



Democracy Watch
émocratie en surveillance

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RE: Report needed from you setting out details concerning what you have done with six Democracy Watch complaints filed from 2001-2009, and all other complaints received, or reviews or investigations initiated, since 2005 concerning allegations of a violation of the *Lobbying Act* or *Lobbyists' Code of Conduct* (of which there seem to be at least 100 total)

Dear Commissioner Shepherd:

Overview of concerns

We are writing concerning six complaints Democracy Watch has filed with the office enforcing the *Lobbyists' Code of Conduct*, either you or your predecessor Registrar of Lobbyists, from 2001 to 2009, as well as all complaints or reviews or investigations since 2005 of allegations of violations of the *Lobbying Act* or *Lobbyists' Code*.

Five of the Democracy Watch complaints were filed from 2001 to 2004. Rather than summarizing them in this letter, we refer you to the following Democracy Watch webpage which contains summaries of them:

http://www.dwatch.ca/camp/Five_Ethics_Complaints.html

The other two complaints were filed with you in October 2009 -- you can see them summarized in the following Democracy Watch news release:

<http://www.dwatch.ca/camp/RelsNov0309.html>

You finally issued a ruling on one of the two complaints, concerning lobbyists assisting Cabinet minister Lisa Raitt with a fundraising event, last week.

Concerning the five complaints filed from 2001 to 2004, as you would know given that you began working in the Office of the Registrar of Lobbyists in 2004, in a July 2004 ruling the Federal Court quashed rulings on four of (at that time) eight Democracy Watch complaints that had been ruled on by then-Registrar of Lobbyists Howard Wilson, and as a result of that order, the Department of Justice and the Registrar's office agreed in a letter to Democracy Watch to have new rulings issued concerning all eight complaints (Democracy Watch can provide the letter to you if necessary). You can see the ruling at:

<http://decisions.fct-cf.gc.ca/en/2004/2004fc969/2004fc969.html>

/1 . . .

Rulings were issued by the Registrar's office on three of the complaints, and Democracy Watch filed a judicial review application concerning one of the rulings, which as you know resulted in the Federal Court of Appeal ruling in March 2009, *Democracy Watch v. Campbell* 2009 FCA 79.

As a result, six Democracy Watch complaints filed from 2001 to 2009 remain for which neither the Registrar of Lobbyists, nor your office, has issued rulings, and under the Federal Court order, and by agreement with the Department of Justice, you are under a legal duty to issue rulings for the complaints.

As well, as detailed below, neither your predecessor Michael Nelson nor you have ever provided any summary or detailed information in your annual reports concerning the number and nature of complaints you receive each fiscal year. As a result, it is impossible to tell whether you have, over the years, unjustifiably refused to investigate valid complaints that have been filed with you.

In addition, as detailed below, as of the end of fiscal year 2007-2008, Registrar Michael Nelson had 43 outstanding case situations (36 administrative reviews, six (6) investigations, and once case referred to the RCMP), and it seems that you dropped 38 of those cases (although given the vagueness of the two annual reports you have issued, it is essentially impossible to tell what you have done with those 43 cases).

Further, through fiscal year 2008-2009, and fiscal year 2009-2010, it seems from your annual reports and testimony before House committees that you have initiated about 43 new administrative reviews (the specific number is difficult to determine) based on complaints you received or that you have self-initiated after you have become aware of evidence of a violation of the *Act* or *Code*, and it seems that you have initiated eight (8) investigations, and referred six (6) cases to the RCMP (although the exact totals are also very difficult to determine).

So while it seems that you have on file a total of at least 100 case situations (43 inherited from Registrar Nelson at the end of fiscal year 2007-2008, 57 new cases since the end of fiscal year 2007-2008), you have not provided adequate information to determine exactly what you have done with each case and why, nor have you provided any details concerning cases referred to the RCMP (and, as you know, these details are important because if the RCMP and Crown prosecutors decide not to charge and prosecute a violator of the *Act*, you can still then proceed to find the violator guilty under the *Code* of failing to comply with the spirit of the *Act*).

