

March 21, 2011

Dear Members of the House Access, Privacy and Ethics Committee,

This Wednesday, March 23rd, you begin the five-year review of the *Lobbying Act* with testimony from Commissioner of Lobbying Karen Shepherd from 3:30 p.m. to 5:30 p.m in Room 237-C, Centre Block.

Set out below are 30 questions to ask Commissioner Shepherd, to provide you with answers that contain key information needed for an effective review of the *Act*.

The questions can be easily answered by Commissioner Shepherd, many by yes or no, or by providing simple facts and figures that she should know clearly if she is doing her job properly.

To date, the Committee and other House committees have failed to ask questions of Commissioner Shepherd that ensure she is providing details needed for MPs and the public to determine whether she is doing her job as required by the *Act* and by the standards of effective performance expected of an Officer of Parliament.

The Committee and other House committees have also failed to ask questions of Commissioner Shepherd that ensure she is providing full details of the loopholes in the *Act* that allow for secret (unregistered), unethical lobbying.

As a result, as detailed in a recent Democracy Watch news release and accompanying letter to Commissioner Shepherd, in Democracy Watch's opinion MPs have essentially let Commissioner Shepherd have a worse disclosure record over the past three years than disgraced former Integrity Commissioner Christiane Ouimet, an equally bad performance record in terms of ruling on complaints and situations of allegations of violations of the *Lobbying Act* and/or *Lobbyists' Code of Conduct*, and an equally bad performance record in terms of misleading the public about loopholes and flaws in the *Act* and *Code*.

You can see that news release and letter at:
<http://www.dwatch.ca/camp/RelsFeb2311.html>

Asking the 30 questions set out below, and demanding clear, complete answers from, Commissioner Shepherd, will, finally, reveal just how ineffective the federal lobbying disclosure and ethical restriction rules and enforcement system has been for the past 22 years, and is still.

If you fail again to ask these questions, you will be ignoring not only your oversight duties, but also the clear call from seven Officers of Parliament in a recent letter to your and other House committees to correct and strengthen your oversight processes. You can see a copy of that letter contained in an article at:
<http://www.cbc.ca/news/politics/story/2011/03/04/pol-integrity-commissioner.html>

Please send any questions about the 30 questions to me by email at:
<dwatch@web.net>

I look forward to the hearing on Wednesday.

Sincerely,
Duff Conacher, Coordinator of Democracy Watch and Chairperson of the Government Ethics Coalition (<http://www.dwatch.ca>)
Organizer of the CoffeeParty.ca movement (<http://www.CoffeeParty.ca>)
Tel: 613-241-5179

QUESTIONS RE: CASES UNDERWAY BUT NOT COMPLETED BY FORMER REGISTRAR OF LOBBYISTS MICHAEL NELSON UP TO 2008

NOTE: The Commissioner of Lobbying is required under subsection 10.4(3) of the *Act* to conduct investigations of violations of the *Lobbying Act* or *Lobbyists' Code of Conduct* in secret, but she is not required to keep her rulings secret (in fact, she is required under subsection 10.5(1) of the *Act* to report her rulings on investigations of violations of the *Act* or *Code* to the Senate and House “including the findings, conclusions and reasons for the Commissioner’s conclusions”).

1. According to his last Annual Report (for fiscal year 2007-2008), former Registrar of Lobbyists Michael Nelson had 43 cases underway, in some stage of review or investigation but not yet completed, when Commissioner Shepherd became Interim Commissioner in 2008 — how many of these cases did Commissioner Shepherd continue to review or investigate?
2. How many other cases did former Registrar Michael Nelson complete and rule on, but the rulings had not been issued when she became Interim Commissioner in 2008?
3. Were the five Democracy Watch cases Registrar Nelson had begun to review but not ruled on included in the cases she continued to review or investigate? — See details about the five cases at: http://www.dwatch.ca/camp/Five_Ethics_Complaints.html
4. For all of these cases, the 43 plus the others, whether or not Commissioner Shepherd continued to review and/or investigate the case, for how many cases has Registrar Nelson’s ruling, or a ruling by Commissioner Shepherd, been made public? For each case that a public ruling has not been issued, why did Commissioner Shepherd not issue a public ruling? And will she make the secret rulings for each of those cases public within the next 30 days (including the name of the person alleged to have violated the *Act* or *Code*, the alleged violation, a summary of the facts of the situation, her ruling (or Registrar Nelson’s) and the reasons for each ruling)?
5. How many of the 43 plus other cases Registrar Nelson had underway or had ruled on when he left office were referred to the RCMP or another law enforcement body (as required under the *Act*, subsections 10.4(1.1)(a) and 10.4(7) to (9))?

QUESTIONS RE: COMPLAINTS RECEIVED BY COMMISSIONER SHEPHERD, OR SITUATIONS SHE BECAME AWARE OF, FROM 2008 ON

6. How many complaints did Commissioner Shepherd receive alleging violations of the *Act* in fiscal year 2008-2009? 2009-2010? 2010-2011? Or alleging violations of the *Code* during the same years? And how many other situations of alleged violations of the *Act* or *Code* did she become aware of during those same years?
7. For how many of those complaints or situations did she complete a review or investigation in fiscal year 2008-2009? 2009-2010? 2010-2011?
8. How many of those complaints or situations were referred to the RCMP or another law enforcement body (as required under 10.4(1.1)(a) and 10.4(7) to (9))?
9. How many of those complaints or situations did she rule on in fiscal year 2008-2009? 2009-2010? 2010-2011?
10. How many of the rulings did she release publicly in fiscal year 2008-2009? 2009-2010? 2010-2011?
11. For each of the secret rulings Commissioner has made either about a complaint, or about a

situation she became aware of, why was the ruling kept secret? and will she make her ruling public within the next 30 days (including the name of the person alleged to have violated the *Act* or *Code*, the alleged violation, a summary of the facts of the situation, her ruling and reasons for her ruling)?

