



democracy Watch  
émocratie en surveillance

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Nancy Bélanger, Commissioner  
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April 20, 2018

**RE:**

- 1. Request that you recuse herself from ruling on situations involving the Trudeau Cabinet and Liberals because you were appointed by Prime Minister Trudeau through a process that violates the law;**
- 2. Request that you delegate all four Democracy Watch complaints and other matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties**
- 3. Update and clarification of allegations in Democracy Watch's complaints**

Dear Commissioner Bélanger:

I am writing on behalf of Democracy Watch to repeat our request that you recuse yourself from decisions concerning the enforcement of the *Lobbying Act* and *Lobbyists' Code of Conduct* ("*Lobbyists' Code*") for any situations involving the Trudeau Cabinet or Liberals, including decisions concerning the remaining four complaints that Democracy Watch has filed with your office (all of which are about situations involving the Trudeau Cabinet or Liberal MPs) and any future similar complaints that Democracy Watch may file.

To allow the investigations into these situations to continue, Democracy Watch again requests that you delegate the investigations and rulings on the situations to a provincial ethics/integrity/lobbying commissioner who is not in any way under

the control of, or connected to, you or the Trudeau Cabinet or any of the federal political parties.

Under section 4.4 of the *Lobbying Act*, you can delegate to anyone outside the investigation of, and rulings on, Democracy Watch's complaints. I realize that subsection 4.4(b) states that you are prohibited from delegating the preparation and tabling in Parliament of the report on an investigation as set out in subsection 10.5(1). However, Democracy Watch requests that you accept whatever conclusions are reached by the independent person to whom you delegate the investigation and ruling on each complaint.

## **2. Request that you recuse herself from ruling on situations involving the Trudeau Cabinet and Liberals because you were appointed by Prime Minister Trudeau through a process that violates the law**

Democracy Watch requests that you recuse yourself from making any decisions about any investigations or rulings on situations involving the Trudeau Cabinet or Liberals because you were nominated by Prime Minister Trudeau to the position of Lobbying Commissioner, as set out at:

<https://pm.gc.ca/eng/news/2017/11/30/prime-minister-nominates-next-commissioner-lobbying>

after a process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO and the office of Treasury Board Minister Scott Brison who is responsible for the *Lobbying Act*, as detailed in this Democracy Watch news release:

<http://democracywatch.ca/headhunting-firms-confirm-pmo-and-cabinet-staff-on-watchdog-selection-committees/>

and in this news article:

<https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

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*, which can be seen at:

<http://laws-lois.justice.gc.ca/eng/acts/L-12.4/page-2.html#h-5>

as the opposition parties made clear in several statements in the House of Commons, as well as in this article:

<https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

and in this article:

<https://www.theglobeandmail.com/news/politics/liberal-government-nominates-languages-and-lobbying-commissioners/article37138810/>

Democracy Watch recently 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, and the failure of the Cabinet to consult with opposition parties before making the appointment. The details concerning this application can be seen here: <http://democracywatch.ca/democracy-watch-files-lawsuits-challenging-trudeau-cabinets-appointments-of-new-ethics-commissioner-and-lobbying-commissioner/>

You share this reasonable apprehension of bias because you were chosen through a process controlled by Prime Minister Trudeau and his 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.

Your appointment is analogous to a situation in which the Prime Minister and Cabinet are sued by someone, and they choose the judge who hears and decides the case. It is true that the Cabinet appoints federal judges, but only from a list proposed by selection committees that have representatives from non-governmental organizations (unlike the selection committee that chose you, which only had members from the PMO and Cabinet).

As well, neither the Prime Minister nor the Cabinet choose which judges will hear and decide which cases, especially not cases challenging the decisions or actions of the Prime Minister or other Cabinet ministers, as it would be a clear conflict of interest for them to do so.

With your appointment, the Prime Minister and Cabinet have chosen the person who will hear and decide all cases of situations involving the relationship between lobbyists and the Prime Minister and Cabinet ministers and government official and MPs for the next seven years. This appointment puts you in a conflict of interest – there is a reasonable apprehension of bias on your part given that you were chosen by people involved in situations you will judge in terms of whether violations of the *Lobbying Act* and/or *Lobbyists' Code* occurred.

