



Commissioner of Lobbying of Canada Karen Shepherd  
255 Albert Street  
10th Floor  
Ottawa, Ontario  
K1A 0R5  
Fax: 613-957-3078

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 Shepherd:

Democracy Watch is filing this petition to request, under the provisions of the federal *Lobbying Act* (the *Act*) and the *Lobbyists' Code of Conduct* (*Lobbyists' Code*), an investigation of and ruling on the legality of 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) through the holding of the fundraising event at the Rogers Centre, Democracy Watch opinion is that the contribution violates Rule 8 of the *Lobbyists' Code*.

**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**

Principles set out in the *Lobbyists' Code* require that all lobbyists follow "not only the letter but the spirit" of the *Lobbyists' Code* and all relevant laws, including the registration requirements of the *Lobbying Act* (1985, c. 44 (4th Supp.)), and that lobbyists conduct all their relations with "integrity and honesty" and "observe the highest professional and ethical standards."

In addition, Rule 8 of the *Lobbyists' Code* states the following:

"8. Improper influence Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder."

The *Act* defines “designated public office holder” as, among other people, including “a minister of the Crown or a minister of state and any person employed in his or her office who is appointed under subsection 128(1) of the Public Service Employment Act,” and the *Act* defines “public office holder” as including, among other people, “a member of the Senate or the House of Commons and any person on the staff of such a member” (subsection 2(1)).

Based upon a careful review of the federal *Conflict of Interest Act* (2006, c. 9, s. 2) and the federal Conflict of Interest and Ethics Commissioner’s 2008 *Guideline on Gifts (including Invitations, Fundraisers and Business Lunches)* which was issued under her authority in the *Conflict of Interest Act*, Democracy Watch’s opinion is that the only gifts that are permitted under the *Canada Elections Act* exemption in clause 11(2)(a) of the *Conflict of Interest Act* are money, property or the use of property or services provided by an individual up to the contribution limit of \$1,100 (or equivalent commercial value) annually, and volunteer labour provided by an individual outside of their area of work and outside of their working hours.

Based on a careful review of the the *Conflict of Interest Code for Members of the House of Commons* (the *MPs Code*), Democracy Watch’s opinion is that it is a violation of the *MPs Code* for an MP to accept any gift of money, property or the use of property or services (volunteer or otherwise, such as fundraising) from a registered lobbyist, as such a gift can reasonably be seen to be given to influence the MP’s exercise of their public duties.

Democracy Watch is happy to provide you with these reviews.

Further, Democracy Watch’s opinion is that the undertaking by a lobbyist of volunteer labour for a public office holder is not permitted under Rule 8 of the *Lobbyists’ Code* if the volunteer labour is significant enough in quantity because providing such a benefit would violate the fundamental conflict of interest standard set out unanimously by the Federal Court of Appeal (FCA) in *Democracy Watch v. Campbell* (2009 FCA 79) in which the FCA considered a situation of a lobbyist who had volunteered to organize a fundraising event for a Cabinet minister the lobbyist was registered to lobby at the time of the event within the context of Rule 8.

The FCA quoted passages from three previous leading court rulings on the issue of conflict of interest in paragraph 49 and then stated at paragraph 52:

“Since a public office holder has, by definition, a public duty, one can only place a public office holder in a conflict of interest by creating a competing private interest.”

and at paragraph 53 that:

“A lobbyist’s stock in trade is his or her ability to gain access to decision makers, so as to attempt to influence them directly by persuasion and facts. Where the lobbyist’s effectiveness depends upon the decision maker’s personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed.”

and at paragraph 48 that:

“It can hardly advance public confidence in the integrity and transparency of government decision-making to condone certain conflicts of interest, while prohibiting others. Any conflict of interest impairs public confidence in government decision-making.”

As you know, this ruling is specifically binding on you as the Commissioner of Lobbying.

Therefore, Democracy Watch’s opinion is that it is a violation of Rule 8 of the *Lobbyists’ Code* for any lobbyist (whether legally and properly registered under the *Act* or not) to provide, directly or indirectly, to any public office any more money than is allowed to be contributed annually under the *Canada Elections Act*, or any more property or use of property the commercial value of which exceeds the annual contribution limits under the *Canada Elections Act*, or any services (whether paid or volunteer) that are significant enough to create within the public office holder a personal sense of obligation to the lobbyist.

## **Application of the law to the Conservatives' fundraising event at Rogers Centre**

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 would have accepted a gift that is prohibited by the *Conflict of Interest Act* and the *MPs Code* because none of the gift rules' exemptions apply and the gift would have been given by a company registered to lobby the federal Cabinet and the House of Commons and the gift has significant value and, therefore, should be regarded as a gift that can reasonably be seen to have been given to influence the Cabinet ministers and MPs.

Even if the Conservatives paid Rogers for the services provided by Rogers for the event (including food and beverages), 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 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 should be considered to be a very valuable, and prohibited, gift to any Cabinet minister or MP who attended the event.

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 should also be considered to be a very valuable, and prohibited, gift to any Cabinet minister or MP who attended the event.

To explain in more detail, taking into account the above measures in the *Act* and the *Lobbyists' Code*, and the *Conflict of Interest Act* and *MPs Code*, and the court rulings, concerning the the situation of the Conservatives' holding a fundraising event in the Owner's Box at the Rogers Centre (with the added perks of attending and meeting members of the Blue Jays team at batting practice), Democracy Watch's opinion is that the Conservative Cabinet ministers and any other public office holders and MPs who attended the event all have created a specific, personal private interest for themselves by accepting these gifts from Rogers (which causes them to have a "personal sense of obligation" to Rogers).

It is also Democracy Watch's opinion that the ministers and others and MPs also have a specific, personal private interest in having Rogers continue to help raise money for them, and that both these private interests are clearly financial interests which compete with their public duty.

To be clear, the "private interest" created is not Rogers' interest in a beneficial result from the decisions and actions of the Cabinet ministers and others and MPs (although Rogers obviously also has this private interest constantly), the private interest is the personal sense of obligation the ministers and others and MPs have to Rogers because of the gifts given to them by Rogers, and the interest of the Cabinet ministers and others and MPs in having Rogers continue to assist them with their fundraising efforts.

Given the above, the exemptions in the definition of "private interest" in the *Conflict of Interest Act* do not apply, as the private interest of the Conservative Cabinet ministers and others and MPs is not a matter of general application or that affects them as one of a broad class of persons (because it applies specifically and directly only to them, not others), and is not part of the pay or benefits they receive as a federal politician.

As a result, in Democracy Watch's opinion, such a situation creates a conflict of interest for any Cabinet ministers, their staff or MPs or their staff who attended the event, and because of this conflict of interest they are required to recuse themselves from participating in decisions that affect Rogers directly or indirectly -- any kind of decisions -- because they have a personal, private interest in making decisions that will benefit Rogers, and this interest conflicts with their public duty to make decisions in the public interest based only on the merits.

Therefore, in Democracy Watch's opinion, by providing the gift of the use of the property for the fundraising event (and possibly other perks) to the Cabinet ministers and MPs, serious questions are raised about Rogers being in violation of Rule 8 of the *Lobbyists' Code*.

### **Request for investigation and rulings on situation**

In your legal position as Commissioner of Lobbying enforcing the *Lobbyists' Code*, you are required under subsection 10.4(1) of the *Lobbying Act* to investigate if you have a reasonable belief that a violation of the *Lobbyists' Code* has occurred. Under subsection 10.4(2) of the *Act*, you have the full powers of a judge in your investigation (including the power to subpoena witnesses and compel evidence), and you are required under section 10.5 to report your ruling to the Speakers of the Senate and the House of Commons who are required to make it public.

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 violation has occurred.

Again, based on the information set out above about the situation of the Conservatives' fundraising event at the Rogers Centre, and the law (which the *Conflict of Interest Act*, the *Canada Elections Act*, your *Guideline on Gifts*, the *MPs Code* and the courts define quite clearly), Democracy Watch's opinion is that the Cabinet ministers and MPs who attended the event accepted a gift in violation of the *Conflict of Interest Act* and the *MPs Code* because the gift can reasonably be seen to have been given to influence the exercise of their official duties, and Democracy Watch's opinion is that it is reasonable to conclude that they are in a conflict of interest, and will be in a situation in which they will have an opportunity to make decisions that will affect their private interest in having Rogers continue to assist with their fundraising efforts.

As a result, Democracy Watch's opinion is that it is reasonable for you to believe that a lobbyist has contravened Rule 8 of the *Lobbyists's Code*, and therefore it is reasonable to conclude that, if you are going to act in a legally correct manner, you should investigate the matter addressed in this petition, and in Democracy Watch's opinion issue a ruling that finds the lobbyist in violation of Rule 8.

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 1-page 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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