



democracy Watch
émocratie en surveillance

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Nancy Bélanger, Commissioner
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January 30, 2020

RE:

- 1. Second request for independent, impartial ruling on complaint filed on April 25, 2018, and;**
- 2. Request that you recuse yourself from conducting investigation and ruling on the above matter because you were chosen and appointed by the Trudeau Cabinet, and also because of your statements showing bias against effective enforcement**

Dear Commissioner Bélanger:

I am writing again on behalf of Democracy Watch concerning enforcement of the federal *Lobbying Act* (the “*Act*”) generally, and specifically requesting an independent ruling under the *Act* and the *Lobbyists’ Code of Conduct* (“*Lobbyists’ Code*”) on the complaint Democracy Watch filed with the office of the Commissioner of Lobbying on April 25, 2018.

This is the second follow-up letter to the complaint that we have sent. We sent the first follow-up letter on August 1, 2019 by email, which you can see at: <https://democracywatch.ca/wp-content/uploads/LettToFedLobbyCommReFacebookAug012019new.pdf>. Your office acknowledged receipt of that letter in an email sent to Democracy Watch that same day.

Democracy Watch requested in the original April 2018 complaint letter that you recuse yourself from ruling on the complaint because you were also handpicked by the Trudeau Cabinet, and for other reasons set out below.

1. Request for independent, impartial ruling on complaint filed on April 25, 2018

Democracy Watch filed a complaint with the Office of the Commissioner of Lobbying on April 25, 2018 via email. You can see the complaint letter (mistakenly dated as “2017”) at:

<https://democracywatch.ca/wp-content/uploads/LettToFedLobbyCommReFacebookApr252018.pdf>

On April 26, 2018, the Office of the Commissioner of Lobbying sent an email to Democracy Watch confirming that its complaint had been received, and “forwarded to the appropriate directorate.” We can provide you with that email if you would like to see it.

Democracy Watch’s complaint letter contained extensive, detailed evidence concerning possible violations by Facebook of the *Lobbying Act* dating back to 2010, as well as evidence concerning alleged violations of former Rule 8, and current Rules 6-9, of the *Lobbyists’ Code*. . There is no justifiable reason for failing to issue a ruling in the past almost two years, especially given that you have ruled on more than a dozen other complaints and situations that were filed or arose from September 2017 on, after Democracy Watch filed its July 2017 complaint.

Please confirm by reply letter confirming that an investigation is underway into this matter, and that a ruling will be issued soon. While subsection 10.4(3) of the *Act*, which you can see at:

<https://laws-lois.justice.gc.ca/eng/acts/l-12.4/page-5.html#h-339367>

requires that investigations be conducted in private, there is no prohibition in the *Act* on you disclosing that an investigation is being undertaken, nor on you disclosing the status of an investigation, especially when a complaint has been filed publicly and the matter has been reported on by the media, as is the situation concerning Democracy Watch’s July 2017 complaint. Former Commissioner of Lobbying Karen Shepherd confirmed publicly that investigations were underway into matters that had been made public and were reported in the media, and also provided status updates about such investigations.

2. Request that you recuse yourself from investigating and ruling on the above matter

On January 25, 2018, and again on April 20, 2018, I sent you a letter on behalf of Democracy Watch requesting that you recuse yourself from investigating and ruling on all matters concerning the Trudeau Cabinet and Liberal MPs because you were nominated for the position of Commissioner of Lobbying by Prime Minister Trudeau after a process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO, the Privy Council Office and the Treasury Board, including the Director of Public Appointments in the PMO and the Chief of Staff for Treasury Board Minister Scott Brison.

The PMO- and Cabinet-controlled appointment process did not include consultation with opposition parties as required under subsection 4.1(1) of the *Lobbying Act* as the opposition parties made clear in public statements. As you know, Democracy Watch filed an application for judicial review of your appointment in Federal Court based on the reasonable apprehension of bias and conflict of interest on the part of the Trudeau Cabinet when appointing you.

Democracy Watch's position is that you share this appearance of bias because you were chosen through a process controlled by the Trudeau Cabinet, a process that failed to consult with opposition parties as required by subsection 4.1(1) of the *Lobbying Act*. Your appointment was approved in the House of Commons only on division, as several MPs voted against your appointment.

Democracy Watch's letter to you of January 25, 2018 can be seen at:

<https://democracywatch.ca/wp-content/uploads/LettToLobbyCommReApptBiasComplaintsJan252018-1.pdf>

Democracy Watch's letter to you of April 20, 2018 can be seen at:

<https://democracywatch.ca/wp-content/uploads/LettToLobbyCommReRecusal4ComplaintsApr202018-1.pdf>

As well, Democracy Watch's position is that you made statements when testifying on December 6, 2017 before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, and when testifying in the Senate, concerning your nomination that show a bias toward weak and incorrect enforcement of the *Act*. While her nomination as Lobbying Commissioner was being reviewed by the House and Senate and after her appointment, Nancy Bélanger made several public statements that show bias in favour of lobbyists and public office holders, including:

- a) that you see your goal to "leave [your] mark" by increasing Canadians' "trust in those who make the decisions, that is to say public office holders";
- b) that "Canadians need to understand that lobbying is okay; it's a good thing";
- c) that you see your mandate as "collaborating" with lobbyists as "That is the only way to ensure that I have credibility";

- d) that when asked by a senator what you would do “...to combat this public cynicism about those who have privileged access to power and influence?” you said “My perspective is that lobbying is an activity that all Canadians should understand is in their best interest” and;
- e) that you have “confidence in lobbyists’ willingness to work in compliance with the established rules. I will work collaboratively with lobbyists...” and the June 2018 10th anniversary of your Office was an opportunity to “renew our commitment to working with lobbyists, [and] public office holders...”

Your mandate under subsection 4.2(2) of the *Lobbying Act* does include “programs to foster public awareness” – but not to foster public belief that lobbying is “a good thing” or that Canadians should “trust” public office holders. Instead, subsection 4.2(2) mandates you to foster public awareness “of the requirements of this Act, particularly on the part of lobbyists, their clients and public office holders.”

Neither subsection 4.2(2) nor any other section in the *Act* mentions that your mandate, duties or functions are to “work collaboratively with lobbyists.” Your role is therefore clearly focused on enforcement of the *Act*, and you have quasi-judicial powers of enforcement.

Therefore, your statement that you have “confidence in lobbyists’ willingness to work in compliance with the established rules” creates a reasonable apprehension of bias against effective enforcement of the *Act*. You have no basis for such confidence – no one can know in advance of examining any situation that the lobbyists involved are willing to comply with the rules.

For the above reasons, and also in the interest of ensuring the requirements and interpretation and enforcement standards set out above in section 1 are strictly and strongly upheld, Democracy Watch requests that you do not investigate or rule on the matter addressed in this letter, and that instead you delegate the investigation and ruling to a provincial ethics or lobbying commissioner who has no ties to any federal or provincial political party.

Please contact Democracy Watch at the address above if you need any more information to initiate and delegate the above requested investigation.

As well, given that Democracy Watch’s April 25, 2018 complaint letter contained extensive details, and given almost two years have passed, and given there is no justifiable reason for any further delay, we expect that the ruling on the complaint will be tabled soon in the House of Commons and the Senate.

Sincerely,



Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch