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Karen Shepherd, Commissioner  
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May 25, 2016

**RE: Request for investigation and ruling on gift of paid trips given by various lobbyists to several MPs, and that you recuse yourself from ruling on complaint**

Dear Commissioner Shepherd,

I am writing on behalf of Democracy Watch to request an investigation and ruling on the gift of paid trips that has been given by various federal lobbyists for years to many MPs from all parties (and a few senators). We request that your investigation and ruling cover the period from March 2009 to the present. We are very disappointed that you have not undertaken to investigate and rule on this gift in the past seven years, given that the Federal Court of Appeal unanimously ruled on March 12, 2009 in the case *Democracy Watch v. Barry Campbell, the Attorney General of Canada and the Office of the Registrar of Lobbyists* that a registered lobbyist violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*:

“Where the lobbyist's effectiveness depends upon the decision maker's personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed. The conduct proscribed by Rule 8 is the cultivation of such a sense of personal obligation, or the creation of such private interests.”  
(para. 53)

We would say that we are surprised that you have not undertaken to rule on this gift during the past seven years – however given your very weak enforcement record through that time period we are, unfortunately, not at all surprised.

Given that you have indicated to the *Hill Times/Power and Influence* magazine that you are interested in being reappointed as Commissioner of Lobbying for another term, and given that the consideration of whether you will be reappointed will take place very soon, with the federal Liberal Cabinet having to approve your reappointment (as well as a majority of MPs in the House of Commons and a majority of senators in the Senate), Democracy Watch's position is that you have at least the appearance of a conflict of interest in ruling on this complaint which alleges that various lobbyists have violated Rule 8 by putting MPs and senators from all federal political parties represented in the House of Commons and Senate in a conflict of interest.

Therefore, we request that you recuse yourself from investigating and ruling on this complaint, and request that instead you refer it to another similar commissioner in another jurisdiction. We would suggest referring it the Conflict of Interest and Ethics Commissioner Mary Dawson, but given her very weak enforcement record (including approving in the past lobbyists doing things for Cabinet ministers that violate Rule 8 of the *Lobbyists' Code*) it is unlikely that she would make a legally correct ruling. As well, the consideration of whether she will be reappointed for another term by the federal Liberal Cabinet and MPs will also happen very soon, and so she would also be in at least the appearance of conflict of interest when ruling on this complaint.

Please let Democracy Watch know, first, if you will recuse yourself from ruling on this complaint and refer it to a similar commissioner in another jurisdiction.

With regard to the gift that, it is Democracy Watch's position, violates Rule 8 (now Rule 6) of the *Lobbyists' Code*, a paid trip given by a lobbyist to an MP (and, in some cases, also his/her spouse, family members and/or staff) is not only a form of lobbying but also, of course, creates a sense for the MP of personal obligation to the lobbyist (especially given that the trips are often worth thousands of dollars). In short, the gift of paid travel creates a sense of personal obligation for the MP to return the favour. This is exactly what the Federal Court of Appeal ruled in March 2009 is prohibited and is a violation of Rule 8.

In the new version of the *Lobbyists' Code*, in force since December 1, 2015, Rule 6 is supplemented by Rule 10 which states:

“To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder whom they are lobbying or will lobby, which the public office holder is not allowed to accept.”

Democracy Watch requests that it be made very clear in any ruling on this complaint that registered lobbyists cannot give the gift of paid travel to any public office holder. If it was unintentional to create a loophole with the last part Rule 10 for the gift of paid travel (under the MP and senators' codes), it was a negligently unintentional act by you as

Commissioner and by MPs. If the last part of the wording of Rule 10 was done intentionally, it is one of the most unethical acts by the Registrar/Commissioner of Lobbying, and MPs, since Democracy Watch was established in 1993 – matched only by the ongoing maintenance by MPs and senators of the “sponsored travel” loophole in their ethics codes.

Whether the drafting of the wording of new Rule 10 was negligently unintentional or intentionally unethical, the ruling must make it clear that Rule 6 of the *Lobbyists’ Code*, and the unanimous Federal Court of Appeal ruling in March 2009, override Rule 10 and any unethical loopholes MPs and senators have created in their codes, and that therefore it continues to be a violation of the *Lobbyists’ Code* for a registered lobbyist to give MPs, senators and all public office holders the gift of paid travel.

This complaint letter does not set out the facts concerning the gift of paid travel given by lobbyists to MPs since March 2009. However, to be clear, Democracy Watch requests that your investigation and ruling cover the full period from March 2009 to the present.