A major part of the problem is that, unlike Registrar Nelson's past annual reports, your annual reports do not include summaries of the reviews you have undertaken (summaries in which Registrar Nelson gave the general facts of each case, while not identifying anyone or disclosing personal information). As a result, it is impossible to tell what case reviews and investigations you are talking about in each report, let alone the status of each review and investigation.

In other words, it is impossible to tell how many complaints in total you or Registrar Nelson have received since 2005 with valid evidence of violations of the *Act* or *Code*, and it is also impossible to tell what you have done over the past three years with the approximately 43 cases you inherited from Registrar Nelson, and the approximately 57 situations in total mentioned in your two annual reports, in which you had evidence of a violation of either the *Act* or *Code* (the exact number is impossible to know because of the vagueness of your and Registrar Nelson's reports).

And given that fiscal year 2010-2011 is almost over, who knows how many more cases of valid allegations or evidence you have become aware of in the past year.

Overall, the two annual reports you have produced so far provide far less detail than the annual reports of past Registrar of Lobbyists Michael Nelson (who, although he was revealed to have a very weak enforcement record, at least made it clear in his reports the number of complaints received, included a summary of each case, and disclosed how many were resolved and in what way each year).

Your two annual reports provide less detail even than the annual reports of the disgraced former Public Sector Integrity Commissioner, who at least disclosed the number of complaints received, and how each complaint was treated each year. And, as you may know, recently the Interim Integrity Commissioner disclosed a full "spreadsheet" that provided far more detail concerning how each complaint was addressed, including a full timeline for each complaint.

Given that you have issued only two rulings in the past three years concerning alleged violations of the *Lobbyists' Code of Conduct*, out of at least 100 outstanding situations for which there has been evidence of a violation of either the *Act* or *Code* (and likely many more), your enforcement record is also as weak as the disgraced former Public Sector Integrity Commissioner. The RCMP and Crown prosecutors have contributed to this weak record as they have never charged anyone nor has anyone been prosecuted for violating the *Act* in the past 22 years.

Given the concerns expressed by the Auditor General recently about the very weak performance record of the former Integrity Commissioner, Democracy Watch urges you not only to disclose within 30 days all the details about every complaint received, or review or investigation initiated, concerning alleged violations of the *Act* or *Code* since 2005 (of which there seem to be at least 100), but also include all those details in your next annual report (for fiscal year 2010-2011, to clear up the confusion about what your office has been doing since 2005). We are very sure that MPs will soon be demanding the same detailed disclosure from you.

Registrar of Lobbyists Michael Nelson's reports on Democracy Watch's and other past complaints

As you also know, your predecessor Registrar of Lobbyists Michael Nelson acknowledged that the five complaints were outstanding, and that the enforcement office for the *Lobbyists' Code of Conduct* had a legal duty to issue rulings for the five complaints, and that the five complaints were being transferred to you in the newly created role of Commissioner of Lobbying, when he wrote in his final Annual Report, for the fiscal year 2007-2008, under the heading "Administrative Reviews" in the section entitled "Enforcement of the Lobbyists' Code of Conduct":

"The other 2006-2007 carry-over review, which was one of the six unfinished Democracy Watch cases from 2006, was finalized. It involved an allegation of unregistered lobbying and found that the individual in question was not required to register under the *Act*, and therefore was not in breach. Furthermore, as there was no requirement to register, the individual was not bound by the *Code of Conduct* and the file was closed. The remaining Democracy Watch cases are ongoing.

"Nine of the new reviews mentioned in last year's Annual Report are still ongoing. Seven of them relate to possible breaches of the *Code*, and involve allegations of improper lobbying activity by individuals who were seeking financial benefits from a special operating agency of the federal government. The other two involve registered lobbyists who were alleged to be providing advice and professional services to federal POHs at the same time as being registered to lobby the government.

