



democracy Watch
émocratie en surveillance

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Commissioner of Canada Elections
ATTN: Commissioner Yves Côté
P.O. Box 8000, Station T
Ottawa, Ontario
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October 10, 2019

RE: Request for investigation into possible violation of the *Canada Elections Act* provision prohibiting collusion between a party and a third party

Dear Commissioner Côté,

Democracy Watch is filing this complaint to request an investigation and a public ruling on the situation described in the following *Globe and Mail* articles published in the past two days:

<https://www.theglobeandmail.com/politics/article-election-ad-contracts-capp-conservatives/>

and

<https://www.theglobeandmail.com/politics/article-elections-canada-contradicts-scheers-claim-that-ruling-was-issued-in/>.

The articles describe the following arrangement:

- The advertising firm One Persuasion Inc. was co-founded by Hamish Marshall;
- Mr. Marshall has taken a leave of absence since last June from the company to manage the election campaign of the Conservative Party of Canada (CPC);
- The company confirms that it has provided advertising services during the election campaign period to the CPC, and also to the registered third party, the Canadian Association of Petroleum Producers (CAPP).

You can see CAPP's Third Party Financial Return filed with Elections Canada that confirms it has used the services of One Persuasion Inc. at:
https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0001_due21.pdf.

This situation raises the question of whether CAPP and the CPC are colluding in violation of the rules set out in the *Canada Elections Act* (S.C. 2000, c.9).

A. The *Canada Elections Act* rules, and applicability to this situation

Subsection 351.01(1) of the *Canada Elections Act* ("CEA"), which you can see at:
<https://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-48.html>
states:

351.01 (1) No third party and no registered party shall act in collusion with each other — including by sharing information — in order to influence the third party in its partisan activities that it carries out during an election period, its election advertising or its election surveys that it conducts or causes to be conducted during an election period.

and a violation of subsection 351.01(1) is an offence requiring intent under clause 496(2)(b) of the *CEA*, which you can see at:
<https://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-94.html>.

Under section 24 of the *Criminal Code of Canada* (R.S.C., 1985, c. C-46) an attempt to commit an offence is also a violation of the law:
<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-5.html>.

Under subsection 500(5) of the *Canada Elections Act*, the penalty for violating clause 496(2)(b) on summary conviction is a fine of not more than \$20,000 or to imprisonment for a term of not more than one year, or both. On conviction on indictment, the penalty is a fine of not more than \$50,000 or to imprisonment for a term of not more than five years, or both:
<https://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-99.html>.

One Persuasion Inc. providing advertising services to both the CPC and the CAPP, and being a firm co-founded by the CPC's election campaign manager, raises the question of whether the CPC is "sharing information" with CAPP in order to influence the CAPP's partisan activities, election advertising or election surveys during the election campaign period.

While the above-linked *Globe and Mail* articles quote representatives of One Persuasion Inc., the CPC, and the CAPP, all saying that the *CEA* rules are being followed, Democracy Watch's position is that the situation should be investigated for the following reasons:

1. According to this *Globe and Mail* article:
<https://www.theglobeandmail.com/politics/article-conservative-politicians-oil-executives-map-out-strategy-for-ousting/>
last April 11th, CPC Leader Andrew Scheer and Mr. Marshall attended a private meeting with oil-industry executives that included Mr. Marshall speaking on a panel about using third-party interest groups to rally support for the party;
2. According to the above-linked *Globe and Mail* article, and the meeting agenda obtained by the *Globe*, the meeting was attended by “Michael Binnion, CEO of Questerre Energy Corp.; Patrick Ward, CEO of Painted Pony Energy Ltd.; Perpetual Energy Inc. CEO Susan Riddell Rose; and her husband, Mike Rose, head of Tourmaline Oil Corp.” and also by Tim McMillan, president of the Canadian Association of Petroleum Producers (CAPP). The executives are all members of CAPP’s board of governors and the board of the Modern Miracle Network, which aims to “shift the conversation” on energy, according to its website;
3. According to this National Observer article:
<https://www.nationalobserver.com/2019/07/17/news/imperial-oil-sponsored-gala-50000-then-it-lobbied-scheer>
Imperial Oil sponsored a gala dinner event that was held last May 15th in Ottawa and then, due to a “last minute” seating arrangement change, Andrew Scheer sat beside Imperial Oil’s CEO Rich Kruger during the dinner, and was lobbied by him. Mr. Kruger is a member of the Board of Governors of CAPP, and;
4. According to this *Globe and Mail* article:
<https://www.theglobeandmail.com/politics/article-energy-executives-listed-on-organizing-team-for-conservative-event/>
a June 4th fundraising event for the CPC attended by Andrew Scheer was organized by several energy company executives, and the event was attended by Michael Binnion. You can see the CPC’s disclosure form concerning the event at:
<https://www.elections.ca/fin/reg/pdfs/51-report.pdf>.

These events, along with the current advertising services provided by One Persuasion Inc. to both the CPC and CAPP, point to a relationship of collaboration and support that gives you reasonable grounds to investigate whether the anti-collusion rule in the *CEA* has been violated.

B. Request for investigation under section 510 of the *Canada Elections Act*

The Supreme Court of Canada has ruled in several cases that Canadians have a right under the *Canadian Charter of Rights and Freedoms* to free and fair elections. Collusion between parties and third parties make elections unfair as it misleads voters about the actual support a party has amongst voters, and can also assist both to exceed spending limits.

Subsection 351.01(1) of the *Canada Elections Act* is clearly intended to prohibit a wide range of types of connections and relationships between parties and third parties.

Democracy Watch's position is that, to find a violation of this subsection, you are not required to find proof that the third party CAPP undertook an activity, advertisement or survey because of the sharing of information with the CPC. Instead, all you need to find is evidence that information was shared "in order to influence" the third party.

Given all of the above, Democracy Watch requests that you investigate the CPC and the CAPP under section 510 of the *Canada Elections Act*:
<https://laws.justice.gc.ca/eng/acts/e-2.01/page-102.html#h-210761>.

Democracy Watch's position is that, to conduct a thorough investigation, you will have to examine all the communications between everyone at One Persuasion Inc. and the CPC and the CAPP, and between the CPC and CAPP and, as a result, likely seek court orders under section 510.01 of the *CEA*.

Given subsection 351.01(1) has only recently been added to the *CEA*, if you find clear evidence that subsection has been violated by the CPC and the CAPP, Democracy Watch's position is that it would be negligent for you to fail to initiate, under subsection 511(1) of the *Canada Elections Act*, a prosecution.

The courts are the proper place for this new subsection 351.01(1) to be defined in law and in practice, finally, and for the determination to be made concerning whether the CPC and the CAPP violated the subsection. You should not substitute your judgment for the judgment of the courts concerning the legally correct interpretation and application of subsection 351.01(1) to this situation.

Please let us know if we can provide any further information. We look forward to seeing your public response to this request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', with a stylized, cursive script.

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