepherd has not issued a public ruling since the Liberals were elected despite receiving five complaints of clear violations from Democracy Watch alone since late May 2016. Three of the complaints were filed more than one year ago. You can see those complaints summarized at:

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

Commissioner Shepherd has also refused to recuse herself from investigating these complaints. Democracy Watch filed a court case in July challenging the Commissioner of Lobbying for being in a conflict of interest because the Trudeau Cabinet's re-appointed her last June to her third six-month interim term -- so she is essentially currently serving at the pleasure of the Trudeau Cabinet. You can see that court case summarized at: <http://democracywatch.ca/group-files-court-cases-challenging-trudeau-cabinet-reappointments/>

Please contact Democracy Watch at the address above if your office needs any more information concerning the matters raised above.

We look forward to hearing back from you very soon concerning whether you will audit Commissioner Shepherd's performance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', is positioned above the typed name.

Duff Conacher, Board member of Democracy Watch  
On behalf of the Board of Directors of Democracy Watch