Given the above, Democracy Watch requests that recuse herself from investigating Democracy Watch's four complaints, and all situations involving the Trudeau Cabinet or Liberals, and that you refer the investigations to someone who is fully independent of the yourself, the Trudeau Cabinet, and all federal political parties.

**2. Request that you delegate all four Democracy Watch complaint matters and other matters involving Liberals to a person independent of yourself, the Trudeau Cabinet, and all federal political parties**

There is no reason that your recusal should delay the handling and completion of the investigations and rulings on Democracy Watch's four complaints. All that has to happen is for you to contact provincial integrity/ethics/lobbying

commissioners and request that one of them handle each matter. All of the information gathered by the Investigations Directorate of your office can be easily transferred to a provincial commissioner, and they can continue the investigation to completion with a ruling.

You would then take their draft report and finalize and table it in Parliament as under subsection 10.5(1).

A similar process has been used at the provincial level by ethics commissioners. For example, in 2016 Marguerite Trussler, Alberta's Ethics Commissioner, recused herself from investigating and ruling on a complaint because she was friends with two people involved in the matter. You can see details about this situation at:

<http://calgaryherald.com/news/politics/albertas-ethics-commissioner-cites-conflict-of-interest-removes-herself-from-review-of-tobacco-litigation-contract>

### **3. Update and clarification of allegations in Democracy Watch's four outstanding complaints**

#### **(a) Court case re: Barry Sherman/Apotex's fundraising activities**

As you know, Democracy Watch has applied to Federal Court for a judicial review of your decision to end the investigation into Democracy Watch's complaint that Barry Sherman of Apotex Inc. violated the *Lobbyists' Code* by hosting a fundraising event that then-Liberal Party Leader Justin Trudeau attended in August 2015 (Court file # T-366-18). This application has been filed in part on the basis that you are biased (as detailed above), and in part on the basis that you erred in law in your ruling.

#### **(b) Court case re: Aga Khan's December 2016 trip gift ruling**

As you also know, Democracy Watch has applied to Federal Court for a judicial review of former Lobbying Commissioner Karen Shepherd's decision last September that the *Lobbyists' Code* did not apply to the Aga Khan's Bahamas trip gift to Prime Minister Trudeau because while the Aga Khan lobbies the federal government, he is not registered to lobby for the Aga Khan Foundation Canada (Court file # T-115-18).

### **(c) Complaint re: Aga Khan's trip gifts in 2014 and 2016**

As you also know, Democracy Watch filed a new complaint with your office on December 20, 2017 about the Aga Khan's trip gifts, covering the December 2016 trip gift to Prime Minister Trudeau mentioned above in subsection (b), and also the same gift to then-Liberal MP, now Cabinet minister Seamus O'Regan, and also the Aga Khan's December 2014 trip gift to then-Liberal MP Trudeau.

**NOTE:** For the record, I want to clarify the allegation in that complaint, as former Commissioner Shepherd in dealing with another person's complaint about the Aga Khan's trip gift, and you in your ruling concerning Barry Sherman's fundraising activities, both seem to misunderstand or mischaracterize the allegation made in Democracy Watch's complaints about these situations.

Neither the Aga Khan nor Barry Sherman were lobbying for themselves at the time of their activities in question. Both were lobbying for their organizations (one for their foundation, the other for their business), and both were legally connected to their organizations in a direct and significant manner.

Their organizations were registered to lobby the federal government at the time of their activities in question. The senior officers and all registered lobbyists in their organizations are required under section 10.3 to comply with the *Lobbyists' Code*, including the Professionalism principle that requires that they "observe the highest professional and ethical standards" and "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."

First, as a result of the legal, direct and significant connection between the Aga Khan and Mr. Sherman and their organizations, what they did was essentially done by their organizations, and as a result the *Lobbyists' Code* not only applies to their actions but also the violations of rules 6, 8, 9 and 10 were violations by the senior officers of their organizations. It would be a legal fiction to pretend that, in doing what they did, the Aga Khan and Mr. Sherman were not acting as officials of their registered organizations.

Secondly, by allowing the Aga Khan and Mr. Sherman to do what they did, the senior officers and all registered lobbyists in their organizations also violated the Professionalism principle in the *Lobbyists' Code* because they allowed the unethical giving of gifts/favours by people in their organization that violates both the letter (rules 6, 8, 9 or 10 depending on what is given or done) and the spirit of the *Code*.