OVERALL ENFORCEMENT QUESTIONS

12. Overall, of all of the cases that were not completed by Registrar Michael Nelson, or that Commissioner Shepherd has received complaints about, or that she has become aware of, how many people have been prosecuted for violating the *Lobbying Act*? How many found guilty of violating the *Lobbying Act*? How many found guilty of violating the *Lobbyists' Code*?

13. Is it true that Commissioner Shepherd does not ever audit or inspect any government institution (randomly or otherwise), for example by sending requests for lists of the identities of people who have contacted the minister or head office or decision-makers in an institution, as a way of ensuring that lobbyists are registering and former public office holders are complying with the five-year ban on lobbying.

QUESTIONS ABOUT LOOPHOLES IN THE LOBBYING ACT REGISTRATION REQUIREMENTS

14. Is it true that no one has to be registered as a lobbyist if:

- they are not paid for their lobbying;
- they are lobbying about “the enforcement, interpretation or application of any *Act* of Parliament or regulation” (clause 4(2)(b) of the *Act*); or
- if they work as an employee for a for-profit business corporation and lobby 20 percent or less of their work time (even if the business registers in the Lobbying Registry, because it is not required list them in the registration unless they spend 20 percent or more (ie. about 25 days or more) of their work time lobbying every six months)?

15. Is it true that if you work as an employee of a non-profit organization or other type of organization and lobby only 4.1 percent of your work time every six months, if the organization has four other employees who each also lobby only 4.1 percent of their work time, that the organization is required to register and list all five employees in its registration (because, if they were one person, they will have lobbied more than 20 percent of their collective time)?

16. So it's true that the registration requirement for people who lobby for non-profit organizations is more strict than for people who lobby for businesses?

17. And overall, it's true that it is legal for some people to lobby the federal government a lot without registering as a lobbyist?

18. Do these exemptions to the registration requirement mean that, under the *Lobbying Act* measures, a Cabinet minister, ministerial staff person, Cabinet appointee (including senior government officials) can leave their position and lobby at least some people in the federal government the very next day — as long as they are not paid to lobby, or lobby only about the enforcement or application of laws or regulations, or lobby less than 20 percent of their work time for a for-profit business corporation, or along with other employees lobby collectively less than 20 percent of their work time (if they were one person) for any other type of organization?

19. Is it true that people who come to government under the Interchange employee exchange program are exempt from the five-year ban on lobbying when they return to their corporation after working in government?

20. So, in fact, there is no five-year ban on lobbying the federal government, there is only a five-

year ban on being a registered lobbyist (and even that ban does not apply to participants in the Interchange program)?

21. Is it also true that the *Lobbyists' Code of Conduct* does not apply to anyone who is not registered, or required to register, under the *Lobbying Act*?

22. Overall then, is it true that secret, unregistered lobbying is legal? And it is also true that those who are allowed to legally lobby without registering are also allowed to violate all of the ethics rules in the *Lobbyists' Code*? In other words, is it true that secret, unethical lobbying of the federal government is legal?

23. Is it true that no matter how serious a lobbyist's violation of the *Lobbyists' Code of Conduct* is, that there is no penalty, that all that will happen is that the lobbyist will be named in a report by Commissioner Shepherd filed in the House and Senate?

QUESTIONS ABOUT RULE 8 OF THE LOBBYISTS' CODE OF CONDUCT

24. Is it true that concerning Rule 8, the conflict of interest rule of the *Lobbyists' Code of Conduct*, Commissioner Shepherd considers it very likely a violation of Rule 8 if a registered lobbyist gives a significant gift or does a favour (such as fundraising) for a public office holder and, at the same time or afterwards, lobbies the office holder?

25. Is it true that Commissioner Shepherd does not consider it very likely a violation of Rule 8 if a registered lobbyist lobbies a public office holder and then afterwards gives the public office holder a gift or does them a favour?

26. By taking this position, is Commissioner Shepherd not making it very easy for lobbyists to comply with Rule 8 simply by lobbying first, and giving the gift or doing the favour afterwards? Will Commissioner Shepherd correct her guideline on Rule 8 to close this huge loophole within the next week?

27. Is it also true that Commissioner Shepherd does not consider it a likely violation of Rule 8 for a registered lobbyist to lobby one Cabinet minister or opposition party politician, or their staff person, while giving a significant gift or doing a favour for another minister or politician, or their staff person, who are from the same party?

28. By taking this position, is Commissioner Shepherd not making it very easy for lobbyists to comply with Rule 8 by giving gifts and doing favours for people very close to Cabinet ministers and politicians they are lobbying? Will Commissioner Shepherd correct her guideline on Rule 8 to close this huge loophole within the next week?

29. Is it also true that Commissioner Shepherd considers it potentially a violation of Rule 8 if a lobbyist is simply a member of a riding association, but does not consider it at all a violation of Rule 8 if a lobbyist donates up to the legal annual limit to a party or riding association? And aren't these two positions inconsistent? So will Commissioner Shepherd correct her guideline on Rule 8 and make it clear that it is not a violation of Rule 8 to be a non-active member of a riding association? And will she also put in her guideline within the next week more examples of what are, and are not, activities that violate Rule 8 to clarify the rules for all lobbyists?

OTHER QUESTIONS

30. Is it true that lobbyists are not required to disclose how much they spend on their lobbying activities?