"During the 2007-2008 reporting period, a total of 17 administrative reviews were initiated with only one related to a possible contravention of the *Code*. The ORL received a complaint that a registered lobbyist had provided confidential information without consent. This review is ongoing."

In other words, although not expressed very clearly in the above paragraphs, at the end of fiscal year 2007-2008, Registrar of Lobbyists Nelson had 15 uncompleted reviews of allegations of violations of the *Lobbyists' Code*, including Democracy Watch's five outstanding complaints.

In the subsection entitled "Administrative Reviews" in the section entitled "Enforcement of the Act" in his 2007-2008 Annual Report, Registrar Nelson stated:

"Work continued on the following six administrative reviews, referred to in the *Lobbyists Registration Act* Annual Report, 2006-2007. [and then the review cases were summarized (as they had been also in the 2006-2007 Annual Report) and then Registrar Nelson stated]

In the reporting period of 2007-2008, 17 administrative reviews were initiated with one of these discussed in Part Two . . . Of the administrative reviews relating to possible breaches of the Act, one review was completed with the file referred to the RCMP. The case involved:

* An allegation that an individual lobbied the federal government on behalf of a municipality and a province, and failed to respect the time limits for registering, thereby breaching the Act and the Code. The administrative review found reasonable grounds to believe that the individual had breached the Act, and accordingly, the file was suspended and was transferred to the RCMP in August 2007 for follow-up investigation. A response from the RCMP is pending.

Of the 17 reviews initiated during this reporting period, 15 remain open. They include 13 allegations of unregistered lobbying. Of these, nine involve individual lobbyists, and four involve non-profit organizations. Of the remaining four reviews, two were initiated based on allegations that registered lobbyists were in breach of the *Act* by filing registrations that did not include full disclosure of the members of a client coalition and public funding.

A recent Federal Court decision has questioned the Registrar's authority to investigate cases involving alleged breaches of the *Lobbyists Registration Act*. The decision of the Federal Court is under appeal. In the interim, the ORL has suspended work on all administrative reviews pending the receipt of clearer guidance from the Federal Court regarding the ORL's ability to investigate alleged breaches of the *Code* in cases where the lobbyist has not registered."

In other words, again although not expressed very clearly, as of the end of fiscal year 2007-2008, Registrar Nelson had one completed review that had been referred to the RCMP (response from the RCMP pending), and had 21 uncompleted administrative reviews of allegations of violations of the *Act*.

Also in his final 2007-2008 Annual Report Registrar Nelson wrote, under the heading "Investigations under the Code":

"During the fiscal year 2007-2008, the Registrar did not initiate any new investigations. However, several investigations initiated in previous years remained active. Two investigation reports were finalized by the Investigations Directorate and forwarded to the Registrar, one of which was the Democracy Watch case, which was opened as an investigation in 2006-2007. The Registrar shared these reports with the individuals reported upon so as to provide them a reasonable opportunity to respond in writing. As with the aforementioned suspended reviews, these two cases and the active investigations have been temporarily suspended pending receipt of clearer guidance from the Federal Court regarding investigations under the Code."

So while it is unclear, because of the negligent vagueness of his Annual Report, exactly how many investigations were ongoing by Registrar Nelson at the end of fiscal year 2007-2008, and there

were at least “several”. Registrar Nelson’s 2006-2007 Annual Report states, under the heading “Investigations Under the Code”:

“During the fiscal year 2006-2007, the Registrar initiated two investigations. These two investigations — along with the remaining four initiated in October 2005 — are still in progress.”

As a result, it seems clear that at the end of fiscal year 2007-2008, the Registrar had six ongoing investigations of violations of the *Code*.

As you know, Registrar Nelson only issued five rulings during his four years in office (four of which concerned the actions of one lobbyist, the other was the ruling on one Democracy Watch complaint).

Your actions concerning past complaints about violations of the *Lobbyists’ Code of Conduct*

As you know, the Federal Court case referred to above in the Registrar’s 2007-2008 Annual Report was filed by Neelam Makhija, and the Federal Court of Appeal subsequently ruled that the Registrar/Commissioner of Lobbying is legally empowered to investigate and rule on lobbyists violating the *Lobbyists’ Code* even if the lobbyist has not registered as required under the *Lobbying Act*. (and even if the limitation period for prosecutions under the *Act* has passed).

The fact that you as Commissioner pursued the Makhija case after the change of the *Act* in July 2008 replaced the Registrar with your new position as Commissioner, and the fact that the Federal Court of Appeal upheld your ruling retroactively (Makhija was, in effect, found by the Court of Appeal to have violated the *Lobbyists’ Code* several years earlier, even though the scope your power to find him guilty was in question through the process of the court case), is further acknowledgement by your office that you as Commissioner have a legal duty to continue investigations initiated by the Registrar.

In addition, the fact that the past annual reports of the Registrar of Lobbyists back to 1990 are on your website is further acknowledgement by you that your office is legally responsible for the same duties as the former Registrar and Ethics Counsellor was responsible.

As well, you stated before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on June 8, 2009 that “I have always acted as if I were really the commissioner. I have taken my work seriously, and I have never put anything off because I was in an acting position.” As a result, you have made it clear that your legal duties continued through your one year as Interim Commissioner, and that you did not consider that year to be a justification for any delay in dealing with any matter.

Further, as your in-house counsel Bruce Bergen stated before the same committee on October 27, 2009:

“The Office of the Commissioner of Lobbying has always said, and I think it’s clear, that if there are allegations or facts, they are looked into. And that’s the policy: to look into everything. I think in the member’s question with respect to a lobbyist speaking to a party official who is not a public office-holder, that’s not lobbying as contemplated in the act. However, I suppose if there were some facts or circumstances that would enable a link to be drawn between that activity and actual lobbying, then that would be something we would look into.”

As a result, it is clear that you acknowledge that it is your legal duty to at least review all complaints that are filed with your office, and then let the complainant know whether the complaint will proceed to an investigation and/or referral to the RCMP.

Even further, as you stated before the same committee, also on October 27, 2009:

"I do not have any examples to offer because honestly, to date, I have never refused to consider a case because too much time had elapsed. However, if it has been a long time, it may be difficult to find testimony, people who can provide evidence. It may be that people will have died since 10 years ago and there are no longer any reports about the incident."

This statement, along with your ruling last week on the Bruce Rawson case from 2004, show clearly that you consider past cases that you inherited from the Registrar of Lobbyists to continue to be active, and also that it is fully within the scope of your legal duty to review, investigate and issue rulings about these cases.

Therefore, again Democracy Watch believes it is your legal duty to issue rulings on the five outstanding complaints it filed from 2001 to 2004 with the past Registrar of Lobbyists (as well as, of course, to issue a ruling on the sixth outstanding complaint from October 2009), and that it is your legal duty to at least review every complaint that has been filed with your office or your predecessor Office of the Registrar of Lobbyists.

Your reports concerning Democracy Watch's and other past complaints about violations of the Act and Code

Your 2008-2009 Annual Report

While Registrar Nelson's past annual reports were worded very unclearly, and while it was impossible to determine from his reports how many complaints he received each fiscal year, it was at least possible to decipher how many complaints he had received each year, how many administrative reviews were initiated and completed, and how many investigations were initiated and completed, and how many reviews and investigations were not completed.

In comparison, your annual reports are even more vague. Your 2008-2009 first Annual Report also did not include any details about how many complaints you received in total. All your Report states in the section entitled "Administrative Reviews" is that:

"In 2008-2009, 13 Administrative Reviews were initiated and 8 recommendation reports were sent to the Commissioner."

And then you set out a pie chart entitled "Administrative Review Caseload by File Type (2005-2008)" that sets out the percentage of each type of violation that was alleged in cases reviewed from 2005 to 2008 (we assume up to the end of fiscal year 2007-2008, but it is unclear). While this pie-chart is interesting, it gives no information about the number of complaints received during this time period, the number of reviews or investigations initiated based on complaints, or self-initiated by the former Registrar or yourself, nor any information about the status of each review or investigation.

