



democracy Watch
émocratie en surveillance

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Office of the Senate Ethics Officer
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Ottawa, ON
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Email: cse-seo@sen.parl.gc.ca

September 26, 2018

RE:

1. Request that you issue public ruling on Senator Larry Campbell and other senators who hold major corporate board positions or investments;
2. Request that you disclose anonymized summaries of secret advice given to senators by Senate Ethics Officer Lyse Ricard since April 1, 2014, and by yourself going forward

Dear Senate Ethics Officer Legault:

I am writing because it is Democracy Watch's opinion that it is a violation of the *Ethics and Conflict of Interest Code for Senators* ("*Senate Ethics Code*") for a senator to be a director or officer or executive or to hold major investments in a corporation that has a private interest that conflicts with the overall public interest of the people in the province the senator represents.

It is also Democracy Watch's opinion that Senator Larry Campbell is currently in such a position of conflict of interest that is in violation of the *Senate Ethics Code* due to his position as a director, and holder of stock options, in Great Canadian Gaming Corporation.

As a result, Democracy Watch requests that you investigate and issue a public ruling concerning Senator Campbell's situation.

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It is likely that other senators hold similar positions and investments. As a result, Democracy Watch also requests that you review all senators' corporate positions and investments and issue public rulings for any who hold major positions or investments.

Democracy Watch's reasons for its opinion, and these requests for investigations and rulings, are set out below.

1. Request that you issue public ruling on Senator Larry Campbell and other senators who hold major corporate board positions or investments

You can read the facts of Senator Larry Campbell's situation in the following GlobalNews.ca article:

<https://globalnews.ca/news/4461524/larry-campbell-refuses-answer-questions-great-canadian-gaming/>

Section 1 of the *Senate Ethics Code* sets out the purposes of the *Code* including ensuring and actually enhancing public confidence and trust in the integrity of senators and the Senate. Subsection 2(1) of the *Code* requires senators to give precedence to their parliamentary duties and functions over any other duty or activity, and subsection 2(2) sets out principles senators are expected to uphold, including avoiding even the appearance of a conflict of interest. Section 7.2 requires senators to perform their parliamentary functions and duties with dignity, honour and integrity.

Sections 2(1) and 7.2 were added to the *Senate Ethics Code* on June 16, 2014 -- section 2(2) has been in the *Code* since it was first enacted.

As you know, sections 2(1) and 7.2, and other key rules in the *Senate Ethics Code* that senators are required to comply with, are summarized at:

http://sen.parl.gc.ca/seocse/PDF/KeyObligations_20160601-e.pdf

and you can see the full *Code* that has been in effect since June 16, 2014 at:

<http://sen.parl.gc.ca/seocse/PDF/CodeJune2014.pdf>

Given that Great Canadian Gaming operates businesses in B.C. that are the subject of investigations and regulatory reviews in B.C., and that are also subject to federal laws, and given that Senator Larry Campbell is a director of, and holds stock options in, the company, the company's and Senator Campbell's private interests conflict with the overall public interest of the people of B.C. that Senator Campbell has a duty to represent and uphold as a senator from B.C.

Senator Campbell can help the company's interests not only by taking part in discussions, debates and votes that affect the company's interests but also by not doing anything that might hurt the company's interests such as not making any public statements or proposals concerning casino-connected money

laundering. Whether he does or says anything or doesn't do or say anything, in both ways he can help the company's private interests.

Senator Campbell is, therefore, in a constant conflict of interest between his duties as a board member to further the company's interests (interests he shares given he own stock options in the company) and his duty as a senator to uphold the overall public interest of the people of B.C. As a result, he is in violation of sections 2 and 7.2 of the *Senate Ethics Code*.

The *Senate Ethics Code* contains a huge loophole that allows senators to take part in policy-making decisions even when they or their family, friends or associates will profit from the decisions. Section 8 of the *Code* prohibits senators from furthering their own or the family's private interests or improperly furthering another person or entity's private interests but section 11 limits "furthering private interests" to financial interests, and subsection 11(2) is a huge loophole that undermines section 8 because it says that a senator can't be in a conflict if they are dealing with anything that applies generally, such as changing a law that applies to many companies.

However, you should not let this loophole which applies to specific decision-making process situations override the general rules in subsection 2(1) and section 7.2 of the *Senate Ethics Code* that require senators, including Senator Campbell, to act with integrity always and devote themselves to their duties as a senator to represent the overall public interest of the people of the province they represent (including, as set out in directly related subsection 2(2), to avoid even the appearance of a conflict of interest).

The legally correct ruling, based on the fundamental purpose of the *Code* set in section 1, is to rule that senators violate subsection 2(1) (supplemented by subsection 2(2)) and section 7.2 of the *Code* when they hold board, officer or executive positions or investments in a corporation that is active in their province and/or federally regulated as the interests of the corporation (which they share as a board member or investor) clearly conflict with the overall public interest of the people in the province they represent.

