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Integrity Commissioner J. David Wake
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Via Email: integrity.mail@oico.on.ca, lobbyist.mail@oico.on.ca

July 11, 2019

RE: Request for investigation and ruling on former Doug Ford and Progressive Conservative Party (PC Party) election campaign adviser, and current Regional Vice President for Toronto for the PC Party, lobbying Ford Cabinet ministers

Dear Commissioner Wake:

I am writing requesting an investigation and ruling on Melissa Lantsman, former Doug Ford and Progressive Conservative Party (PC Party) election campaign adviser, and current Regional Vice President of the PC Party, lobbying Premier Ford's Cabinet ministers, as this raises questions concerning whether Ms. Lantsman has violated the *Lobbyists Registration Act* ("*LR Act*" – 1998, S.O. 1998, c. 27, Sched.) by putting Premier Ford and his Cabinet ministers into a conflict of interest as defined by the *Members' Integrity Act* ("*MI Act*" – 1994, S.O. 1994, c. 38).

1. Melissa Lantsman's role as an election campaign adviser to Doug Ford and the Progressive Conservative Party of Ontario

Melissa Lantsman was the "spokesperson" for Doug Ford, and head of the "war room" for the PC Party, from early April 2018 through the spring 2018 Ontario election campaign period, as you can see mentioned in these media articles:
https://ipolitics.ca/2018/03/21/conservatives-with-federal-roots-to-head-up-ford-campaign/
and
https://www.chch.com/pc-leader-doug-ford-preventing-media-buses-tagging-along-campaign-trail/
and
https://barrie.ctvnews.ca/actors-paid-to-support-ontario-tories-outside-leaders-debate-in-toronto-1.3920694
and
https://globalnews.ca/news/4261496/ontario-election-doug-ford-speech-mixup/
and
https://barrie.ctvnews.ca/actors-paid-to-support-ontario-tories-outside-leaders-debate-in-toronto-1.3920694
and this July 28, 2018 *Toronto Sun* column by Ms. Lantsman in which she applauds every action by the Ford government, and which describes her at the end as: "*Vice President, Public Affairs at H&K Strategies in Toronto. Most recently she served as Doug Ford's war room director and spokesperson during the 2018 Ontario provincial election campaign."*
https://torontosun.com/opinion/columnists/guest-column-fords-promises-made-are-promises-kept.

This April 6, 2019 *Toronto Sun* column by Ms. Lantsman also applauds every action by the Ford government, and contains the same description of her at the end:
https://torontosun.com/opinion/columnists/lantsman-ontarios-upcoming-budget-must-restore-fiscal-sanity.

The dictionary definition of "war room" in a political campaign
https://www.collinsdictionary.com/dictionary/english/war-room
is "a room in a political organization equipped with the technical means to gather information, plan strategy, direct activities etc." In other words, being the head of a "war room" is a very senior position in a political/election campaign.

As conservative strategist Chad Rogers puts it in this article:
https://www.theglobeandmail.com/politics/article-harper-era-mps-staffers-pop-up-in-doug-fords-pc-government/
"Ford certainly benefited from having a bunch of candidates and a bunch of campaign volunteers and staffers who got their training in Stephen Harper's regime…" including Ms. Lantsman.

Ms. Lantsman also served on the transition team for Premier Ford after the election, as noted at the end of this media article:
https://ipolitics.ca/2018/06/19/ford-warns-gas-companies-hes-watching-their-every-move/
which would have, of course, involved discussions concerning which MPPs should be appointed as Cabinet ministers.

As you can see in this news release issued by Hill & Knowlton Strategies, Ms. Lantsman joined the company as Vice-President, Public Affairs in its Toronto office on June 27, 2018:
https://www.newswire.ca/news-releases/melissa-lantsman-joins-hillknowlton-strategies-as-vice-president-public-affairs-in-toronto-686698731.html. As you can see, the news release describes Ms. Lantsman as *"Fresh off her role heading up the Progressive Conservative Party Campaign War Room during the 2018 Ontario provincial election…"* and *"Prior to serving on the Doug Ford campaign, she served as Director of Communications to the Caroline Mulroney campaign for the leadership of the Ontario PC Party…"* and that she *"will be an incredible asset for advancing our clients' objectives. There is no one better positioned to provide insights on engaging with the new government in Ontario."*

2. Melissa Lantsman's role as Regional Vice President of the Progressive Conservative Party of Ontario

As you can see on the PC Party website, Ms. Lantsman is on the Executive of the PC Party as Regional Vice-President for Toronto for the party:
https://www.ontariopc.ca/party_executive
and was elected to this position as part of a slate of candidates publicly endorsed by Premier Ford at the PC Party Convention in November 2018, as summarized in this article in which Ms. Lantsman is quoted:
https://www.cbc.ca/news/canada/toronto/doug-ford-ontario-pc-party-post-election-convention-1.4909932.