In the section "Investigations" of your 2008-2009 Report, you state that six past cases (we assume including the five Democracy Watch complaints that had not been ruled on by the Registrar) remained under investigation by you, as you wrote in that Report:

"A transitional provision set out in the Federal Accountability Act regarding pending investigations gave authority to the Commissioner to continue conducting investigations initiated by the Registrar prior to July 2, 2008. In the past year, six investigations initiated by the Office of the Registrar of Lobbyists were transferred to the Commissioner of Lobbying. One investigation report has been submitted for the Commissioner's consideration, with the remaining five still under review. The Commissioner now has the authority to refuse to conduct or cease any investigation that he or she believes would serve no useful purpose in pursuing because of, among other things, the amount of time that has elapsed since the matter arose."

We assume that the five outstanding Democracy Watch complaints from 2001 to 2004 about violations of the *Code* are included in the six complaints you continued to investigate because you have not notified Democracy Watch that you have refused to conduct or ceased investigating any of Democracy Watch's five complaints. Of course, as you know, in order to be in compliance with the rules of natural justice and administrative law principles, as well as the agreement between Democracy Watch and the Department of Justice and the Registrar, you would have had to give such notice to Democracy Watch as the complainant if you decided to either refuse to conduct or cease investigating any of the five complaints.

However, it is very difficult to tell what your enforcement actions have been because, for some unknown reason, and very unfortunately, you did not include summaries of cases in your Annual Report as Registrar Nelson had in his past annual reports. Without the case summaries, it is impossible to tell which cases you are referencing.

You stated before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on June 8, 2009 that "Of those six, I've received one that is recommending it should go forward in terms of tabling. So what I'd like to do over the summer is to actually work in writing up the report, so I can table it sometime in the fall, hopefully." It seems that no ruling report has yet been issued, even though it is now the end of February 2011.

You stated before the same committee on March 2, 2009 the following:

"Mr. Borys Wrzesnewskyj: Let me just stop you there. There are 43 currently active files, and you've investigated 61. Is that correct?

Mrs. Karen Shepherd: Yes, but I'm just going to verify the numbers. Since 2005, we have initiated 61 administrative reviews, as we call them, and 10 investigations have been open since 2005."

However, it is very unclear from your testimony, and your 2008-2009 annual report, whether or not the 43 include the 13 you initiated during fiscal year 2008-2009.

In addition, Democracy Watch is very concerned that your 2008-2009 Annual Report does not provide any details about what you did exactly, or what has happened, with the following cases that were not completed by Registrar Nelson as of the end of fiscal year 2007-2008:

- one completed review that had been referred to the RCMP (response from the RCMP pending);
- 15 uncompleted administrative reviews of allegations of violations of the *Lobbyists' Code*;
- 21 uncompleted administrative reviews of allegations of violations of the *Act*, and;
- the six uncompleted investigations of the Registrar (again, although it is unclear, five of which we assume are Democracy Watch's past complaints).

Your 2009-2010 Annual Report

Further, what you wrote in your 2009-2010 Annual Report makes the status of the Democracy Watch's five complaints from 2001 to 2004, and one new complaint from October 2009 (all of which have not yet been ruled on), and the other past uncompleted 43 cases that were under review or investigation by the former Registrar at the end of fiscal year 2008, even more unclear. In that report, under the heading "Administrative Reviews", you state:

"At any point in time, the Office carries a caseload of about 40 administrative review files. This year, the Office received 11 new complaints of non-compliance with the *Act* and the *Code*. An additional five administrative reviews were opened as a result of internal monitoring and compliance verification efforts. Additionally, 10 reports were submitted to the Commissioner to assist her in administering the *Lobbying Act*."