Based on the above, Democracy Watch's opinion is that you should issue a public ruling that Senator Larry Campbell is currently in violation of section 2 (2(1) informed by 2(2)) and section 7.2 of the *Senate Ethics Code*, and must both resign his position as board member in Great Canadian Gaming, and also exercise or give up his stock options in the company, in order to be in compliance with the *Code*.

Democracy Watch's opinion is that you should also issue the same ruling for any other senator who holds a board, officer or executive position with any corporation that has private interests that conflict with the overall public interest of the people whose province s/he represents or that are subject to federal laws.

2. Request that you disclose anonymized summaries of secret advice given to senators by Senate Ethics Officer Lyse Ricard since April 1, 2014, and by yourself going forward

The first Senate Ethics Officer Jean T. Fournier included in his annual reports from 2006-2007 through to his last annual report for 2011-2012 a section entitled “The Code in Practice” which contained anonymized summaries of advice given to senators about key sections of the *Senate Ethics Code*.

Senate Ethics Officer Lyse Ricard also included such a section in her annual reports for 2012-2013 and 2013-2014. However, her reports for subsequent fiscal years do not contain such a section, nor does your 2017-2018 report.

As the chart on page 12 of Ms. Ricard’s annual report for 2016-2017 shows (although the statistics for the 2014-2015 year are missing from the chart), on average the Senate Ethics Officer receives approximately 250 requests from senators for opinions and advice. You can see that chart in the report at: http://sen.parl.gc.ca/seoc-se/PDF/Annual%20Report_2016-2017_E.pdf

Very unfortunately, as your joint annual report (with Ms. Ricard) for 2017-2018 notes on page 12, the number of requests for opinions and advice were not even tracked during the 2017-2018 fiscal year: http://sen.parl.gc.ca/seoc-se/PDF/Annual_Report_2017-2018_E.pdf

All of these instances of issuing opinions and advice are rulings by the Senate Ethics Officer. It is a violation of the public’s fundamental, and quasi-constitutional,¹ right to know that these rulings have been kept secret. It is also in the public interest that all senators, the media, and the public who pays for all the costs for the Senate, including for your office, know exactly how the Senate Ethics Officer is interpreting and applying the *Senate Ethics Code* in every case. Without this information, it is impossible to determine whether you are doing your job properly or are, instead, covering up wrongdoing by senators.

Four years have passed since summaries of any opinions or advice have been published in the Senate Ethics Officer’s annual reports. The *Senate Ethics Code* was updated in June 2014, adding subsection 2(1) and section 7.2 and other measures. By keeping opinions and advice secret since April 1, 2014, the Senate Ethics Officer has kept secret its rulings on these new measures.

This is an unacceptable, negligent level of secrecy that is matched only by Conflict of Interest and Ethics Commissioner Mary Dawson’s negligent record from 2007-2017 of keeping most of her advice to public office holders, and hundreds of other rulings, secret, which contributed to her well-earned reputation as a secretive lapdog who failed to fulfill her duties as a public watchdog.

¹ *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, 1997 CanLII 358 (SCC)

For all of the above reasons, Democracy Watch requests that you include anonymized summaries of opinions and advice issued to senators since April 1, 2014 in your next report, as you are empowered to do under subsection 42(6) of the *Senate Ethics Code*. Of course, many of the opinions and advice given by the Senate Ethics Officer in the past four years may repeat past opinions and advice. For that reason, likely only summaries of new opinions and advice given since April 1, 2014 need to be included in your next annual report.

Finally, it must be noted that while Prime Minister Trudeau claims that the appointment of you as Senate Ethics Officer was the result of an “open, transparent and merit-based” process, as stated in this news release: <https://pm.gc.ca/eng/news/2017/12/08/prime-minister-nominates-next-senate-ethics-officer>

it was, as summarized by you during your hearing before the Senate on December 11, 2017 – pages 4447-4448 at: http://publications.gc.ca/collections/collection_2017/sen/Y3-421-170-eng.pdf -- actually a closed, secretive process involving unknown people from the Privy Council Office, the Prime Minister’s Office, and the Senate. The appointment process was, therefore, partisan and political in ways that fundamentally undermine your independence as Senate Ethics Officer.

We hope that your appointment process does not also undermine your capacity to review the above requests in an independent and merit-based way.

Please contact Democracy Watch at the address above if you need any more information to initiate the inquiries and issue the public rulings requested above. Given that all of the evidence is on the public record already, we hope that you will be able to conclude your investigations, particularly concerning Senator Larry Campbell, and issue public rulings very soon.

We also hope that you will end the unacceptable, negligent secrecy that Senate Ethics Officer Ricard began in 2014 by publishing in your next annual report summaries of opinion and advice in key cases (that address rules or situations that have not arisen before) that were issued to senators since April 1, 2014.

Sincerely,



Duff Conacher, Board member of Democracy Watch
On behalf of the Board of Directors of Democracy Watch