



Democracy Watch
émocratie en surveillance

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Commissioner of Canada Elections William H. Corbett
c/o Elections Canada
257 Slater Street
Ottawa, Ontario
K1A 0M6
Fax: 1-800-663-4908

Mr. Brian Saunders
Director of Public Prosecutions
284 Wellington Street, Room 2359
Ottawa, Ontario
K1A 0H8

October 16, 2009

RE: Petition for investigation of, and rulings on, fundraising event involving Conservative Cabinet ministers and Conservative MPs and Rogers Communications Inc.

Dear Commissioner Corbett:

Democracy Watch is filing this petition to request, under the provisions of the federal *Canada Elections Act*, (the *Act* -- (2000, c. 9)) an investigation of the a fundraising event that, according to information received by Democracy Watch, was held in the Owner's Box at the Rogers Centre on September 6, 2009.

If Rogers Communications Inc. (Rogers) made the significant contribution it appears that it made to at least one riding association of the Conservative Party of Canada (and possibly other Conservative riding associations and/or candidates and/or the Party overall) through the holding of the fundraising event at the Rogers Centre, Democracy Watch's opinion is that serious questions arise concerning Rogers being in violation of the contribution measures in the *Act*.

The Situation

Democracy Watch has been provided with what appears to be a genuine copy of an invitation sent by email by Rick Dykstra, Parliamentary Secretary to the Minister of Citizenship and Immigration (since November 7, 2008) and Conservative MP (since January 23, 2006) for a fundraising event it appears was to benefit Mr. Dykstra's riding association, and indirectly the Conservative Party of Canada, and possibly other of its candidates and riding associations (Democracy Watch does not know if other Conservative MPs also sent out the invitation. Please see attached the copy of the email invitation.

The invitation states that the event was to be held in the Owner's Box at the Rogers Centre in which Mr. Dykstra would have "the opportunity to host 60 friends" and that "Included with your contribution to my federal association is a ticket to the game, access to the owner's suite, beverages and food during the entire game.". According to the Rogers Centre website, the Centre has been owned by Rogers since February 2005.

The email also states that invitees will have "the opportunity to attend batting practice, meet with the President of Blue Jay Operations, ministers from the federal government and players from the Blue Jays" baseball team. According to Rogers website, the Blue Jays team has been owned by Rogers since September 2000. Democracy Watch does not know which Blue Jays players were made available to meet attendees.

Democracy Watch also does not know which (if any) Cabinet ministers actually attended the event.

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Democracy Watch has been told by Rogers Centre staff that the Owner's Box cannot be rented, but that the Luxury Suites that are available for rent at the Rogers Centre (of which the Owner's Box is one) can be rented for approximately \$175 per person attending a Toronto Blue Jays game (which covers the costs of the game ticket and the rental of the suite -- any food or beverages cost extra).

Given that the Owner's Box cannot be rented, Democracy Watch's opinion is that the Conservatives could not have paid full value for the use of the Owner's Box, and that it is reasonable to conclude that the value of being able to hold an event in it is much greater than the per person rental cost for any of the other Luxury Suites which are available to the public for rental.

As well, Democracy Watch's opinion is that the other perks offered in return for the donation should add to the total value of the benefit provided to attendees.

Democracy Watch does not know whether Mr. Dykstra, his riding association, the Conservative Party of Canada or some other entity paid Rogers for these perks offered to attendees.

The invitation states, referring to attendees of the event, that "Your assistance and attendance is deeply appreciated. Fundraising is a key aspect to the success we have achieved in the last two elections and your commitment means a great deal."

It is not known if anyone at Rogers or the Rogers Centre provided any services in organizing the event, nor whether the Conservatives paid for any services provided. Democracy Watch contacted several members of the Canadian Society of Professional Event Planners and was told that the service of registering people for such an event has a commercial value of \$1,500 to \$2,000, and the services involved in overall organization of such an event have a commercial value of \$4,000 to \$5,000.