3. Melissa Lantsman's registered lobbying activities in Ontario

According to a search of the Ontario lobbyists registry at:
https://lobbyist.oico.on.ca/Pages/Public/PublicSearch/Default.aspx
Ms. Lantsman is currently registered as a consultant lobbyist with 27 current clients. Her list of clients include the following (and possibly others as well) that are registered to lobby Premier Ford and/or (as noted in the list below) various other Cabinet ministers for decisions, it seems from the descriptions in the

registry quoted in the list below, that apply specifically (i.e. the decisions are not matters of general application):

1. Alcanna Inc. re: “Exploring retail alcohol sales in Ontario for Alcanna”;
2. Dynacare re: “Discussions surrounding maintaining the Test and Tech Fund”;
3. Bellwood Health Services re: “Bill 160, Schedule 9 prevents Bellwood from increasing addiction and mental health beds. They are looking to increase beds in their Toronto facility which requires a legislative change, or an amendment to Bill 160”;
4. Ontario College of Social Workers and Social Service Workers re: “To amend proposed regulations relating to requirements for qualifications of Children’s Aid Society staff to ensure certain staff are regulated social workers.”
5. SICPA re: “Looking to explore and discuss government contracts pursued with respect to the safe and secure distribution of cannabis products in the province of Ontario.”
6. Valard Construction re: “Discuss and advocate for the consideration of different procurement models in power-line transmission.
7. Bayshore HealthCare re: “Advocating for change to certain provisions of the Labour Relations Act related to card-based union certification in the homecare sector. Advocating for change to certain exemptions for providers of homecare services to certain provisions of the Employment Standards Act related to shift scheduling in the homecare sector.”
8. Cardinal Health re: “Cardinal Health is looking to compete for the opportunity to partner with the Ontario Government in order to provide modern centralized supply chain and logistics services during Ontario’s health care transformation” – registered for this client to lobby various ministers only, not the Premier;
9. Council of Academic Hospitals of Ontario re: “Advocating to the government to protect the Ontario Research Fund” – registered for this client to lobby various ministers only, not the Premier;
10. Harris Canada Systems re: “We are introducing Harris Corporation into the Ontario government marketplace for the opportunity to bid on the forthcoming Government Mobile Communications Project. It is important for the government to know about Harris Corporation's value and capabilities in light of the above proposed Request for Proposal” – registered for this client to lobby various ministers only, not the Premier
11. Leafly re: “Leafly wants to introduce themselves to government and explore potential partnerships with their website to educate and inform cannabis consumers” – registered for this client to lobby various ministers only, not the Premier;
12. AdvantAge Ontario re: “Ongoing government engagement activities related to regulatory changes impacting long-term care and seniors’ housing, including those associated with the Strengthening Quality and Accountability for Patients Act, 2017.”
13. Widex Canada Ltd. re: “Engage with provincial government officials to discuss WSIB procurement of hearing aids for person injured in workplace

accidents. The Hearing Coalition wants WSIB to reverse their decision and retract their current RFP on hearing aids to give those with hearing injuries more choice" – registered for this client to lobby Minister of Labour only, not the Premier;

As well, in the past Ms. Lantsman has also had the following additional client registered to lobby ministers as described below for decisions that seem, according to the descriptions in the Ontario lobbyists registry quoted below, to be decisions that apply specifically (i.e. not matters of general application):

1. Emblem Cannabis re: "Maintain the prohibitions on licensed producer ownership of retail outlets outside of their production site. Further specify who is "affiliated" to an LP to mean an entity that the LPs can control through ownership or otherwise (including a franchise structure that controls the brands that can be put on shelf). Mirror the "inducement" provisions found in Ontario's alcohol legislation, which types of provisions have already been adopted by other provincial regulators, including the AGLC. Seek to specify through legislation or regulation that Licensed producers of cannabis be limited to one retail sales location at point of production only" – registered for this client to lobby Minister of Labour only, not the Premier.

To be clear, for each of the clients listed above, by listing Premier Ford and the Cabinet office, and the specific ministers listed in each registration, the registration admits that the Premier and/or the ministers are one of the decision-makers in the matters about which each client is lobbying.

According to a search of the Ontario lobbyists registry at:
https://lobbyist.oico.on.ca/Pages/Public/PublicSearch/Default.aspx
Hill & Knowlton Strategies has 113 lobbying registrations currently. I mention this because, as Vice-President, Public Affairs for the Toronto office of the company, arguably Ms. Lantsman's campaign assistance to Doug Ford and the PC Party during the spring 2018 campaign, and ongoing role as Regional Vice-President of the PC Party, creates a conflict of interest for anyone at the company registered to lobby Premier Ford and/or his Cabinet ministers.

