



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  
K1G 3Z1

October 17, 2019

**RE: Request for investigation into possible violation of the *Canada Elections Act* provision requiring disclosure of donors to third parties, and provision prohibiting collusion between third parties**

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* article published yesterday:

<https://www.theglobeandmail.com/canada/article-manning-centre-wont-disclose-source-of-donations-to-third-parties-for/>.

and the following Canadian Press article (as published on CBC.ca on October 3, 2019):

<https://www.cbc.ca/news/politics/manning-centre-proud-1.5307111>

The articles describe the following arrangement:

- The Manning Centre for Building Democracy (“Manning Centre”) issued a request pre-election for donations to help fund its donations to other groups for election advertising;
- The Manning Centre distributed funds from those donations, along with funds from its general revenues, to the following organizations:
  - \$240,500 to Canada Strong and Proud – you can see the organization’s Third Party Financial Return filed with Elections Canada that confirms this at:  
[https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0024\\_due21.pdf](https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0024_due21.pdf);

- \$45,000 to Quebec Fier – you can see the organization’s Third Party Financial Return filed with Elections Canada that confirms this at:  
[https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0028\\_due21.pdf](https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0028_due21.pdf);
- \$11,250 to Proudly New Brunswick – you can see the organization’s Third Party Financial Return filed with Elections Canada that confirms this at:  
[https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0031\\_due21.pdf](https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0031_due21.pdf);
- \$11,200 to NS Proud – you can see the organization’s Third Party Financial Return filed with Elections Canada that confirms this at:  
[https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0126\\_due21.pdf](https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0126_due21.pdf),  
and;
- \$4,500 to NL Strong – you can see the organization’s Third Party Financial Return filed with Elections Canada that confirms this at:  
[https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0125\\_due21.pdf](https://www.elections.ca/fin/oth/thi/advert/tp43/TP-0125_due21.pdf);
- Chris Russell is the financial agent for Canada Strong and Proud, NS Strong, and NL Strong;
- Nicolas Gagnon has been paid consulting fees by both Quebec Fier, and Proudly New Brunswick;
- The Manning Centre has not registered as a third party, and;
- Neither the Manning Centre nor the five organizations it has funded have filed a return with Elections Canada disclosing the identities of the original donors of the funding. The organizations list only the Manning Centre as the contributor.

This arrangement raises the question of whether the Manning Centre and the organizations it has funded are failing to disclose contributors as required by the *Canada Elections Act* (S.C. 2000, c.9), and/or colluding in violation of the rules set out in that *Act*.

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

Section 349 of the *Canada Elections Act* (“CEA”), which you can see at: <https://laws-lois.justice.gc.ca/eng/acts/e-2.01/page-44.html#h-206738> defines “third party” as “a person or group” other than a potential candidate, candidate, electoral district association, political party, or nomination contestant.

Section 349 sets out a separate definition for “registered third party.” Given this, Democracy Watch’s position is that the Manning Centre is a third party covered by the *CEA*, even though it has not registered as a third party during the 2019 pre-election and election periods.

Section 353 of the *CEA* requires third parties that spend more than \$500 on partisan activities, election advertising or election surveys during the election campaign period to register as a third party.

## **(a) Contributor disclosure requirement, and reasons for investigation**

Subsection 357.01(4) of the *CEA* requires disclosure of contributors in a third party's interim election return (filed 21 days before election day) to be listed by category: individuals; businesses; commercial organizations; governments; trade unions; corporations without share capital; and unincorporated organizations or associations. For every donation above \$200, the name, address, amount and date of each contribution must be disclosed.

Subsection 357.01(8) of the *CEA*, which you can see at:

<https://laws-lois.justice.gc.ca/eng/acts/e-2.01/page-49.html#docCont>

also sets out this specific requirement:

### **Names to be provided**

357.01(8) If the third party is unable to identify which contributions were received during the period referred to in paragraph (1)(b) for partisan activity, partisan advertising, election advertising or election survey purposes, the interim third-party expenses return shall include, subject to paragraph (4)(c), the names and addresses of every contributor who contributed a total of more than \$200 to it during that period.