At the time of the reported fundraising event, Rogers Communications Inc. was registered under the federal *Lobbying Act* to lobby Canadian Heritage (PCH), Canadian Radio-television and Telecommunications Commission (CRTC), Foreign Affairs and International Trade Canada (DFAITC), Industry Canada (IC), Prime Minister's Office (PMO), Privy Council Office (PCO), Public Safety and Emergency Preparedness Canada, and the House of Commons and the Senate of Canada (Registration numbers 722074-4903-9 (in-house corporation registration) and 780389-11623-9 (Registration of consultant lobbyist Gerald Kerr-wilson on behalf of his client Rogers)).

Under these two registrations, Rogers has disclosed under the *Lobbying Act* several communications since March 2009 with public office holders who are covered by the *Conflict of Interest Act*, including on March 24th with Bill King, Chief of Staff, Minister of Industry (Communication number 4903-101577); on April 21st with Industry Minister Tony Clement and others (Communication number 4903-105134); and on May 13th with Heritage Minister James Moore and his Chief of Staff Ian Todd and his Senior Policy Advisor Tanya Peatt (Communication number 4903-110490).

Again, Democracy Watch does not know which (if any) Cabinet ministers actually attended the event.

Democracy Watch has searched Mr. Dykstra's website (<http://www.rickdykstra.ca>) and found no mention of the fundraising event, which seems to indicate that the invitation was sent to a select list of people, and not to all of Mr. Dykstra's constituents or to the general public.

The Law

The *Canada Elections Act* defines "contribution" as "2.(1) a monetary contribution or a non-monetary contribution" and, therefore, contributions include money, property and services, with "monetary contribution" defined as "an amount of money provided that is not repayable" and "non-monetary contribution defined as "the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value."

The *Canada Elections Act* defines “commercial value” as follows:

- “2.(1) “commercial value”, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by
- (a) the person who provided it, if the person is in the business of providing that property or service; or
 - (b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business.”

Only individuals are permitted to make contributions under the *Canada Elections Act* and the limits on contributions are as follows:

“Contribution limits

405. (1) No individual shall make contributions that exceed

- (a) \$1,000 in total in any calendar year to a particular registered party;
- (a.1) \$1,000 in total in any calendar year to the registered associations, nomination contestants and candidates of a particular registered party;
- (b) \$1,000 in total to a candidate for a particular election who is not the candidate of a registered party; and
- (c) \$1,000 in total to the leadership contestants in a particular leadership contest.”

With regard to clause 405(1)(a.1) set out above, total contribution limit applies to the combined total contributions made to a registered associations, nomination contestants and candidates of a given registered party during a calendar year and, with regard to clause 405(1)(c), to the combined total contributions made to the leadership contestants in a specific leadership race.

Under section 405.1 of the *Canada Elections Act*, these limits are adjusted for inflation annually. As a result, the actual limit on each type of contribution of money, property or services listed above during 2009 is \$1,100.

However, as set out above, “volunteer labour” is not included in the definition of “non-monetary contribution.” Subsection 2(1) of the *Canada Elections Act* defines “volunteer labour” as: “any service provided free of charge by a person outside their working hours, but does not include such a service provided by a person who is self-employed if the service is one that is normally charged for by that person.”

Application of the law to the Conservatives’ fundraising event at Rogers Centre

Taking into account the above measures in the *Act*, if Rogers provided the gift of the use of the Owner’s Box at the Rogers Centre for the fundraising event and/or the gift of services in organizing the event and/or the perks involving the Blue Jays players, tickets, food and beverages, it seems clear in Democracy Watch’s opinion that any Cabinet ministers and MPs who attended the event and/or riding association(s) associated with the event would have accepted a contribution that is prohibited under the *Canada Elections Act* because the contribution was made by a corporation.