4. The proper interpretation and application of the law prohibiting campaigning for a politician or party

(a) Lobbyist working on campaign for a politician or party violates section 3.4 of the *LR Act* as it causes politician to violate sections 2, 3 and/or 4 of the *MI Act*

(i) Summary of Democracy Watch's position

Democracy Watch's position is that any lobbyist working on a campaign for a politician or party by fundraising, providing advice of any kind or other similar activities violates section 3.4 of the *Lobbyists Registration Act* ("*LR Act*"), which can be viewed at:
https://www.ontario.ca/laws/statute/98l27#BK9
because it puts the politician or politicians the lobbyist is assisting (in this case Premier Ford and his Cabinet ministers) into either a real or potential conflict of interest as defined by subsection 3.4(3) of the *LR Act*, depending on what the lobbyist is lobbying for at the time of the event or initiative or may lobby for in the future.

The real or potential conflict of interest, as defined by subsection 3.4(3) of the *LR Act*, which cites the standards set out to sections 2, 3 or 4 or subsection 6 (1) of the *Members' Integrity Act* ("*MI Act*")
https://www.ontario.ca/laws/statute/94m38#BK3
is created when the lobbyist providing the campaign assistance is lobbying for a decision that applies specifically (i.e. not a decision that applies generally). The campaign assistance creates a sense of obligation on the part of the politician(s) that makes it improper for the politician(s) (or their staff) to participate in making the decision because the decision furthers the private interest of the lobbyist (either as an in-house lobbyist representing the interest of any type of organization (for profit or non-profit), or as a consultant lobbyist representing a client's interest).

Given that section 3.4 prohibits putting a politician in even a potential conflict of interest, the lobbyist violates section 3.4 even if the politician does not actually participate in making the decision for which the lobbyist is registered to lobby at the time the campaign assistance is provided.

Please see further below for the reasons concerning why this is Democracy Watch's position, which are well-established in Canadian law.

(ii) Why have you not issued Interpretation Bulletin re: section 3.4?

Despite section 3.4 of the *LR Act* being in force since July 1, 2016, and despite the fact that effective enforcement of this section is key to ensuring the integrity of relationships between lobbyists and public office holders in the Government of Ontario, and the integrity of the government overall, you have not issued an

Interpretation Bulletin concerning the meaning of the section – or if you have issued a bulletin, it is not listed on this webpage that lists your Interpretation Bulletins:
http://www.oico.on.ca/home/lobbyists-registration/interpretation-bulletins.

Page 5 of your Guide to the *Lobbyists Registration Act* at:
http://www.oico.on.ca/docs/default-source/default-document-library/guide-to-the-lobbyists-registration-act.pdf?sfvrsn=2
only contains a summary of rules in section 3.4 and related sections – there is no guidance concerning what actions by lobbyists may violate the section.

According to page 38 of your 2016-2017 annual report at:
http://www.oico.on.ca/docs/default-source/annual-reports/annual-report-2016-2017.pdf?sfvrsn=5
and page 57 of your 2017-2018 annual report at:
http://www.oico.on.ca/docs/default-source/annual-reports/annual-report-2017---2018.pdf?sfvrsn=4
you may have provided Advisory Opinions confidentially to some lobbyists concerning the meaning and application of section 3.4 to various activities by lobbyists. If you have done that, Democracy Watch's position is that it would be simply negligent not to have issued a public Interpretation Bulletin that contains the same information as the Advisory Opinion(s).

Your Compliance Checklists for Consultant Lobbyists at:
http://www.oico.on.ca/home/lobbyists-registration/the-registration-process/compliance-checklist---consultants
and In-House Lobbyists (For Profit)
http://www.oico.on.ca/home/lobbyists-registration/the-registration-process/compliance-checklist---in-house-lobbyists-%28p-p%29
and In-House Lobbyists (Organizations)
http://www.oico.on.ca/home/lobbyists-registration/the-registration-process/compliance-checklist---in-house-lobbyist-%28org%29
all neglect to mention that section 3.4 and the related sections cover the key situation in which a public office holder participates or potentially will participate in a decision in which the public office holder "improperly" furthers the private interest of another person. This is a significant omission.

(iii) The legal lines that section 3.4 and related sections draw

Democracy Watch's position is that the legal lines that section 3.4 of the *LR Act* and related sections in the *MI Act* draw clearly prohibit a lobbyist from doing anything that creates a sense of obligation that makes it improper for a politician or other public office holder to even potentially take part in or influence a decision that could affect the interests of the lobbyist or his/her client.

