



democracy Watch  
émocratie en surveillance

P.O. Box 821, Str. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: info@democracywatch.ca Internet: http://democracywatch.ca

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Nancy Bélanger, Commissioner  
Office of the Commissioner of Lobbying of Canada  
255 Albert Street  
10th Floor  
Ottawa, Ontario K1A 0H2  
Tel: 613-957-2760  
Fax: 613-957-3078

Email: QuestionsLobbying@ocl-cal.gc.ca

November 28, 2018

**RE:**

- 1. Request for investigation into members of the Liberal Party of Canada Leader's Circle that raises serious questions concerning violations by lobbyists of the Integrity and Professional Principles, and rules 6-9, of the *Lobbyists' Code of Conduct*, and;**
- 2. Request that you recuse yourself from conducting investigation and ruling on the above matters 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 on behalf of Democracy Watch concerning enforcement of the federal *Lobbying Act* generally, and specifically requesting an investigation under the *Lobbyists' Code of Conduct* ("*Lobbyists' Code*") into the activities of the members of the Liberal Party Leader's Circle fundraising group (or any other similar fundraising group the Party may be operating).

Democracy Watch requests that this letter be considered by the Office of the Commissioner of Lobbying in conjunction with the letter it sent to the office dated September 17, 2018, which you can see at:

<https://democracywatch.ca/wp-content/uploads/LettToLobbyCommFundraisingSept172018.pdf>

as one request for investigation.

Together, these two letters provide extensive evidence that a comprehensive investigation into Liberal Party of Canada fundraising activities and events is needed to ensure compliance with the *Lobbyists' Code of Conduct (Lobbyists' Code)*.

**1. Request for investigation into members of the Liberal Party of Canada Leader's Circle that raises serious questions concerning violations by lobbyists of the Integrity and Professional Principles, and rules 6-9, of the *Lobbyists' Code of Conduct***

The problem with the Liberal Party Leader's Circle, and the reasons Democracy Watch is requesting an investigation, are that:

- we know that the Liberal Party events in the past have been organized and/or hosted by registered lobbyists or people who are directly connected to organizations that are registered to lobby the federal government (as board members or employees) – for example the August 2014 event organized by a board member of Clearwater Seafoods (which Democracy Watch filed a [complaint](#) about with your office on March 1, 2017) and the August 2015 event organized by Apotex Chairman Barry Sherman (which Democracy Watch filed a [complaint](#) about with your office on November 4, 2016);
- we know that the Liberal Party of Canada has not followed its own rules considering lobbyists being involved in its fundraising and fundraising events since April 2017, and;
- we know that the Liberal Party Leader's Circle (or any similar fundraising group the Party may be operating) is made up of people who have recruited several top donors, and therefore been involved in significant fundraising for the Party.

Therefore, given this pattern of rule-breaking, there is reason to believe that an investigation into members of the Liberal Party Leader's Circle "... is necessary to ensure compliance with the Code..." – which is the threshold in subsection 10.4(1) of the *Act* for initiating an investigation – as it is very likely that registered lobbyists or people directly connected with organizations that are registered to lobby the federal government are members of the Leader's Circle (or any other similar fundraising group that the Liberal Party is operating).

The wording of subsection 10.4(1) of the *Act* makes it clear that the Commissioner of Lobbying does not need evidence of a violation – that your investigations are also required when a situation simply raises questions concerning compliance with the *Lobbyists' Code* and the investigation is required to ensure compliance with the *Code* (or *Act*). In other words, you are required to investigate when you have a reasonable belief that an investigation will prevent a violation by ensuring compliance or discover a violation.

The Commissioner of Lobbying's "Guiding principles and criteria for recommending compliance measures" document states:

"It is the role of the Office of the Commissioner of Lobbying (OCL) to support this mandate by conducting administrative reviews of suspected, alleged, or known contraventions of the Act and Code, recommending appropriate enforcement measures and, where the Commissioner deems necessary, conducting formal investigations under subsection 10.4 of the Act."

All that is needed is a suspected violation to trigger an administrative review and, it is Democracy Watch's position, subsection 10.4(1) of the *Act* also requires an investigation of all suspected violations that raise questions concerning compliance.

The Introduction to the *Lobbyists' Code* states that its purpose is "to assure the Canadian public that when lobbying of public office holders takes place, it is done ethically and with the highest standards with a view to enhancing public confidence and trust in the integrity of government decision-making." The Preamble to the *Code* states: "The *Lobbyists' Code of Conduct* is an important instrument for promoting public trust in the integrity of government decision making."

The Preamble to the *Lobbyists' Code* also states:

"Public office holders, when they deal with the public and with lobbyists, are required to adhere to the standards set out for them in their own codes of conduct. For their part, lobbyists communicating with public office holders must also abide by standards of conduct, which are set out below. These codes complement one another and together contribute to public confidence in the integrity of government decision making."

