



Democracy Watch
émocratie en surveillance

1 Nicholas St., Suite 1210
P.O. Box 821, Stn. B
Ottawa, Canada K1P 5P9
Tel: (613) 241-5179
Fax: (613) 241-4758
Email: dwatch@web.net
Internet: <http://www.dwatch.ca>

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

October 21, 2009

RE: Petition for investigation of, and rulings on, situation involving Minister of Natural Resources Lisa Raitt and Cement Association of Canada lobbyist Michael McSweeney

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 concerning the significant role (apparently on a volunteer basis) Cement Association of Canada registered lobbyist Michael McSweeney played in a fundraising event for Minister Raitt held on September 24, 2009.

Given the significant role Mr. McSweeney played in the fundraising event for Minister Raitt, Democracy Watch opinion is that the services provided by Mr. McSweeney violate Rule 8 of the *Lobbyists' Code*.

The Situation

Lisa Raitt is the Minister of Natural Resources. Michael McSweeney is a registered lobbyist for the Cement Association of Canada (CAC), and the CAC is registered to lobby the Ministry of Natural Resources under the federal *Lobbying Act* (Registration number 781395-13913-5). And on March 3, 2009 (Communications registration number 13913-100475), and on September 24, 2009 (the same day as the event -- Communications registration number 13913-125034) representatives of the CAC communicated directly with Minister Raitt.

A fundraising event was held for Minister Raitt on September 24, 2009 at Kultura at 169 King St. E. in Toronto and, to attend, a person was required to make a donation of minimum \$250. The invitation does not state whether the donations were for Minister Raitt as a nomination contestant or candidate, or for her riding association, or for the Conservative Party of Canada, or to be divided in some way amongst all or some of the above.

While it is not known what role (if any) Michael McSweeney played in organizing the event, or designing or distributing invitations for the event, the invitation that was distributed stated "Come and support Lisa Raitt on September 24th" and "To RSVP, please fax this form to Michael McSweeney 1.613.563.4498" (See attached copy of invitation). This is the fax number for the Cement Association of Canada's office in Ottawa.

The invitation also stated: "Questions? Please e-mail michael_b_mcsweeney@yahoo.ca" and that "Cheques can be made payable to: Halton Conservative E.D.A."

The invitation that was distributed also had space for the invitee to fill out their name, credit card number and expiry date, and amount they were donating

/1 . . .

It is clear from the invitation that Mr. McSweeney played a significant role in the event for Minister Raitt.

It is not known whether Minister Raitt paid Mr. McSweeney for the services he provided to her.

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 situation involving Minister Raitt and Mr. McSweeney

To explain in more detail, taking into account the measures in the *Conflict of Interest Act* and the *Lobbyists’ Code*, and the *MPs Code*, and the court rulings, concerning the private interest created by the situation of Mr. McSweeney of the Cement Association of Canada assisting with the fundraising event for Minister Raitt (whom the Association lobbies), Democracy Watch’s opinion is that Minister Raitt has created a specific, personal private interest for herself by accepting this gift and/or being in this relationship with Mr. McSweeney (an interest that causes her to have a “personal sense of obligation” to Mr. McSweeney).

Democracy Watch contacted several members of the Canadian Society of Professional Event Planners and was told that the services that we know Mr. McSweeney provided to Ms. Raitt have a commercial value of \$1,500 to \$2,000, and if Mr. McSweeney was involved in overall organization of the event (including the services we know he provided) then the commercial value is \$4,000 to \$5,000. The value of both of these sets of services exceeds the annual contribution limits for individuals under the *Canada Elections Act*.

It is also Democracy Watch’s opinion that Minister Raitt also has a specific, personal private interest in having Mr. McSweeney continue to help raise money for her, and that both these private interests are clearly financial interests which fall under the definition of “private interest” in the *Conflict of Interest Act* and the *MPs Code*.

To be clear, the “private interest” created is not Mr. McSweeney’s and the Cement Association’s interest in a beneficial result from the decisions and actions of Minister Raitt (although the Cement Association obviously also has this private interest constantly), the private interest is the personal sense of obligation Minister Raitt has to Mr. McSweeney because of the services given to her by Mr. McSweeney, and the interest of Minister Raitt in having Mr. McSweeney continue to assist her with her and her riding association’s and/or political party’s fundraising efforts.

As a result, the exemptions in the definition of “private interest” in the *Conflict of Interest Act* do not apply, as the private interest of Minister Raitt is not a matter of general application or that affects her as one of a broad class of persons (because it applies specifically and directly only to her, not others), and is not part of the pay or benefits she receives as a federal politician.

Therefore, in Democracy Watch’s opinion, such a situation creates a conflict of interest under the *Conflict of Interest Act* and the *MPs Code* respectively for Minister Raitt (and, by extension under the convention of ministerial responsibility, her staff)

Therefore, in Democracy Watch’s opinion, by providing the services to Minister Raitt, serious questions are raised about Mr. McSweeney 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 Mr. McSweeney's assistance with the fundraising event for Minister Raitt, and the law (which the *Conflict of Interest Act*, the *Canada Elections Act*, the federal Conflict of Interest and Ethics Commissioner's *Guideline on Gifts*, the *MPs Code* and the courts define quite clearly), Democracy Watch's opinion is that it is reasonable to conclude that Mr. McSweeney's actions put Minister Raitt in a conflict of interest, and that she (and, by extension under the convention of ministerial responsibility) will be in a situation in which they will have an opportunity to make decisions that will affect their private interest in having Mr. McSweeney continue to assist with Minister Raitt's 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' 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 invitation to the September 24th fundraising event for Minister Raitt



Lisa Raitt



Conservative

**Come and support
Lisa Raitt on September 24th**

JOIN US ON
SEPTEMBER 24, 2009 6:00–8:00PM



KULTURA
169 KING EAST
TORONTO, ON M5A 1J4

A minimum of \$250 per person.

No corporate sponsorships, please.

To RSVP, please fax this form to:

Michael McSweeney

1.613.563.4498

Questions?

Please e-mail

michael_b_mcsweeney@yahoo.ca

Cheques can be made payable to:

Halton Conservative E.D.A.

YES I will attend.
Here's my information:

I am donating \$ _____

Name: _____

MasterCard #: _____

Visa# _____

Expiry Date: _____

Home Address:

X

Signature