

Standing Committee on Access to Information, Privacy and Ethics
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario
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Via E-mail: ETHI@parl.gc.ca

April 6, 2023

RE: Joint call on Committee to reverse its position and reject Commissioner of Lobbying's proposed changes to key ethical lobbying rules in the *Lobbyists' Code of Conduct*

Dear Committee members:

You have reviewed Commissioner of Lobbying Nancy Bélanger's proposed changes to the *Lobbyists' Code of Conduct*, including key ethical lobbying rules in the *Code*, and after deliberating behind closed doors the Committee has recently sent a letter to the Commissioner approving of her proposed changes to Rule 6 (other than the NDP member) with only minor changes that would not change the fact that lobbyists would be allowed to do significant fundraising and campaigning for MPs and parties and then lobby the MPs and party leader soon afterwards.

In the letter, all of the Committee members also call on the Commissioner to weaken her proposed gifts and hospitality rules so that lobbyists and lobby groups would continue to be able to give gifts of "sponsored travel" trips worth thousands of dollars to MPs, and so that lobbyists and lobby groups would be allowed to give MPs gifts and hospitality worth a total of hundreds of dollars annually.

Following up on the letter that 32 lawyers and professors from 14 universities in 8 provinces signed on to and submitted to the Committee on March 6, we are submitting this joint letter signed by 15 lawyers from 7 law firms (and also lawyers in private practice or other roles), and 26 law, politics and ethics professors from 15 universities in 9 provinces requesting that the Committee reverse its positions on the proposed Rule 6 changes, and on increasing gifts and hospitality from lobbyists, because these changes will allow lobbyists to do significant favours for MPs and party leaders through campaigning and fundraising, and give significant gifts and benefits to MPs and party leaders, and then lobby them right afterwards or soon afterwards. This is clearly unethical and will undermine the integrity of all federal policy-making processes.

In the current *Code*, Rules 6 and 9 and a guideline the Commissioner has issued concerning Rule 9 prohibit lobbying for 4 years (a "full election cycle" i.e. until after the next election) after a person does any significant campaigning or event organizing, or any fundraising, for a politician or party.

If a person only makes a donation, volunteers a bit on a campaign, attends a fundraising event or puts an election sign on their lawn, they are not prohibited from

lobbying at all, because many voters engage in these same low-level political activities.

In contrast, Commissioner Bélanger's proposed new Rule 6, and the definitions of "political work" and "other political work" in the Appendix of her proposed new *Code*, will allow lobbyists:

1. To secretly campaign for and fundraise for politicians and parties up to nearly full-time (including raising an unlimited amount of money for them) while lobbying them (as long as the campaigner/fundraiser does not have frequent/extensive interaction with the politician or party officials);
2. To secretly be a second-level, full-time campaign staff person for a politician, riding association and/or party and then only be prohibited from lobbying for 1 year;
3. To secretly be a top-level, full-time campaign staff person for a politician, riding association and/or party and then only be prohibited from lobbying for 2 years;

and not only can all of this campaigning and fundraising be done in secret, but also the Commissioner is proposing to give herself the power to secretly reduce a lobbyist's 1-2 year lobbying prohibition down to an even shorter time period.

The Committee's letter to the Commissioner only requests that the Commissioner establish a cooling-off period on lobbying (which will very likely be less than 1 year) after fundraising less than near-full-time and without frequent/extensive interaction with a candidate or party official. The letter says nothing about whether that cooling-off period should be increased based on the amount of funds raised. The letter also says nothing about having a cooling-off period for campaigning up to near-full-time for a politician or party, even though campaigning can be as valuable a favour as fundraising.

Commissioner Bélanger is claiming that a legal opinion her office paid one law firm to do for her says that the current 4-year prohibition on lobbying after doing the above campaigning or fundraising activities violates the *Charter* right to freedom of expression and would be rejected by the courts. Commissioner Bélanger refuses to make this opinion public.

We disagree. The Supreme Court of Canada (SCC) has made it very clear in its rulings that protecting government integrity, and the integrity of policy-making processes, is a priority objective in order to ensure we have a democratic system of government in Canada.

The SCC has also made it very clear in its rulings, as have other Canadian courts, that reasonable limits can be put on *Charter* rights in order to ensure government and policy-making integrity, and actually that these limits are needed to protect our democracy.

It is an entirely reasonable limit to prohibit a person who does anything significant to help a politician or political party from lobbying the politician, party leader and top party officials for 4 years. That prohibition ensures that lobbyists don't lobby people they have helped – which helps ensure ethical lobbying and protects the integrity of government and policy-making.

For all these reasons, we call on the Committee to reverse its position and reject the Commissioner's proposed changes. The current Rules 6 and 9 properly prohibit, for 4 years, a person from lobbying a politician, party leader or top party officials after doing significant campaign activities, or any fundraising, that helps the politician or their party during an election or between elections.

Whether the Committee calls on the Commissioner to leave current Rules 6 and 9 in the *Code* in their current form, or to adapt them to the context of the proposed new *Code*, the Committee should call on the Commissioner to:

1. Ensure under proposed new Rule 6 that when a person does significant campaigning or provides significant assistance to a politician or party, or any fundraising, they are prohibited from lobbying for at least 4 years, to ensure they can't lobby the people they assisted before the next election;
2. Ensure under proposed new Rule 6 that a person is only allowed to lobby right away after political activity if the person has only volunteered or campaigned a few times for a politician or party during an election campaign or between elections (without doing any fundraising), and;
3. Prohibit any reductions of any lobbying prohibition time periods.

In addition, the Committee should reverse its positions calling on the Commissioner to exempt lobbyists giving gifts of "sponsored travel" from the gift rule, and calling on the Commissioner to more than double the amount of gifts and hospitality that lobbyists are allowed to give to MPs annually. Lobbyists giving these gifts and benefits to MPs and party leaders while lobbying them is as unethical as campaigning and fundraising for politicians and parties and then lobbying them soon afterwards.

Signed,

Professors

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