You then set out a table containing “the types and number of files that constitute OCL's new caseload of administrative reviews in 2009–2010”, as follows:

“Unregistered Lobbying - 8 files; Unreported Communication - 3 files;
False/Misleading Communication - 2 files; Improper Influence (Rule 8) - 3 files”

As you can see, while "new complaints" and reviews are mentioned, past complaints are not mentioned. No details are provided concerning when the 11 complaints were received and five self-initiated reviews commenced, nor what stage each administrative review was at when the Annual Report was produced at the end of fiscal year 2009-2010.

Again, unlike past reports by Registrar Nelson, you did not summarize any of the “about 40” review files, or the “11 new complaints” or the “additional five administrative reviews”.

No information is provided about what has resulted from past 36 administrative reviews and six investigations that were uncompleted by the Registrar at the end of fiscal year 2007-2008, nor about the one completed review the Registrar had referred to the RCMP, nor whether the six cases mentioned in the 2008-2009 Annual Report that you transferred from the past Registrar of Lobbyists are still under review or investigation.

In addition, it is not specified what the "10 reports" are -- administrative review reports? investigation reports? policy reports? Only by reading your April 20, 2010 testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics can one determine that the 10 reports were administrative review reports, and that you had (at that time) 47 active administrative reviews (but it is unclear whether you meant 47 reviews that fiscal year, or 47 overall ongoing reviews including reviews of past cases).

Similarly, also in your 2009-2010 Annual Report, under the heading “Investigations”, you state:

“This year, the Commissioner initiated three new investigations.”

No details are provided about whether the investigations are about alleged violations of the *Act* or *Code*, nor about what stage each investigation reached at the end of the fiscal year, and again no information is provided about the status of the six investigations mentioned your 2008-2009 Annual Report (and again, it remains unclear whether those investigations concerned alleged violations of the *Act* or *Code*).

Also similarly, in your 2009-2010 Annual Report, under the heading “Referrals to a Peace Officer”, you state:

“This year, four administrative reviews under the *Lobbying Act* have resulted in referrals to the Royal Canadian Mounted Police.”

No details are provided concerning which reviews you referred to the RCMP, when they were referred, whether the RCMP has launched an investigation, nor any estimate of when the RCMP will decide whether or not to lay charges.

Your Fall 2010 and February 2011 committee appearances

Your committee appearances, including those from 2008 to spring 2010 mentioned above, as well as your appearances in Fall 2010 and February 2011, only add to the confusion concerning the number of complaints you have received, administrative reviews or investigations you have initiated, and cases you have referred to the RCMP, and only add to the evidence of your very weak enforcement record.

In your 2009-2010 Annual Report, cited above, you stated that you have referred four cases to the RCMP during that fiscal year alone. Yet, during your December 14, 2010 appearance before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, you stated that "Since the coming into force of the Lobbying Act in July 2008, I have had to suspend looking into two files." -- presumably to refer them to the RCMP. So is it four cases, or two cases, that have been referred to the RCMP?

During that same committee appearance, you failed to give details as to how many administrative reviews (ie. initial investigations) you had outstanding as of that date, although you stated:

"The issues I wish to raise with you are based on my experience in enforcing the act. Several lobbyists have been coming forward to voluntarily disclose that they were late in registering. It is encouraging to realize that a growing number of registrants are disclosing breaches of the act voluntarily. This year alone nine of the 23 administrative reviews initiated by my office were the result of voluntary disclosures."

If, by this year, you meant fiscal year 2009-2010, this contradicts your Annual Report in which you stated that you had initiated 16 administrative reviews during that fiscal year. So which is it, 16 reviews or 23 reviews?

And you also stated the following about your administrative reviews since July 2008:

"It is also possible that I close the administrative review even though the allegation is well founded. In cases where I consider the offence not serious enough to refer to the RCMP, I may choose to take measures that I consider better suited to ensuring compliance with the act. These measures may include educating the subject or requesting that a correction be made to the registry of lobbyists. These files are also subject to further monitoring. This is important if I want to be in a position to show intent or negligence should I eventually decide to refer the matter to the RCMP. Since July 2008, I have closed 16 files where the allegation was well founded and such measures were employed."