Section 3.4 of the *LR Act* states:

"Lobbyists placing public office holders in conflict of interest
Consultant lobbyists
3.4 (1) No consultant lobbyist shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.

In-house lobbyists
(2) No in-house lobbyist (within the meaning of subsection 5(7) or 6(5)) shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.

Definition — conflict of interest, member of the Assembly
(3) A public office holder who is a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that is prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994. 2014, c. 13, Sched. 8, s. 5.

Definition — conflict of interest, other persons
(4) A public office holder who is not a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that would be prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994 if he or she were a member of the Legislative Assembly. 2014, c. 13, Sched. 8, s. 5."

Sections 2, 3 and 4 of the *MI Act* state:

"Conflict of interest
2. A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 2.

Insider information
3. (1) A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest. 1994, c. 38, s. 3 (1).

Same
(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection. 1994, c. 38, s. 3 (2).

> Influence
> 4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4."

Section 3.4 of the *LR Act* is a complicated section because it refers internally (to subsections 3.4(3) and 3.4(4)) and also externally to four sections in the *MI Act*: https://www.ontario.ca/laws/statute/94m38#BK3
of which sections 2, 3 and 4 are all qualified by the definition of "private interest" in section 1 of that Act:
https://www.ontario.ca/laws/statute/94m38#BK1

This section 1 definition of "private interest" seems to create a huge loophole that allows all MPPs, including Premier Ford and all Cabinet ministers, to make decisions that apply generally (for example, changing any law as essentially all laws apply generally) even if they are in a conflict of interest.

I find no definition on the Integrity Commissioner website of this key phrase – a decision "that is of general application" – even though it is fundamental to defining what can cause a conflict of interest for any Ontario politician. In 2016, federal Conflict of Interest and Ethics Commissioner Mary Dawson finally defined what a matter of general application is in this disclosure document by federal Cabinet minister Dominic LeBlanc:
http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Client.aspx#k=6be1eb88-257d-e111-970b-002655368060
which stated:

> "A decision or a matter that is of general application is one that affects the interests of a broad class of persons or entities. If a decision or matter is narrowly focussed and affects the interests of [the person or entity] as one of a small group or if [the person or entity] has a dominant interest in the matter, it would no longer be considered a matter of general application."

However, despite this loophole, if a lobbyist is lobbying for a specific change that would help his/her client or a small group of clients, or will lobby for such a change in the future, then section 3.4 of the *LR Act* prohibits the lobbyist from selling fundraising tickets or fundraising or campaigning in other ways for any politician (or the politicians' party) they are lobbying or will lobby in the future because the assistance they provide to the politician (or party of politicians) creates a real or potential conflict of interest for the politician(s).

For years after the assistance is provided, if the politician(s) then participates in a decision-making process (section 2 of the *MI Act)*, tries to influence (section 4) a decision-making process, or shares inside information with someone involved in a decision-making process of the legislature or government that concerns a

specific change the lobbyist is seeking (section 3), Democracy Watch's position is that the politician(s) would then violate those sections because the politician(s) would be "improperly furthering another person's private interest" (which is prohibited in sections 2,3 and 4). Participating in or influencing the decision would be improper because the politician(s) had been assisted by the lobbyist.

In addition, the lobbyist's campaign assistance for a politician or party is a violation of section 3.4 of the *LR Act* even if the politician(s) never participates in or tries to influence a decision-making process, or shares inside information with others involved in a decision-making process. This violation occurs because the campaign assistance creates a potential conflict of interest for the politician, and creating a potential conflict of interest is expressly prohibited by subsection 3.4(3) of the *LR Act*.

Democracy Watch's position is that, taken together, these sections mean that a registered lobbyist violates section 3.4 of the *LR Act* when the lobbyist does anything for an Ontario provincial politician or party or other public office holder (as defined in section 1 of the *LR Act*) that creates even the potential that the politician or other public office holder will have a sense of obligation to the lobbyist while participating in or influencing a decision (including by sharing inside information) that would further the private interest of any client or future client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist is registered to lobby the politician, the lobbyist admits that the politician has the potential to participate in or influence a decision that would affect the private interest of the client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist tries to excuse the sense of obligation that the lobbyist has created for the politician by claiming that the lobbyist did not actually lobby the politician, then the lobbyist admits that s/he has violated subsection 18(4) of the *LR Act* by making a false or misleading statement in their registration return.

(iv) Democracy Watch's position is well established in Canadian law

Democracy Watch's position concerning the legal lines that section 3.4 of the *LR Act* and related sections draw is well established in Canadian law.

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 federal consultant lobbyist, Barry Campbell, who organized a fundraising event for the riding association of a minister whom he was registered to lobby, and was actively lobbying, around the same time as the event. The Federal Court of Appeal ruling made it clear that lobbying and fundraising around the same time violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*. Rule 8 stated:

> "8. Improper influence
> Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder."

While the wording is obviously different in section 3.4 of the *LR Act*, the common elements are an action that causes an "improper" relationship between the lobbyist and public office holder and that creates a "conflict interest" for the office holder that makes it "improper" for the office holder to take part in a decision (actually or potentially) that affects the private interests of the lobbyist (as an in-house lobbyist) or of the clients of consultant lobbyist.

As the Federal Court of Appeal unanimously ruled in the 2009 *Democracy Watch* case (at para. 52):

> "Improper influence has to be assessed in the context of conflict of interest, where the issue is divided loyalties. Since a public office holder has, by definition, a public duty, one can only place a public office holder in a conflict of interest by creating a competing private interest. That private interest, which claims or could claim the public office holder's loyalty, is the improper influence to which the Rule [8] refers."

It is true that the event that was at issue in the 2009 Federal Court of Appeal's ruling was a fundraising event for a Cabinet minister's riding association, not for the Premier's party. However, it would be unreasonable and legally incorrect to distinguish a fundraising event for the political party or election campaign assistance for a party from a riding association event, given that money raised for a political party and/or campaign assistance for a party can as directly assist the Premier as money raised for or campaign assistance to a riding association.

With regard to campaign assistance, working or volunteering in a party's headquarters as a campaigner assists not only the party leader (in this case Premier Ford) but also all the candidates running for the party in the election (including, in this case, all of Premier Ford's Cabinet ministers). Working or volunteering as a campaigner for a candidate's riding association campaign for election or by-election obviously assists the candidate.

With regard to fundraising, 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; some of the funds raised by the party pays for some of the Premier's expenses, and; the national election campaign run by each party assists every candidate with their re-election campaign.

Subsequent to the Federal Court of Appeal's 2009 ruling in the Democracy Watch case, the federal Commissioner of Lobbying ruled in the cases of lobbyist Will Stewart
https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00265.html
and lobbyist Michael McSweeney
https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00292.html
that their lobbying of a Cabinet minister while helping to organize and sell tickets for a fundraising event for the minister's riding created a sense of obligation that amounted to improper influence.

Federal Conflict of Interest and Ethics Commissioner Mary Dawson subsequently required the Cabinet minister involved, The Hon. Lisa Raitt, to recuse herself from any decisions concerning the association Mr. McSweeney represented, to avoid the conflict of interest his fundraising assistance to her riding association had created. You can see this decision of Ethics Commissioner Dawson on p. 25 and in Schedule B of her report on the fundraising at:
http://ciec-ccie.parl.gc.ca/Documents/English/Public%20Reports/Examination%20Reports/The%20Raitt%20Report%20-%20Act.pdf

Rule 8 of the federal *Lobbyists' Code* was replaced on December 1, 2015 in part and by Rule 9 (and also Rule 6, and Rules 7, 8 and 10). New Rule 9 states:

> "Political activities
> 9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s)."

You can see a guidance document concerning Rule 9 by the federal Commissioner of Lobbying at:
https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01479.html. In that document, the Commissioner lists the following as "higher risk" political activities that very likely violate Rule 9:

- Serving as a campaign chair or in another strategic role on a campaign team
- Serving in a named position on behalf of a registered party as set out in the Canada Elections Act;

- Serving as an electoral district association officer within the meaning of the Canada Elections Act, such as chief executive officer, financial agent, appointed auditor, or any other officer;
- Organizing a political fundraising event;
- Gathering or soliciting donations that you then provide to a registered party or electoral district association;
- Working in a war room for a registered party in a strategic role;
- Preparing candidates for debates; or
- Acting as a designated spokesperson for a political candidate, campaign, registered party, electoral district association, or other organization.

The Commissioner also states in that guidance document that:

> "If you engage in higher-risk political activities then you should not lobby any public office holder who benefited from them, nor their staff, for a period equivalent to a full election cycle."

Section 3.4 of Ontario's *LR Act* is much broader than old Rule 8 or new Rule 9 of the federal *Lobbyists' Code*, because the lobbyist violates it not only by doing anything for a politician that creates a conflict of interest (or a potential conflict of interest) involving the politician's private interest, but also doing anything that creates any sense of impropriety (or potential impropriety) by the politician taking part in or influencing decisions that affect any interest of the lobbyist or the lobbyist's clients or organization.

(v) Improperly furthering another person's private interests is a very broad standard

As noted above, the parts of the rules set out in sections 2, 3 and 4 of the *MI Act* that prohibit a member from participating in a decision, influencing a decision or using or sharing inside information "improperly to further another person's private interests" set a very broad standard.

