



democracy Watch  
émocratie en surveillance

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Integrity Commissioner J. David Wake  
Office of the Integrity Commissioner (as Lobbyists Registrar)  
2 Bloor Street West, Suite 2100  
Toronto, Ontario  
M4W 3E2

Via Email: [integrity.mail@oico.on.ca](mailto:integrity.mail@oico.on.ca), [lobbyist.mail@oico.on.ca](mailto:lobbyist.mail@oico.on.ca)

January 22, 2020

**RE: Request for ruling on two complaints filed in June and July 2019  
concerning lobbyists violating the *Lobbyists Registration Act***

Dear Commissioner Wake:

We are writing requesting a public ruling as soon as possible on the two complaints Democracy Watch filed with you in June and July 2019 concerning lobbyists violating the *Lobbyists Registration Act* (“*LR Act*” – 1998, S.O. 1998, c. 27, Sched.).

Please see the details concerning this request set out below.

**1. The two Democracy Watch complaints filed in June and July 2019**

The first complaint filed on June 12, 2019, which you can see at:

<https://democracywatch.ca/wp-content/uploads/LettToOntlCReLobbyistsAndFordDinnerJune122019.pdf>  
requested an investigation and ruling on three registered lobbyists, Chris Benedetti, Paul Pellegrini and Matthew Gibson of Sussex Strategy Group, helping to organize and sell tickets for Premier Ford’s February 2019 fundraising

dinner, as this raises questions concerning whether these lobbyists have violated section 3.4 of the *LR Act* by putting Premier Ford into a conflict of interest as defined by the *Members' Integrity Act* ("*MI Act*" – 1994, S.O. 1994, c. 38). The complaint also requested a broader investigation based on media reports quoting anonymous sources claiming that they had also sold tickets for the event after being pressured by officials at the Ontario Progressive Conservative Party ("PC Party").

Claire Allen, Team Lead-Lobbying, of your office acknowledged receipt of the first complaint in an email sent on June 17, 2019.

The second complaint filed on July 11, 2019, which you can see at:

<https://democracywatch.ca/wp-content/uploads/LettToOntLCReMLantsmanJuly112019-1.pdf>

requested 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 section 3.4 of the *LR Act* by putting Premier Ford and his Cabinet ministers into a conflict of interest as defined by the *MI Act*.

Claire Allen, Team Lead-Lobbying, of your office acknowledged receipt of the second complaint in an email sent on July 12, 2019.

Both complaint letters provided extensive evidence concerning the fundraising and/or other assistance provided by the lobbyists to Premier Ford, and to the PC Party, and extensive evidence concerning their registered lobbying activities of Premier Ford and his Cabinet ministers.

By registering their lobbying, the lobbyists have essentially admitted that they were actually doing the lobbying they registered. If they are not actually doing the lobbying they registered, then they clearly filed a false return in violation of section 7 of the *LR Act*.

Both complaint letters also contained extensive legal arguments and citations showing clearly that past court and commissioner rulings in Canada have concluded that the assistance given to politicians by the lobbyists Democracy Watch complained about creates a conflict of interest that means the lobbyists are prohibited from lobbying those politicians, or anyone under their direction, for several years. In other words, it is well established in Canadian law that the assistance provided by those lobbyists, combined with their subsequent lobbying of Premier Ford and/or his Cabinet ministers, violates section 3.4 of the *LR Act*.

## **2. No reason for any further delay in completing investigation**

In both of the emails she sent in response to the two Democracy Watch complaints, Ms. Allen stated, after acknowledging the receipt of the complaint by you in your position as Lobbyists Registrar, the following:

“The information you provided is being reviewed. You will be contacted if any further information is required. The Act limits the type of information that can be released about any potential investigation. This means the Office cannot confirm or deny whether an investigation is occurring. However, the Office publishes an annual report with summaries of completed investigations. The annual report and other information about the lobbyists registry is available at [www.oico.on.ca](http://www.oico.on.ca).”

In fact, under clause 17.10(2)(a) of the *LR Act* you, as Lobbyists Registrar, may, as necessary, disclose information, documents or things you obtain during an investigation in order to conduct the investigation. As a result, you are free to contact Democracy Watch as the complainant (as Ms. Allen stated in her email) to share information you have gathered in an investigation, so that we may respond to that information with further information we may have gathered or may be able to provide.

Given that six months have now passed since I filed the first complaint, and five months since I filed the second complaint, and given that I supplied essentially all of the information needed to reach a conclusion about the legality of the actions of the lobbyists who were named in the complaints, I see no reason for any further delay in you issuing a decision on the two complaints.

## **3. No reason for any further delay in issuing public statements**

You are prohibited under clause 17.10(1)(a) of the *LR Act* from disclosing whether you are conducting an investigation. However, there is no prohibition in the *Act* on you disclosing that you have completed an investigation. Section 17.12 of the *LR Act* makes it clear that you are free to disclose whether you have completed an investigation, as that section actually requires you to include a summary of each completed investigation in your Annual Report.

There is no requirement in the *Act* that you wait until you issue your Annual Report next spring to disclose whether you have completed an investigation into Democracy Watch’s complaints.

#### 4. Further delay undermines democratic good government in Ontario

Section 3.4 of the *LR Act* has been in force since July 1, 2016. Given more than three years have passed, your position on what actions cross the lines set out in section 3.4 must have been fully formed some time ago.

However, you have not issued a public ruling on a situation involving a violation of section 3.4 since it was enacted. The “Guidance for Lobbyists on Political Activity” page on your website at:

<http://www.oico.on.ca/home/lobbyists-registration/guidance-for-lobbyists-on-political-activity>

is decidedly vague. It does say that say that working for or volunteering on a campaign can mean that "depending on your interaction with a candidate, your ability to lobby may be restricted." However, the words “interaction” and “may be restricted” are so imprecise that the page really doesn’t provide useful guidance to anyone.