So since July 2008 you have closed 16 cases (out of how many total cases is unknown because of the vagueness of your reports and testimony), and in each of those 16 cases you concluded the person had violated the *Act* or *Code*, but in each of the cases you decided in secret that the case should not be referred to the RCMP, nor did you find the person guilty of violating even the *Code*, and you have kept the identity of the violator secret in all of these cases?

Also during that same committee appearance, you stated that "Since July 2008, I initiated eight investigations." This contradicts your 2008-2009 and 2009-2010 annual reports, in which you stated that you only initiated three investigations, all during the 2009-2010 fiscal year. So which is it, three investigations, or eight investigations?

Further, during that same committee appearance, you stated that "Since July 2008 I have referred six files to the RCMP." This also contradicts your 2008-2009 and 2009-2010 annual reports, in which you stated that you had only referred four cases to the RCMP, all during the 2009-2010 fiscal year. So which is it, four cases or six cases?

You also stated that "Of the six that I referred to the RCMP, five of them are currently back with me for reassessing in terms of determining what are reasonable grounds to proceed. One of them is still with the office." So where are the rulings on these five? Why the further delay given that you had obviously already concluded that the person had violated the *Act*? And when you finally make your rulings, will you disclose the reasons why the RCMP and Crown prosecutors did not charge the violator (yet again)?

Finally, during the same committee appearance, you stated that “I expect to table a number of reports on investigation this fiscal year.” So far only two ruling reports have been made public, and there is only one month left in the fiscal year (although, it should be noted, you did say you would table a “number” of reports, and “two” is a number).

But seriously, what about the ruling reports on the other, as far as it can be determined from all of the above information, at least 100 total cases you have on file?

Your overall weak disclosure and enforcement record -- as bad as the former Public Sector Integrity Commissioner

As noted above, since you became Commissioner of Lobbying, you have issued only two public rulings concerning complaints filed, or self-initiated reviews, about allegations of violations of the *Lobbying Act* or the *Lobbyists' Code of Conduct*. This record of inaction, combined with the vagueness of your annual reports summarized above, makes it essentially impossible for anyone to determine whether you are actually reviewing complaints of violations of the *Act* and *Code* in compliance with the rules of natural justice and administrative law.

The fact that Registrar Nelson provided very few details that made it very difficult to determine what he was doing in terms of reviewing, investigating and ruling on complaints about violations of the *Act* and *Code* is no excuse for your continuing such negligent reporting practices.

Registrar Nelson’s past record, and your record to date are, in effect, very similar to the former Public Sector Integrity Commissioner who resigned in October when it was determined by the Auditor General that she was not actually reviewing complaints in compliance with the rules of natural justice and administrative law.

It is clear that none of Democracy Watch's five complaints filed from 2001 to 2004 have had rulings issued in a fair, impartial way by an independent tribunal in accordance with administrative law principles, as was ordered by the Federal Court in July 2004, and agreed to in a letter by the Department of Justice and your predecessor Registrar of Lobbyists.

It is also very clear that you have not provided information, again as required to comply with administrative law principles, concerning what you have done with the 43 cases that had not been completed at the end of Registrar Nelson’s tenure at the end of fiscal year 2007-2008, nor about the approximately 57 cases you have received complaints about and/or reviewed and/or investigated and/or referred to the RCMP and Crown prosecutors through fiscal years 2008-2009 and 2009-2010 (the exact number is very difficult to determine), nor about any new cases that have arisen in the past fiscal year.

It is also clear that you have taken an overly long period of time to rule on all cases, up to and including failing to issue a ruling on one of the two complaints filed by Democracy Watch in October 2009.