On page 8 of his February 8, 2002 ruling on the actions of then-Deputy Premier and Minister of Finance Jim Flaherty, then-Integrity Commissioner Coulter A. Osborne stated concerning the word "improperly":

> "that the qualification "improperly" is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black's Law Dictionary definition of "improper")."

You can see that ruling at:
https://www.oico.on.ca/docs/default-source/commissioner%27s-reports/re-flaherty-minister-of-finance-feb-8-2002.pdf?sfvrsn=8

As federal Conflict of Interest and Ethics Commissioner Mary Dawson stated in a June 2015 speech:

> "The concept of "improper" by its very nature allows more latitude and discretion in interpreting it."

That speech can be viewed at:
http://ciec-ccie.parl.gc.ca/Documents/English/About%20the%20Commissioner/Presentations/Speaking%20Notes%20Annual%20General%20Meeting%204%20juin%202015%20EN.pdf
with the above statement at the top of page 4.

As a result, in addition to the common law standard of the meaning of "improper" set out by the Federal Court of Appeal in its 2009 unanimous ruling in the Democracy Watch case (summarized above in subsection (a)(iii)), and the subsequent rulings by the federal Lobbying Commissioner and Ethics Commissioner that confirm that fundraising by lobbyists creates conflicts of interest for politicians, the other legal standards concerning propriety in the *MI Act* that apply to the Premier and other Ontario provincial politicians must be taken into account in determining whether a lobbyist fundraising for a politician's riding association or for the Premier's or minister's party creates a situation in which it would then be "improper" for the Premier or minister to further the lobbyist's interest by participating in or influencing a government decision or sharing inside information (or potentially doing so).

Subsection (3) of the Preamble to the *MI Act* is one of those standards, as it states:

> "Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members."

and subsection (4) is another standard as it states:

> "Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

You suggest, by quoting them under the heading "Standards of Behaviour" on the webpage:
http://www.oico.on.ca/home/mpp-integrity/resources-for-new-mpps
that you consider the expectations set out in the Preamble to be as enforceable as all the other rules in the *Act*, as you state at the end of that section on that webpage that:

> "The Act contains further rules and statements of values that must be adhered to by all MPPs."

The rule set out in section 30 of the *Act* that allows you to rule on a violation of "Ontario parliamentary convention" by a member of the legislature, and that relates to the enforceability of the provisions in the Preamble of the *Act*, has been interpreted and applied in previous rulings. As you know, on pages 8 (paragraph

24) and 9 (paragraphs 25-26) of his December 12, 2002 ruling on the actions of Member Sandra Pupatello, then-Integrity Commissioner Coulter A. Osborne stated:

> "[24]… The Act clearly incorporates the standards imposed by parliamentary convention within its necessarily general terms…
>
> "[25] Parliamentary convention is not defined in the *Act*. A convention is a generally accepted rule or practice – established by usage or custom (see *Blacks Law Dictionary*). Parliamentary convention refers that which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the *Act* as set out in the *Act*'s preamble (the reconciliation of private interests and public duties).
>
> "[26] I think it is accepted that there are limits on what members can do in their personal affairs and what they can do for friends, relatives, constituents etc. Some of those limits are established by parliamentary convention."

You can see that report at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-pupatello-purolator-courier-service-dec-12-2002-.pdf?sfvrsn=12

Democracy Watch's position is that "etc." in para. 26 above must include what members can do for lobbyists, especially lobbyists who have assisted members with fundraising or other campaign activities.

The only decision issued by the Integrity Commissioner concerning a fundraising event organized in part by stakeholders of a Minister is your August 2016 ruling concerning Cabinet ministers the Hon. Bob Chiarelli and the Hon. Charles Sousa, which can be seen at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4

However, in that ruling you only considered whether donations made at the event were a gift or personal benefit for the ministers who attended the event, in violation of subsection 6(1) of the *MI Act*. You did not address at all in that ruling section 3.4 of the *LR Act* that applies to lobbyists assisting politicians they are lobbying.

Again, no Ontario Integrity Commissioner has issued a ruling concerning a lobbyist assisting a politician they are lobbying (or assisting the politician's party or riding association).

Democracy Watch's complaint concerning the campaign assistance Ms. Lantsman provided to the PC Party, and the assistance she is currently providing as a Regional Vice-President for the PC Party, is focused on the prohibition in subsection 3.4 on the lobbyist fundraising for a politician or assisting them in another way, and the connected prohibitions in sections 2, 3 and 4 in the *MI Act* on the politician subsequently participating in or influencing a decision that helps the lobbyist or the lobbyist's client(s). This prohibition is not based on whether the politician has a private interest of their own in conflict with their public duties. It is based instead on whether the politician potentially could participate in or influence a decision, or influence the decision of another person, or share inside information, that would further the private interest of the lobbyist or any client of the lobbyist or the lobbyist's organization (for in-house lobbyists).