In direct contrast, the federal Commissioner of Lobbying's Guidance page concerning a rule that is similar to s. 3.4 of the *LR Act*, which can be seen at:

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01479.html>

provides fairly clear, detailed guidance concerning what lines the rule draws.

Democracy Watch’s position, backed up by past court and commissioner rulings in Canada that were cited in the two complaint letters, is that the lobbying by the lobbyists named in the two complaints is a clear violation of fundamental ethics rules in the *LR Act* and the *MI Act* that must be strictly, strongly and publicly enforced to protect the integrity of the Government of Ontario.

Delaying ruling on these lobbyists’ lobbying activities continues to allow the undermining of democratic good government in Ontario as these lobbyists unethically advance the private interests of their clients. This is directly contrary to the public interest.

There is no need to prove that the assistance these lobbyists provided (and continue to provide in one case) to Premier Ford, his Cabinet ministers and the PC Party actually resulted in preferential treatment from Premier Ford and/or his Cabinet ministers. All that is needed for a violation of section 3.4 of the *LR Act* is for the assistance to create a potential conflict of interest for the politician.

The Supreme Court of Canada's judgment in *R. v. Hinchey*, [1996] 3 S.C.R. 1128, 1996 CanLII 157, held that ethics rules are one of many statutes and codes that "regulate behaviour" of government officials "for the important goal of preserving the integrity of government" (para. 13). Justice L’Heureux-Dubé wrote for the majority that:

"Suffice it to say that our democratic system would have great difficulty

functioning efficiently if its integrity was constantly in question. ... [T]he importance of preserving integrity in the government has arguably increased given the need to maintain the public's confidence in government in an age where it continues to play an ever increasing role in the quality of everyday people's lives." (para. 14)

As Justice L'Heureux-Dubé also wrote in *R. v. Hinchey*:

"The need to preserve the appearance of integrity..." requires that statutory provisions be interpreted so as to prohibit actions "...which can potentially compromise that appearance of integrity." (para. 16)

And, finally, as Justice L'Heureux-Dubé also wrote in *R. v. Hinchey*:

"For a government, actual integrity is achieved when its employees remain free of any type of corruption. On the other hand, 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." (para. 17)

This principle applies equally to the politicians in a government – no corrupt practice needs to take place in order for the appearance of integrity to be harmed. No corrupt practice needs to take place in order for section 3.4 of the *LR Act* to be violated – all that is needed is that the lobbyist's actions create a potential conflict of interest for the politician.

It is past time for you to issue a clear, detailed, public ruling on section 3.4 of the *LR Act*, to make it clear to lobbyists, public office holders, and the public what actions by lobbyists section 3.4 prohibits, and specifically whether the lobbyists complained about in Democracy Watch's two complaints are violating section 3.4 with their ongoing lobbying of Premier Ford and his Cabinet ministers.

## **5. Request for public statements, and rulings, as soon as possible**

For all of the above reasons, it would be simply negligent if you have not initiated and completed (or, at the very least, will complete very soon) your investigations 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 of lobbyists described in Democracy Watch's two complaints concerning violations of subsection 3.4 of that *Act*.

Democracy Watch also requests that you issue a public ruling on each of its two complaints under section 17.9 of the *LR Act*, published on your webpage at:

<http://www.oico.on.ca/home/lobbyists-registration/compliance-penalties>.

We know that under section 17.6 of the *LR Act* that you must give notice to the people being investigated of your conclusion, and that under section 17.7 they then have 15 days to request that you reconsider your conclusion (and, under section 17.12, to request that you delay any penalty you have decided to impose). We also know that within 60 days of you providing your re-considered conclusion (and/or decision concerning delaying any penalty) they have the right to apply under section 17.8 for judicial review of your conclusion. And we know that all of these factors are not in your control.

However, as set out above in section 3 of this letter, there is no prohibition in the *Act* on you disclosing publicly that you have completed an investigation. As well, there is no prohibition in the *Act* on you disclosing publicly that a person has requested under section 17.7 that you re-consider your conclusion and/or requested under section 17.12 that you re-consider any penalty.

In addition, if a lobbyist has applied under section 17.8 for judicial review of any of your decisions, you are of course free to issue a public notification that such an application has been filed as the court filing is a public document.

It is clearly in the public interest that you issue public statements as each of the steps listed above occur. In fact, it is essential that you do so in order for the public to know whether you are actually enforcing the *LR Act*.

Finally, given the seriousness of the violations of section 3.4 of the *LR Act* by the lobbyists that are detailed in Democracy Watch's two complaints, Democracy Watch's position is that the appropriate penalty for you to impose on the lobbyists cited in the two complaints is a prohibition on lobbying for the maximum two years, as allowed under section 17.9.

## **6. Summary of Requests**

In summary, we request a written response to the following questions:

- 1) Has the Office of the Integrity Commissioner (as Lobbyists Registrar) commenced an investigation into either of the two Democracy Watch complaints set out above?
- 2) If so, what is the current status of those investigations?
- 3) If not, will the Office of the Integrity Commissioner (as Lobbyists Registrar) provide our office with a copy of the reasons for not investigating these complaints?
- 4) If an investigation was started and completed, will the Office of the Integrity Commissioner (as Lobbyists Registrar) provide the public a copy of its decision, or alternatively, provide Democracy Watch with a copy of its decision?

Please advise when we can expect a response to these questions.

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 Democracy Watch's two requests for investigations contained most of the evidence needed to issue rulings, we hope to see your public statements and rulings very soon – public statements as soon as you complete your investigations, and rulings issued very soon afterwards.

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