



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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Via Email to: info@cef-cce.ca

March 15, 2021

RE: Request for ruling on possible violations of the *Canada Elections Act* provisions prohibiting donations from entities to election candidates, and/or collusion between a party, candidate, candidate's agent and a third party

Dear Commissioner Côté,

Democracy Watch requests as soon as possible a public ruling on the situation involving the organization RightNow recruiting campaign volunteers and offering them training through in-person sessions and webinars that contained some very direct information about volunteering for Conservative Party of Canada (CPC) candidate campaigns.

This situation was reported by PressProgress.ca in this August 29, 2019 article: <https://pressprogress.ca/anti-abortion-groups-are-training-activists-to-collect-data-on-voters-for-conservative-candidates/> and by CBC in this September 6, 2019 article: <https://www.cbc.ca/news/canada/ottawa/rightnow-volunteers-campaign-abortion-questions-1.5272540>

As the articles describe, RightNow also coordinated directing volunteers to campaigns.

In this May 8, 2020 *National Post* article:

<https://nationalpost.com/news/anti-abortion-group-investigated-by-elections-canada-for-providing-volunteers-to-2019-candidates>

RightNow confirms that it is under investigation by the Commissioner of Canada Elections, and that it had received a letter from the Commissioner's Director of Investigations in February 2020.

The *Post* article states that the letter from the Commissioner's investigations director raises the question of whether the recruitment, training and coordination by RightNow was a non-monetary donation of services to the CPC candidates, which would be a violation of the *Canada Elections Act (CEA)* because only individuals are allowed to contribute to parties, riding associations and candidates (see [subsection 363\(1\)](#) and definition of "non-monetary contribution" in [subsection 2\(1\)](#)).

Democracy Watch's opinion is that the only way RightNow could legally provide those services to candidates is if the candidates paid it market value for the services. According to candidate reports to Election Canada (filed under [subsection 477.59\(2\)\(b\)](#)), RightNow was not paid for the services.

This situation also raises the question of whether RightNow and the CPC, or any its candidates or people associated with any of its candidates, colluded 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

Section 351.01 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:

Prohibition – collusion with registered party

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.

Prohibition — collusion with candidate

(2) No third party and no candidate 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.

Prohibition — collusion with associated person

(3) No third party and no person associated with a candidate's campaign — including a candidate's official agent — 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 these three subsections of section 351.01 is an offence requiring intent under clause 496(2)(b), (c) or (d) of the *CEA* (respectively), 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 any clause under subsection 496(2) is 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>.

B. Request for ruling as soon as possible 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. Illegal donations and/or collusion between parties, candidates or their representatives 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 or donation limits.

Subsection 351.01 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 RightNow undertook an activity, advertisement or survey because of the sharing of information with the CPC or its candidates or their representatives. Instead, all you need to find is evidence that information was shared "in order to influence" the third party.

Given all of the above, and given the public interest in having a public ruling before another election occurs on whether the kind of activities RightNow engaged in violate these key provisions of the *Act*, Democracy Watch requests that you conclude your investigation under section 510 of the *Canada Elections Act*:

<https://laws.justice.gc.ca/eng/acts/e-2.01/page-102.html#h-210761>

and issue a public ruling as soon as possible.

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

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

We look forward to seeing your public response to this request soon.

Sincerely,

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

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