Again, the lobbyist assisting the politician in any way (including by assisting the politician's party) creates the potential conflict between the private interest of the lobbyist (his/her clients or organization) and the public interest that the politician is required to uphold, and makes it improper for the politician to participate in or influence a decision that could affect the lobbyist's private interest.

On page 13 of your ruling on the Chiarelli/Sousa situation, you cited the 1993 *Blencoe* ruling by former B.C. Conflict of Interest Commissioner Ted Hughes concerning donations and campaign assistance given by a Mr. Tait and Mr. Milne to election candidate Robin Blencoe, who subsequently became a Cabinet minister who, two years later, had some decision-making power concerning a proposal made by Mr. Tait and Mr. Milne's company. Commissioner Hughes' ruling can be seen at:
https://coibc.ca/wp-content/uploads/2018/05/opinion_blencoe_1993.pdf.

In that ruling, similar to the conclusion federal Ethics Commissioner Dawson reached concerning the Lisa Raitt situation (summarized above in subsection 4(a)(iv)), Commissioner Hughes stated that:

> "I am of the view that Blencoe's private interest was advanced by virtue of the cumulative effect of both Milne's and Tait's financial and other support and particularly during the most recent provincial election campaign." (page 31)

As a result, Commissioner Hughes, as Commissioner Dawson did with Minister Raitt, concluded that Milne's and Tait's assistance caused a conflict of interest for Blencoe and, therefore, Minister Blencoe was prohibited from taking part in decisions affecting Milne's and Tait's interests (pages 34-39).

In other words, Commissioner Hughes found that if Minister Blencoe took part in decisions affecting Milne and Tait, he would be improperly furthering their interests (and, given that Minister Blencoe did take part in some decisions that affecting Milne and Tait, Commissioner Hughes found that Minister Blencoe did violate the B.C. conflict of interest law).

It would, of course, also be improper for the staff of the Premier or a Cabinet minister to participate in decision-making affecting a lobbyist or the lobbyist's clients, as ministerial staff serve at the pleasure of the politician and so they share any conflict of interest that the politician has. As a result, it would completely undermine the conflict of interest rules to allow the Premier or a Cabinet minister to use their staff as proxies to participate in or influence decisions that they are not allowed to participate in or influence.

(b) Lobbyist assisting a politician or party violates section 3.4 of the *LR Act* also by violating subsection 6(1) of the *MI Act*

Democracy Watch's opinion is also that the ongoing assistance by Ms. Lantsman as a Regional Vice-President of the PC Party also violates subsection 6(1) of the *MI Act*. Subsection 6(1) states:

> "Gifts
> 6 (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office."

In your August 2016 ruling (Chiarelli-Sousa report), which again can be seen at: http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4
you ruled that making a donation to a political party does not constitute a gift or personal benefit that is prohibited by subsection 6(1) because donations are legal under the *Elections Finances Act* (R.S.O. 1990, c. E-7) and, while some of the money raised could flow back from the party to a minister, the connection between the donation and the minister receiving the money is not direct enough to be a personal benefit.

However, in the situation of Ms. Lantsman serving as a Regional Vice-President of the PC Party that this complaint addresses, the lobbyist is not making a donation, the lobbyist is providing broad assistance to the party (likely including advice and assistance on fundraising, communications, strategies and other activities).

Assisting a party in these ways, is not expressly legal under the *Elections Finances Act* or any other provincial law. As a result your interpretation and application of the provisions in the *LR Act* and *MI Act* cannot automatically exempt this kind of assistance from the prohibition on receiving a personal benefit set out in subsection 6(1) of the *MI Act* that would make it improper to participate in a decision that affects the lobbyist's private interests (or the interests of their client).

As mentioned above in subsection (a)(iv), B.C. Commissioner Hughes ruled in the *Blencoe* case that fundraising and other types of assistance are a personal

benefit for the politician. In fact, although you ignore it in your ruling on the Chiarelli/Sousa situation by only quoting part of his statement, Commissioner Hughes ruled that donations and other assistance alone can be a personal benefit that can cause a conflict of interest. As he stated on page 29 of his ruling:

> "Campaign contributions and assistance, whether financial or otherwise, can, in my opinion, in some circumstances, be a "private interest". I am conscious of the very real purpose and difference between these kinds of contributions and other kinds of pecuniary or non-pecuniary benefits that could pass to a Member. Indeed in our system of parliamentary democracy, campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally; it is thus an interest clothed with the public interest. Nevertheless, it would be wrong to deny that in some circumstances it is also an interest that accrues to individual candidates and is thus also a private interest. This is particularly the case where the financial contribution is specifically directed to the candidate even though it is payable to the party. It is also the case where the non-financial contribution or assistance is of particular benefit to the candidate. The non-financial contribution on behalf of a specific candidate (notwithstanding that it is also on behalf of the party that the candidate represents) can include an array of activities from distributing leaflets, knocking on doors, developing campaign strategies, public endorsements and fundraising."