To summarize the list since 2009 of gifts of paid travel from lobbyists to MPs (and a few senators) that Democracy Watch believes violate Rule 8/Rule 6, the Registry of Lobbyists, together with the Sponsored Travel (Code) section of the Public Registry available on the Conflict of Interest and Ethics Commissioner’s website, indicate that in 2016 up to the end of April (there is a lag time of up to 60 days in the Public Registry) the following lobbyists were registered to lobby the House of Commons and gave the gift of a paid trip to one or more MPs:

- Centre for Israel and Jewish Affairs
- RESULTS Canada

The Registry of Lobbyists, together with the 2015 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner’s website, indicate that in 2014-2015 the following lobbyists were registered to lobby the House of Commons and gave the gift of a paid trip to one or more MPs:

- Armenian National Committee of Canada
- RESULTS Canada
- Westjet

The Registry of Lobbyists, together with the 2014 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner’s website, indicate that in 2013-2014 the following lobbyists were registered to lobby the House of Commons and gave the gift of a paid trip to one or more MPs:

- Centre for Israel and Jewish Affairs (which has also given a few senators the gift of paid travel over the past few years, as the Public Registry maintained by the Senate Ethics Officer details)
- Canadian Union of Public Employees
- Engineers Without Borders Canada
- RESULTS Canada
- United Steelworkers of America

- Westjet

The Registry of Lobbyists, together with the 2013 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner's website, indicate that in 2013 the following lobbyists were registered to lobby the House of Commons and gave the gift of a paid trip to one or more MPs:

- Armenian National Committee of Canada
- Cenovus Energy
- Centre for Israel and Jewish Affairs
- Public Service Alliance of Canada
- RESULTS Canada
- United Food and Commercial Workers International Union

The Registry of Lobbyists, together with the 2012 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner's website, indicate that in 2011-2012 the following lobbyists were registered to lobby members of the House of Commons and gave the gift of a paid trip to one or more MPs:

- Centre for Israel and Jewish Affairs
- Goldcorp
- Public Service Alliance of Canada
- RESULTS Canada
- World Vision

The Registry of Lobbyists, together with the 2011 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner's website, indicate that in 2011 the following lobbyists were registered to lobby members of the House of Commons and gave the gift of a paid trip to one or more MPs:

- Canada-Israel Committee (via the Centre for Israel and Jewish Affairs)
- Canadian Union of Public Employees
- RESULTS Canada
- United Steelworkers
- World Vision

The Registry of Lobbyists, together with the 2010 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner's website, indicate that in 2010 the following lobbyists were registered to lobby members of the House of Commons and gave the gift of a paid trip to one or more MPs:

- Canada-Israel Committee (via the Centre for Israel and Jewish Affairs)
- Canadian Association of Petroleum Producers
- RESULTS Canada

The Registry of Lobbyists, together with the 2009 List of Sponsored Travel available on the Conflict of Interest and Ethics Commissioner's website, indicate that in 2009 the following lobbyists were registered to lobby members of the House of Commons and gave the gift of a paid trip to one or more MPs:

- Cameco Corporation

- Canada-Israel Committee (via the Centre for Israel and Jewish Affairs)
- Queen's University
- RESULTS Canada

As well, given the number of paid trips the following organizations gave to MPs from 2009-2016, Democracy Watch requests an investigation to determine if these organizations did enough lobbying through these trips and other communications with public office holders to have required them to be registered at any time in the past seven years as a lobbyist in the Registry of Lobbyists (none of them have been registered since 2009):

- Anatolian Heritage Federation
- Chinese International Economic Cooperation Association (which has also given a few senators the gift of paid travel over the past few years, as the Public Registry maintained by the Senate Ethics Officer details)
- Friedrich Ebert Stiftung Foundation
- Iran Democratic Association
- Taipei Economic and Cultural Office
- One Free World International

You have an opportunity to uphold a key measure in a key democratic good government law in a legally correct manner. We hope you will not refuse to do this.

Democracy Watch looks forward to hearing from you soon concerning whether you will recuse yourself from ruling on this complaint, and what process will be used to investigate and rule on the complaint.

Please let us know if you need any more information to act on this request – Democracy Watch is happy to provide further details.

Sincerely,

*Not signed because sent electronically*

Duff Conacher, Co-founder of Democracy Watch and Visiting Professor and LL.M. candidate at the University of Ottawa  
on behalf of the Board of Directors of Democracy Watch