Those sections apply to the arrangement addressed in this complaint because the Manning Centre raised funds from contributors and it knowingly transferred those contributions to the five "Proud" groups, along with funds from its general revenues, to pay for election advertising. Those groups have undertaken election advertising and registered as third parties. Those groups have not disclosed the actual source of part of the funds (the donors to the Manning Centre) or which part of the funds came from the Manning Centre's general revenues. As a result, the groups are unable to identify which contributions were received specifically for partisan activity, election advertising or election survey purposes.

As a result, Democracy Watch's position is that the Manning Centre was required to register as a third party and file a public interim return by September 30, 2019 disclosing the identity of the donors whose funds were used to pay for the election advertising (as the five "Proud" groups are just front-groups for the Manning Centre and it is actually conducting the election advertising). Given the Manning Centre also transferred general revenues to the five organizations, it was also required, under subsection 357.01(8) of the *CEA*, to disclose all of its donors who contributed more than \$200 since the last general election as it would not be able to identify which specific contributions made up the amount of general revenues it transferred.

Alternatively, the five groups were required to disclose the identity of the donors to the Manning Centre whose funds were used to pay for the advertising in their interim returns (as the Manning Centre is just a front-group for those contributors), and were required, under subsection 357.01(8) of the *CEA*, to disclose all of the Manning Centre's donors who contributed more than \$200

since the last general election as the five organizations would not be able to identify which specific contributions made up the amount of general revenues they received from the Manning Centre.

In any case, given the above information, and the rules in the *CEA*, this arrangement raises serious questions that merit your investigation.

### **(b) Foreign contributions prohibition, and reasons for investigation**

Sections 349.01 to 349.03 of the *CEA*, which you can see at:

<https://laws-lois.justice.gc.ca/eng/acts/e-2.01/page-45.html#h-1132650>

prohibit the use of foreign funds by third parties for partisan activities, election advertising or election surveys.

Given the lack of disclosure by the Manning Centre and the five “Proud” organizations of the original contributors of the funds the Manning Centre transferred to the organizations, it is an open question whether any of the original contributors were a foreign entity.

As a result, this aspect of the arrangement also merits your investigation.

### **(c) Prohibition on collusion by third parties, and reasons for investigation**

Subsection 351 of the *CEA*, which you can see at:

<https://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-48.html>

states:

**351** A third party shall not circumvent, or attempt to circumvent, a maximum amount set out in section 350 in any manner, including by splitting itself into two or more third parties for the purpose of circumventing the maximum amount or acting in collusion with another third party so that their combined partisan activity expenses, election advertising expenses and election survey expenses exceed the maximum amount.

and a violation of section 351 is an offence requiring intent under clause 496(2)(a) 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)(a) 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>.

Section 351 applies to the arrangement this complaint addresses because the Manning Centre provided funds to the five “Proud” organizations, and the same people are involved in several of the five organizations. The organizations have split into two or more organizations, and they also seem to be colluding.

It is important to note that section 351 prohibits attempting to circumvent “in any manner” the spending limit that applies to each third party, which is \$511,700 for this general election.

As there is no disclosure of the contributions to, or expenditures of, third parties during the last seven days of the election campaign period until their returns are filed up to four months after election day (under section 359 of the *CEA*) it is impossible to know at this point how close the six organizations will come to exceeding the spending limit of \$511,700.

However, given the same people are involved in multiple organizations, and all the organizations are receiving funding from the Manning Centre, the arrangement merits your investigation.

## **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. Failure to disclose donors, and collusion between third parties, make elections unfair as it misleads voters about who actually supports a third party, and can also facilitate exceeding spending limits.

The *Canada Elections Act* (“CEA”) is remedial legislation. The *Interpretation Act* (R.S.C., 1985, c. I-21) requires that the *CEA* be “given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” (section 12).