The Supreme Court of Canada ruled in two cases in 1996 that "If democracies are to survive, they must insist upon the integrity of those who seek and hold public office" (*Harvey v. New Brunswick*), and; "given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe" and; "[t]he magnitude and importance of government business requires not only the complete integrity of government employees and officers conducting government business but also that this

integrity and trustworthiness be readily apparent to society as a whole.” (*R. v. Hinchey*).

As L’Heureux-Dubé, J. wrote in *Hinchey*: “The need to preserve the appearance of integrity...” requires that the statutory provisions such as the *Act* be interpreted so as to prohibit actions “...which can potentially compromise that appearance of integrity” (para. 16). As she also noted at para. 17, “...it is not necessary for a corrupt practice to take place in order for the appearance of integrity to be harmed. Protecting these appearances is more than a trivial concern.”

As a result, the legally correct interpretation and enforcement approach that the Commissioner of Lobbying must take concerning the *Lobbying Act* and the *Lobbyists’ Code* is that when there is even an appearance of lack of integrity in the actions of a lobbyist or someone directly connected to a lobbying organization or in the relationship between a lobbyist or a lobbying organization and public office holders, the threshold set out in subsection 10.4(1) has been crossed and an investigation “... is necessary to ensure compliance with the Code...”

As well, the results of that investigation must be that, whenever there is even an appearance of lack of integrity in the actions of a lobbyist or someone directly connected to a lobbying organization, the lobbyist or lobbying organization will be found in violation of the *Lobbyists’ Code*.

**(a) Information about the Liberal Party Leader’s Circle**

You can see mention in the media about the Liberal Party’s Leader’s Circle invitation and webpage at:

<https://democracywatch.ca/wp-content/uploads/HillTimesLiberalBundlerArticleApril202016.pdf>

and you can see a screen capture from August 31, 2016 of the Liberal.ca webpage concerning the Leader’s Circle at:

<https://democracywatch.ca/wp-content/uploads/FedLibLeadersCircleWebpageAug312016.jpg>

As you can see, the webpage describes a new fundraising class – called the Leader’s Circle – as offering from April 2016 until at least the end of August 2016 “recognition opportunities” for Liberals who recruit a minimum of 10 persons annually into the Laurier Club (which is the top level of Liberal donors who contribute the *Canada Elections Act* maximum of \$1,525 each annually).

The webpage states:

“With limits on political fundraising, donor networking and bundling are of the utmost importance to growing the Party. Leader’s Circle members play an essential role in the mission to grow the Liberal movement and promote Liberal values across the country.”

And the webpage also states:

“Leader’s Circle members can look forward to a variety of recognition opportunities including an annual dinner with the Leader and invitations to events and discussions with leaders within the party.”

Only a full investigation would be able to determine whether Leader’s Circle members (or any similar top donor/fundraising group the Liberal Party may be operating) are registered to lobby for an individual, company and/or organization seeking a decision from the federal government and/or are directly connected to an individual or an individual, company or organization (as a board member, employee or retired executive) that has lobbyists registered to lobby the federal government.

**(b) Application of the Integrity and Professionalism Principles of the *Lobbyists’ Code* to members of the Liberal Party Leader’s Circle**

The Introduction to the *Lobbyists’ Code* states: “Lobbyists, when engaging in lobbying activities, shall meet the standards set out in the principles and rules of the Code.”

The “Integrity” Principle of the *Lobbyists’ Code* states “Integrity and Honesty: Lobbyists should conduct with integrity and honesty all relations with public office holders.” The “Professionalism” Principle in the *Lobbyists’ Code* states:

“Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with the letter and the spirit of the Lobbyists’ Code of Conduct as well as with all relevant laws, including the Lobbying Act and its regulations.”

These principles, of course, apply to any registered lobbyist involved in assisting with fundraising that benefits the Liberal Party of Canada when they are lobbying the Liberal government or if they lobby the government before or after the event.

However, Democracy Watch’s position is that these principles also apply to any registered lobbyist who is the senior office of an organization registered to lobby the government. Under section 7 of the *Lobbying Act*, the senior officer of any corporation or organization is responsible for the compliance of everyone in the organization with the registration requirements under the *Act*. By extension, it is reasonable to conclude that the senior officer is also responsible for the compliance of everyone in the organization with the requirements of the *Lobbyists’ Code*.

And, in fact, Rule 4 of the *Lobbyists Code* states:

“The responsible officer (the most senior paid employee) of an organization or corporation shall ensure that employees who lobby on the

organization's or corporation's behalf are informed of their obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct*."