Commissioner Hughes continues on page 30:

> "I want to emphasize that I do not intend that anything that I have said or will say hereafter to be interpreted as in any way discouraging or disapproving of campaign contributions or assistance. Indeed, I wish to express my complete support for those who choose to participate in the democratic process in this way. Political parties are essential to properly functioning parliamentary democracies. To be effective they require membership and resources. I start from the premise that those who contribute to political party viability through contributions of time or resources or both, to either the party or one of its candidates, should not be prejudiced in subsequent dealings with government as private citizens, regardless of whether the political party they support does or does not form the government of the day. Similarly, those who choose not to participate in the political process should not be, nor be seen to be, prejudiced in their dealings with government as a result of their non-participation in the political process. It is to be emphasized, however, that a Member who has received a campaign contribution, financial or otherwise, must not, at least in some circumstances, discussed in more detail below, thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution."

Subsequent rulings by former B.C. Conflict of Interest Commissioner Paul Fraser, and Alberta Ethics Commissioner Marguerite Trussler that you cite on pages 11-12 of your ruling on the Chiarelli/Sousa situation that found donations alone from lobbyists to a political are not a gift or personal benefit for the politician are therefore irrelevant to the situation this complaint addresses. Again, this situation involves a lobbyist (Ms. Lantsman) serving as a Regional Vice-President of the ruling party, and in that role providing broad assistance to the party (likely including advice and assistance on fundraising, communications, strategies and other activities).

Given that Ms. Lantsman is currently registered to lobby Premier Ford and/or his Cabinet ministers for 13 clients on specific issues, and in the past for another client, the benefit she provides to the Premier and the Cabinet ministers by being a Regional Vice-President for Toronto for the PC Party (and all the activities involved in that role) is clearly connected, at least indirectly if not directly, with the performance of their duties of office.

5. Conclusion and request for investigation

Applying all of the legal standards set out above, in the common law, in lobbying and ethics commissioners' rulings, and in the *LR Act* and *MI Act*, to the situation of Ms. Lantsman working for Doug Ford in leading up to the spring 2018 election campaign period, and in the "war room" for the PC Party during the spring 2018 campaign, and continuing now as a Regional Vice-President for the PC Party, Democracy Watch's conclusion is that Ms. Lantsman is clearly in violation of subsection 3.4 of the *LR Act*.

Ms. Lantsman has done many, if not all, of the things listed above in subsection 4(a)(iv) as an adviser to Doug Ford, and the PC Party, and as a Regional Vice-President of the PC Party. Those activities create a real or potential conflict of interest for Premier Ford and his Cabinet ministers, a conflict that makes it improper for any of them to participate in decisions that specifically affect Ms. Lantsman's consultant lobbyist clients. As a result, Ms. Lantsman's lobbying of Premier Ford and various Cabinet ministers is prohibited by subsection 3.4 of the *LR Act*.

For all of the above reasons, Democracy Watch requests that you initiate an investigation under sections 17.1 to 17.7 and 17.10 of the *LR Act* https://www.ontario.ca/laws/statute/98l27#BK30
into the actions described above of Ms. Lantsman concerning violations of subsection 3.4 of that *Act*.

So you know, Democracy Watch is also considering filing a complaint with the Ontario Provincial Police (OPP) concerning Ms. Lantsman's actions, as an offence under subsection 18(7.4) of the *LR Act* (which is the section that applies to violations of subsection 3.4).

https://www.ontario.ca/laws/statute/98l27#BK46
and Democracy Watch suggests that you consider referring the matter also to the OPP through your power to do so under section 17.2 of the *LR Act*.

Whether you investigate and rule directly on this complaint, or refer it to the OPP and then issue a ruling after the OPP have completed their investigation and any possible prosecution, Democracy Watch requests that you issue a public ruling on this complaint under section 17.9 of the *LR Act*, published on this page of your website:
http://www.oico.on.ca/home/lobbyists-registration/compliance-penalties.

Given the seriousness of this violation, Democracy Watch's position is that the appropriate penalty for you to impose on Ms. Lantsman is a prohibition on lobbying for the maximum two years, as allowed under section 17.9.

You have an opportunity to uphold key measures in two key democratic good government laws, the *Lobbyist Registration Act* and the *Members' Integrity Act*. Given that this request for an investigation contains most of the evidence needed to issue a ruling, we look forward to hearing back from you about this request, and to seeing your public ruling issued, very soon.

Sincerely,

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