Request for corrective actions - detailed report needed from you now, and in future years

As a result of the above information which raises many, many questions concerning your enforcement actions over the past three years, Democracy Watch requests that, in the next 30 days, you provide all of the details for the following:

- the total number of complaints you have received since you became Interim Commissioner of Lobbying at the end of fiscal year 2008, and the total number of complaints filed with Michael Nelson during his tenure as Registrar of Lobbyists from 2005 to 2008;

- details about each complaint and what you and/or Michael Nelson did with each complaint (including general description of each case including law or code section alleged to be violated; and whether you rejected it without reviewing or investigating it; reviewed it but did not investigate it; reviewed it and investigated it and ruled on it; reviewed it and investigated it and referred it to the RCMP (and then, after the RCMP review, ruled on it), with reasons for each ruling;
- the status of your investigations of Democracy Watch's five complaints filed from 2001 to 2004, including when you estimate you will issue rulings for each complaint;
- what you have done with the 36 administrative reviews and six investigations, and one case referred to the RCMP, that were outstanding at the end of fiscal year 2007-2008 (including general description of each case, the status of each review and investigation, when you estimate you will rule on each review and investigation, and the status of the case referred to the RCMP,);
- what you have done with the at least 43 administrative reviews, eight investigations, and six cases you have referred to the RCMP in the past three years (again, including exactly how many complaints you have received in total, general description of each complaint, how many complaints have been reviewed or investigated, how many reviews you have self-initiated, how many investigations you have initiated, when you estimate you will rule on each review and investigation (or if you have ruled, how you ruled and reasons for ruling), the status of each investigation, and the status of each case referred to the RCMP), and;
- the status of your investigation of the one outstanding Democracy Watch complaint filed in October 2009, including when you estimate you will issue a ruling for the complaint.

Given that April 20, 2010 testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics you stated that "we have put an electronic system in place so that our staff knows which stage in the game a file is at" it should be no problem for you to produce the detailed report of what has happened with every complaint received, or review or investigation initiated, since 2005.

As you know, in 2005 Democracy Watch initiated an application for mandamus against Registrar Nelson re: his refusal to comply with the commitment to issue rulings on Democracy Watch's outstanding complaints as ordered by the Federal Court in July 2004 and as agreed in a letter from the Department of Justice. Thankfully, Registrar Nelson soon complied and issued rulings for three of the complaints, one of which, as you know, became the test case that was ruled on by the Federal Court of Appeal in March 2009, namely *Democracy Watch v. Campbell* 2009 FCA 79.

It would be unfortunate, but Democracy Watch is fully prepared to initiate a similar application if you do not, within 30 days of receipt of this letter, provide the details requested above.

Finally, given the Auditor General's audit of the Public Sector Integrity Commissioner's negligent record, and the Auditor General's public statements that all officers of Parliament must meet the highest standards in operations and reporting, Democracy Watch suggests very strongly that your Annual Report for 2010-2011, and all future annual reports, contain the following details so that Parliament and the public can actually determine if you are fulfilling your legal duty to enforce the *Act* and *Code* properly:

- date each complaint / allegation of violation of *Act* or *Code* was received or a review or investigation was self-initiated (and again, in your 2010-2011 Annual report, to clear up confusion about the past several years, you should list all cases that were outstanding at the end of fiscal year 2007-2008, and all complaints received or review or investigation initiated from beginning of fiscal year 2005-2006 up to the end of the current fiscal year);

- general description of each complaint's allegations (including section of law or code violated, without identifying anyone or any government institution);
- date you as Commissioner referred each complaint for administrative review and/or investigation;
- date you self-initiated an administrative review and/or investigation of any situation (and general description of each situation);
- date initial administrative review / investigation report was submitted to you, or current status of investigation;
- date you ruled and details of ruling (including reasons);
- date ruling was submitted to Parliament (for *Code* violations) or sent to RCMP (if warranted, for violations of the *Act*) or if kept secret why it was kept secret;
- date Parliament made ruling public (for *Code* violations);
- date RCMP began reviewing complaint (for *Act* violations), and;
- date RCMP notified you about its decision whether or not to lay charges (for *Act* violations);
- date you ruled on any case referred back to you by the RCMP concerning whether it was a violation of the *Code*.

We are sure that you will want to fulfill your legal duties properly and effectively, and look forward to hearing from you within the next 30 days.

Sincerely,



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

Original to follow by mail