Therefore, if someone in the organization or directly connected to the organization (as a board member, employee or retired executive – whether or not they are listed in the organization's lobbying registration under the *Act*) does something that violates these two principles or a rule in the *Lobbyists' Code*, including by being a member of the Liberal Party Leader's Circle (or any similar fundraising group the Party operates), Democracy Watch's position is that the conclusion should be that senior officer of the organization violated the Integrity and Professionalism principles of the *Code* by allowing the person to do whatever they did.

Allowing such an act by a board member of an organization that is lobbying the federal government would be contrary to the fundamental purpose of the *Lobbyists' Code* to ensure ethical lobbying and government integrity. It would create a loophole that the *Code* does not intend nor permit, a loophole that would allow any organization to use unpaid officers or unregistered employees to do things for, and give things to, public office holders that place them in a conflict of interest and give the organization undue and unethical influence by creating a sense of obligation on the part of the public office holder to return the favour.

The only justifiable excuse that a senior officer could have if a person in or directly connected to their organization was involved in activities that violate the *Code* is if they could show that they did their due diligence by establishing, and taking clear, effective steps to enforce, an internal code of conduct applying to everyone in the organization that effectively prohibits everyone from doing anything that violates the *Code*.

### **(c) Application of Rule 6 of the *Lobbyists' Code* to members of the Liberal Party Leader's Circle**

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* [2010] 2 F.C.R. 139, 2009 FCA 79:

"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)

That case concerned a lobbyist, Barry Campbell, who organized a fundraising event for a minister that he was registered to lobby, and was actively lobbying, around the same time as the event. The Federal Court of Appeal ruling makes it

clear that lobbying and fundraising around the same time violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*.

Rule 6 of the *Lobbyists' Code of Conduct* states:

“A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.”

While the wording of current Rule 6 is different than former Rule 8, as set out in the guidance statement on Rule 6 at:

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01180.html> the standard is the same as the Federal Court Appeal set out in its ruling – lobbyists are not allowed to put any public office holder in even the appearance of a conflict of interest.

Buying a ticket to a political party's fundraising event is the same as making a donation to the party as allowed under the *Canada Elections Act*. However, recruiting 10 top donors like members of the Liberal Party Leader's Circle do, does a greater favour for the party, and the public office holders in the party. The *Act's* definition of public office holder includes ministers, parliamentary secretaries and MPs.

It is true that the event that was at issue in the 2009 Federal Court of Appeal's ruling was a fundraising event for the minister's riding association, not fundraising for a political party. It would be unreasonable and legally incorrect to distinguish fundraising for a party from a fundraising event for a riding association event because money raised for political party can as directly assist a minister or parliamentary secretary or MP as money raised for a riding association. Parties and their riding associations often transfer funds between each other; the events and promotional activities that each party undertakes in between elections assists with the profile of each minister and candidate, and; the national election campaign run by each party assists every candidate with their re-election campaign.

It is also true that Barry Campbell, the lobbyist at issue in the 2009 Federal Court of Appeal's ruling was a consultant lobbyist, not an in-house lobbyist or a person directly connected with an organization registered to lobby (as a board member or employee or a retired executive), and that Mr. Campbell was personally doing the lobbying. Again, however, it would be unreasonable and legally incorrect to distinguish a lobbyist assisting with a fundraising event (or assisting with anything else that helps a political party, riding association, candidate, politician or anything other public office holder) on this basis because doing so would create a technical loophole that would be exploited companies and organizations to undermine entirely the purpose and effect of Rule 6.

Anyone directly connected with an organization that is registered to lobby a public office holder who gives or does anything for that office holder (or that office holder's political party or riding association) that is more than an average voter

does (i.e. more than putting a sign on their lawn, making a donation or voting) puts that office holder in at least the appearance of a conflict of interest (and possibly a real conflict of interest depending on the significance of what is given or done for the office holder or the office holder's party or riding association).

As a result, the actions of that person cause them to violate Rule 6 (if they are a registered lobbyist) or cause the senior officer of their organization to be in violation of Rule 6 and the principles discussed above in subsection (b), and possibly also Rule 4 of the *Code*, for allowing them to do whatever they did on behalf of the organization.

#### **(d) Application of Rules 7, 8 and 9 of the *Lobbyists' Code* to these fundraising events**

As the guidance documents make clear that are linked on the Rules page in the *Annotated Lobbyists' Code of Conduct* at:

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01192.html>

Rules 7, 8 and 9 of the *Lobbyists' Code* are violated if, after a lobbyist or person directly connected to a lobbying organization does something to create a real or apparent conflict of interest for a public office holder, the lobbyist or the person's organization goes on to arrange a meeting for anyone with the office holder (Rule 7) or lobby the office holder (Rule 8) for five years (Rule 9 – as set out in the guidance document at:

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01182.html>).