Similarly, if any type of organization hired a consultant lobbyist, and that consultant lobbyist did not ensure that his/her client was complying with all the rules of the *Lobbyists' Code*, that consultant would be guilty of violating Professionalism principle in the *Lobbyists' Code*.

For the above noted reasons, in the case of the Aga Khan even though he is not registered to lobby for his Foundation, Commissioner Shepherd should have concluded that the senior officer of his Foundation, as the officer responsible for

the Foundation and all of its officers and employees, violated the Professionalism principle and rules 6, 8 and 10 by allowing the Aga Khan to give the trip gifts to Mr. Trudeau and Mr. O'Regan.

Also for the above reasons, in the case of Mr. Sherman, you should have concluded that the investigation should continue, and that the senior officer of Apotex, as the officer responsible for the company and all of its officers and employees, violated the Professionalism principle and rules 6, 8, 9 and 10 by allowing Mr. Sherman to host the fundraising event for the Liberal Party that Mr. Trudeau attended.

Also for the above reasons, the person who rules on Democracy Watch's December 20, 2017 complaint about the Aga Khan's trip gifts (again, not you as you are biased due to being handpicked by Prime Minister Trudeau and his Cabinet) should conclude that the senior officer of his Foundation, as the officer responsible for the Foundation and all of its officers and employees, violated the Professionalism principle and rules 6, 8 and 10 by allowing the Aga Khan to give the trip gifts to Mr. Trudeau and Mr. O'Regan.

**(d) Complaint re: Mickey MacDonald/Clearwater Seafood's fundraising activities**

As you also know, Democracy Watch filed a complaint with Lobbying Commissioner Shepherd on March 1, 2017 raising questions about an August 25, 2014 fundraising event for the Liberal Party of Canada hosted by Clearwater Seafoods co-founder and board member (and, according to media reports, possible major shareholder) Mickey MacDonald at his home and attended by Justin Trudeau.

The points noted above in subsection 3(c) apply also to this situation. Democracy Watch's position is that the person who rules on this situation (again, not you as you are biased due to being handpicked by Prime Minister Trudeau and his Cabinet) should conclude that the senior officer of Clearwater Seafoods violated the Professionalism principle and rules 6, 8, 9 and 10 in the *Lobbyists' Code* by allowing Mr. MacDonald to host the fundraising event for the Liberal Party that Mr. Trudeau attended.

**(e) Complaint re: Council of Canadian Innovators staff lobbying Global Affairs Minister Chrystia Freeland**

As you also know, Democracy Watch filed a complaint with Lobbying Commissioner Shepherd on July 12, 2017 about Council of Canadian Innovators staff lobbying Global Affairs Minister Chrystia Freeland (directly or indirectly) after working on her 2015 federal election campaign.

Given that all the facts of the situation were provided to the Lobbying Commissioner in the complaint, we find it completely unjustifiable that it is taking so long for the investigation to conclude and for a ruling to be issued (again, a ruling not by you as you are biased due to being handpicked by Prime Minister Trudeau and his Cabinet).

**(f) Complaint re: various lobby groups giving the gift of sponsored travel to various MPs from all parties between 2009 and 2016**

As you also know, Democracy Watch filed a complaint with Lobbying Commissioner Shepherd on May 26, 2016 about various lobby groups giving the gift of “sponsored travel” to various MPs from all parties between 2009 and 2016.

Given that all the facts of the situation were provided to the Lobbying Commissioner in the complaint, we find it completely unjustifiable that it has taken almost two years for the investigation to conclude and for a ruling to be issued (again, a ruling not by you as you are biased due to being handpicked by Prime Minister Trudeau and his Cabinet).

As the Ethics Commissioner reported recently, another year’s worth of unethical sponsored travel gifts have been given by lobby groups to MPs, a practice that could have been stopped in 2016 by a legally correct ruling by the Lobbying Commissioner that such gifts clearly violate the *Lobbyists’ Code*.

As Commissioner of Lobbying, you have an opportunity to ensure that situations being currently investigated by your office are, by recusing yourself, investigated and ruled on in an impartial, legally correct manner. We hope you will do so.

Democracy Watch looks forward to hearing from the Office soon concerning whether you will recuse yourself from making these decisions.

Sincerely,



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