In *Harper v. Canada (Attorney General)*, 2002 ABCA 301 (CanLII), which you can see at:

<http://canlii.ca/t/5bm5>

the Alberta Court of Appeal ruled that the purposes of the requirements for third parties to register and disclose their donors were “to enforce the spending limit regime” and also “electoral fairness” and that the effect of the requirements “enhance the right to vote.” (paras. 42-43)

In the ruling on the appeal of that ruling, the Supreme Court of Canada in *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33 (*CanLII*), which you can see at:

<http://canlii.ca/t/1h2c9>

agreed with the Alberta Court of Appeal, quoting Peter Aucoin's statement filed as evidence:

[The attribution, registration and disclosure provisions] advance the objective of an informed vote, an important objective in its own right. Transparency, in short, advances an informed vote. Secrecy does not. With disclosure, voters are made aware of who contributes and who spends in the electoral process and thus who stands behind electoral communications. (para. 140)

The Supreme Court also stated in that ruling the following about these provisions, at paragraphs 142-145:

The attribution, registration and disclosure provisions advance two objectives: first, the proper implementation and enforcement of the third party election advertising limits; second, to provide voters with relevant election information. As discussed, the former is a pressing and substantial objective. To adopt election advertising limits and not provide for a mechanism of implementation and enforcement would be nonsensical. Failure to do so would jeopardize public confidence in the electoral system. The latter objective enhances a *Charter* value, informed voting, and is also a pressing and substantial objective.

The registration and disclosure requirements are rationally connected to the enforcement of the election advertising regime. The registration requirement notifies the Chief Electoral Officer of which individuals and groups qualify as third parties subject to the advertising expense limits. The reporting requirement allows the Chief Electoral Officer to determine the extent to which third parties have advertised during an election. These measures enable the Chief Electoral Officer to scrutinize spending more easily.

...

The disclosure requirements add transparency to the electoral process and are, therefore, rationally connected to providing information to voters. Third parties must disclose the names and addresses of contributors as well as the amount contributed by each. The Chief Electoral Officer, in turn, must disclose this information to the public. In conjunction with the attribution requirements, this information enables voters to identify who is responsible for certain advertisements. This is especially important where it is not readily apparent who stands behind a particular third party. Thus, voters can easily find out who contributes and who spends.

The attribution, registration and disclosure requirements facilitate the implementation and enforcement of the third party election advertising scheme. By increasing the transparency and accountability of the electoral process, they discourage circumvention of the third party limits and

enhance the confidence Canadians have in their electoral system. The deleterious effects, by contrast, are minimal. The burden is certainly not as onerous as the respondent alleges. There is no evidence that a contributor has been discouraged from contributing to a third party or that a third party has been discouraged from engaging in electoral advertising because of the reporting requirements.

As a result of the above, you are required, when interpreting and applying the CEA in your enforcement decisions and actions concerning the situation described in section A above, to ensure the purposes and objects of the disclosure requirements that apply to third parties, including disclosure of their contributors, are upheld and attained.

Again, those objects are to inform Elections Canada, you as Commissioner, and voters so that:

1. who contributes and who spends can be easily determined;
2. the prohibition on foreign donations can effectively enforced;
3. third party spending limits can be effectively enforced, and;
4. the prohibition on collusion between third parties can be effectively enforced.
5. to ensure the *Charter* right to be an informed voter is upheld, and;
6. to ensure voters can have confidence in Canada's electoral system.

Given these objects of the registration and disclosure requirements for third parties in the *CEA*, as applied to the facts and the rules in the *CEA* set out above in section A, Democracy Watch's position is that either the Manning Centre was required to register as a third party and disclose the identities of the original donors of the funds that the Manning Centre transferred to the five organizations, or the five organizations were required to disclose the identities of those donors.

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 the Manning Centre and the five "Proud" organizations and, as a result, likely seek court orders under section 510.01 of the *CEA*.

Given that the provisions of the *CEA* that cover this situation have never been interpreted in court rulings as applied to a situation like this, if you find clear evidence that any of the provisions have been violated, 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 these provisions to be defined in law and in practice and for the determination to be made concerning whether the Manning Centre and/or the five "Proud" organizations violated these provisions. You

should not substitute your judgment for the judgment of the courts concerning the legally correct interpretation and application of these provisions in the *CEA*.

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 flourish at the end.

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