As a result, if the investigation finds that any lobbyist has done these things after assisting with a fundraising event, then the lobbyist has violated one or more of rules 7-9 of the *Lobbyists' Code*. Similarly, if any lobbying organization has done these things after a person directly connected to the organization (again, as a board member, employee or retired executive) has assisted with an event, then the senior officer of the organization has violated one or more of rules 7-9, as well as the principles addressed above in subsection (b) and possibly also Rule 4 of the *Code*.

#### **(e) Request for investigation of members of the Liberal Party Leader's Circle**

Given everything set out above, there is reason to believe that an investigation is needed to ensure compliance with the Integrity and Professionalism Principles, and Rules 6-9, of the *Lobbyists' Code of Conduct* because the Liberal Party Leader's Circle likely has lobbyists as members.

I therefore request, on behalf of Democracy Watch, that you delegate to someone independent of your office to conduct an investigation of members of the Leader's Circle.



I also request that you pass on this letter to that person so that they apply the legally correct interpretation of the Principles and Rules cited above from the *Lobbyists' Code* in reaching their conclusions concerning violations, an interpretation that fulfills the purpose of the *Act* and the *Code* and the legal standard set out in the two Supreme Court of Canada rulings from 1996, and the Federal Court of Appeal ruling from 2009.

I suggest that the investigation of the Leader's Circle proceed as follows:

1. Request that the Liberal Party of Canada provide the list of members of the Leader's Circle (or any other similar fundraising group that the Party operates), including the companies or other organizations that each person works for or is affiliated with as a board member or other position;
2. Search the Registry of Lobbyists to determine if any of the members of the Leader's Circle or their organizations were, at the time they did the fundraising, registered to lobby the federal government and/or the ministers, parliamentary secretaries or MPs who attended the events, or were lobbying them at or before or after the fundraising and should have registered their lobbying in the Registry.
3. If any of the members of the Leader's Circle or their organizations were registered to lobby, or lobbying, the government, minister, parliamentary secretary or MP when they did the fundraising, determine whether the fundraising was in any way related to the previous lobbying effort, as that link would also constitute a violation of Rule 6 of the *Code*.
4. Do the same for all similar "bundler" fundraising going back to 2009 to determine which people assisted with such fundraising since 2009 have violated Rules 7-9 of the *Code* by arranging meetings with or lobbying a Liberal MP within five years after they did the fundraising.

Finally, Democracy Watch's position is that an investigation should also be undertaken of all federal political parties going back to spring 2009 when the Federal Court of Appeal ruled unanimously that anyone assisting with such fundraising while being involved in lobbying a federal politician is in violation of the *Lobbyists' Code*. During the Conservative government under Prime Minister Harper, there were several fundraising activities that raised similar questions concerning violations of the *Lobbyists' Code* – all pointing to a pattern of violations that necessitate a broad investigation of events going back several years.

I suggest that the investigation of the fundraising events held by the other federal political parties since 2009 proceed in the same way as set out above for the investigation of members of the Liberal Party Leader's Circle.

If former Commissioner of Lobbying Karen Shepherd had been properly enforcing the *Code* and the *Act*, she would have been conducting random audits of the political activities of lobbyists and would have found out about this fundraising long ago. Her negligence in failing to conduct those audits during her

2008 to 2017 term means that the Commissioner of Lobbying must now take corrective action and conduct the audits now. To fail to do so would simply compound the negligence, and likely allow dozens of lobbyists get away with violating the *Code* (dozens more than the likely hundreds of other lobbyists who have very likely violated the *Code* or *Act* since 1993 and not been caught or held accountable because of the failure of Commissioner Shepherd and her predecessors Michael Nelson and Howard Wilson to conduct audits to ensure lobbyists were registered properly and following all the other rules in the *Code* and *Act*).

## **2. Request that you recuse yourself from investigating and ruling on these fundraising events**

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 reasonable apprehension 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, 2017 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 that the tenth anniversary of the Office in June 2018 is 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 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.

This investigation is an opportunity to hold lobbyists accountable for violations of the *Lobbyists' Code* over the past several years, and to stop activities that former Commissioner of Lobbying Karen Shepherd failed to stop even though she had

the mandate and powers to stop them, and even though the purpose of the *Code*, and Rules 6-9, make it clear that such activities are prohibited.

Please contact Democracy Watch at the address above if you need any more information to initiate the investigation into these events.

We hopefully look forward to seeing your decision considering recusing yourself from this investigation very soon.

As well, given that the Liberal Party will clearly have all detailed information concerning it Leader's Circle fundraising group (or whatever similar fundraising group it is operating), we expect that the investigation into the members of the Leader's Circle can proceed and conclude in a timely fashion.

Sincerely,

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

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