Even if the Conservatives paid Rogers for the services provided by Rogers for the event (including food and beverages), and even if it was claimed that the individual who heads Rogers made the contribution of the use of the Owner’s Box, the Owner’s Box cannot be rented, and therefore payment cannot be effectively made at a commercial rate for the use of the Owner’s Box because lack of public access to the Box makes its rental cost inestimably high.

Therefore, it seems clear, in Democracy Watch’s opinion, that the use of the Owner’s Box can reasonably be considered to be a very valuable contribution (ie. worth much more than \$1,100), and therefore is a prohibited contribution, to any Cabinet minister or MP who attended the event, or to any riding association(s) associated with the event, or to the Conservative Party overall.

Democracy Watch does not know if attending and meeting Blue Jays players at batting practice is also something that the public has access to for a specific price, or if it is a perk that can only be accessed with the permission of the owners of the Blue Jays, namely Rogers. The invitation to the event indicates that this perk is not something that attendees were paying for when they made a donation to Mr. Dykstra's riding association to attend the event. If it is such an exclusive perk, it seems clear, in Democracy Watch's opinion, that this perk must also be considered to be a very valuable, and therefore also prohibited, contribution.

Request for investigation of situation

Under sections 511 to 514 of the *Canada Elections Act* (the *Act*), the Commissioner of Canada Elections and the Director of Public Prosecutions share the responsibility of investigating and reviewing situations for possible prosecution based on having reasonable grounds to believe that a violation of the *Act* has occurred.

Democracy Watch believes that the information set out above gives you much more than adequate evidence upon which to form the reasonable belief that a contravention has occurred.

Again, based on the information set out above about the situation of the Conservatives' fundraising event at the Rogers Centre, and the applicable measures in the *Canada Elections Act*, Democracy Watch's opinion is that it is reasonable to conclude that the Cabinet ministers and MPs who attended the event accepted a contribution that violates the *Act* because the contribution was made by a corporation and/or was of a value higher than the legal annual contribution limits.

As a result, Democracy Watch's opinion is that you have clear reasons to believe that public office holders have contravened the *Conflict of Interest Act*, and that MPs have contravened the *MPs Code*, and therefore it is reasonably, if you are going to act in a legally correct manner, for you to examine the matter addressed in this petition, and issue a ruling that finds Cabinet ministers and MPs in contravention of the *Act* and *MPs Code*, and issue recusal orders to those ministers and MPs.

Democracy Watch looks forward to your prompt response to the above information and requests.

Sincerely,



Duff Conacher, Coordinator
on behalf of the Board of Directors of Democracy Watch

Original to follow by mail

ATTACHMENT:

Copy of email invitation to the Blue Jays Fundraiser September 6

----- Original Message -----

From: DykstR9@parl.gc.ca <DykstR9@parl.gc.ca>

To: DykstR9@parl.gc.ca <DykstR9@parl.gc.ca>

Sent:

Subject: Fw: Blue Jays Fundraiser September 6

On Sunday September 6th I have the opportunity to host 60 friends in the Owner's Box at the Roger's Centre. The Toronto Blue Jays will be playing host to the New York Yankees.

The game begins at 1:30pm and includes the opportunity to attend batting practice, meet with the President of Blue Jay Operations, ministers from the federal government and players from the Blue Jays.

Included with your contribution to my federal association is a ticket to the game, access to the owner's suite, beverages and food during the entire game.

I look forward to seeing you at the game and having the opportunity to see you on September 6th. Your assistance and attendance is deeply appreciated. Fundraising is a key aspect to the success we have achieved in the last two elections and your commitment means a great deal.

Regards and looking forward to seeing you.

Rick Dykstra
Member of Parliament
St. Catharines

----- Original Message -----

From: Dykstra, Rick - Personal

To: Dykstra, Rick - Personal

Sent: Tue Jul 21 16:35:18 2009

Subject: Blue Jays Fundraiser September 6

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