



## TALKING POINTS

ETHI COMMITTEE APPEARANCE 2020-03-09

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### INVESTIGATIONS AND FILES OF INTEREST

- I take all allegations of breaches of the Lobbying Act and the Lobbyists' Code of Conduct seriously.
- I am unable to discuss or confirm investigation activities and can only report on completed investigations and compliance activities through reports to Parliament.
- The Lobbying Act requires that all investigations be conducted in private.
- Each allegation is given the time necessary based on its complexity. Due process is followed.

### INVESTIGATION PROCESS

- The Commissioner of Lobbying may initiate an investigation at any time there is cause to believe that an investigation is necessary to ensure compliance with the Lobbying Act.
- I am not required to wait until a third party submits an allegation of a breach of the Lobbying Act or the Lobbyists' Code of Conduct.
- The Office conducts its own compliance monitoring activities.
- When I become aware of a potential breach, the Office conducts a preliminary assessment to evaluate the nature of the alleged contravention, obtain initial information, and determine whether the subject matter falls within the Office's mandate.
- When necessary to ensure compliance, an investigation is initiated. Each allegation is given the time necessary based on its complexity.
- Several witnesses may need to be interviewed, many of whom often have limited availability due to the nature of their work.
- If, during the course of an investigation, I have reasonable grounds to believe that someone has committed an offence under the Lobbying Act, I must suspend my investigation and refer the matter to a peace officer (e.g. RCMP, provincial/municipal police). The police then conducts its own investigation to determine whether to lay charges.
- As such, the Office is unable to confirm or deny whether any investigation has been initiated or is ongoing on any specific matter.

### SNC LAVALIN

- SNC Lavalin registered and reported communications with DPOHs in the Registry of Lobbyists, including those related to a DPA.



- The Lobbying Act and the Lobbyists Registration Regulations do not specify the level of detail required under Subject Matter Details, in the Registry of Lobbyists.

#### FACEBOOK

- Garrick Tiplady, Managing Director of Facebook Canada Ltd. registered the corporation in the Registry of Lobbyist on May 31, 2018.
- Facebook, like any other corporation, is required to file monthly communication reports whenever any of their employees (listed or not) meet or have an oral and arranged communications with designated public office holders.
- In-house corporations and organizations are required to register when the cumulative lobbying activities of all employees adds up to a “significant part of duties.” The threshold is equivalent to 20% or more of the working hours of one full-time employee, over a period of one month.
- In-house corporation and organizations must register within 60 days of meeting the significant part of duties threshold.

### COURT CHALLENGES

#### GENERAL

- I am unable to comment on matters that are before the Court.
- The Attorney General is the respondent for all three of the application of judicial review initiated by Democracy Watch.

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- The provisions of the Lobbying Act and the Lobbyists’ Code of Conduct only apply to those required to be registered.
- Should the court’s decision be upheld, there may be an impact on . Volunteers, such as those on board of directors, could be subject to the requirements of the Act or the Code.
- The Lobbying Act requires paid lobbyists to register publicly their lobbying activities and to report their communications with designated public office holders.
- With regard to financial benefits, the Office has historically interpreted this to mean lobbying for a direct financial benefit such as grants and contributions.

#### APOTEX

- In early 2018, I ceased the investigation of an alleged breach of the Lobbyists’ Code of Conduct by Dr. Bernard (Barry) Sherman related to a fundraising event held in August 2015.
- In light of Dr. Sherman’s passing, the purpose of conducting an investigation under the Act, to ensure Dr. Sherman’s compliance with the Lobbyists’ Code of Conduct, can no longer be fulfilled.

- The application for judicial review that was to be held on March 3, 2020 has been postponed to a date yet to be determined.

#### **NOMINATION** (dismissal from Bench, Feb. 2020)

- I'm aware of the Federal Court of Appeal's decision to dismiss the appeal from the bench on January 28, 2020.
- I will continue to work diligently with the staff of the Office on ensuring that the activities of lobbyists are done transparently and with the highest ethical standards.

#### **If pressed**

- The Federal Court of Appeal ordered the appellant (Democracy Watch) to pay \$1500 to the respondent (Department of Justice) in relation to costs.

### **SWITCHING SIDES – 5-YEAR POST-EMPLOYMENT PROHIBITION**

- Former designated public office holders are subject to a 5-year prohibition on lobbying once they leave office. This post-employment restriction excludes designated public office holders from being paid to:
  1. work as a consultant lobbyist;
  2. lobby on behalf of an organization; or
  3. lobby on behalf of a corporation, where lobbying activities would constitute a significant part of the work.
- This prohibition begins immediately following the last day of employment as a designated public office holder.
- The Commissioner of Lobbying can exempt an individual from the 5-year prohibition, as long as it would not be contrary to the purpose of the Lobbying Act. A list of exemptions granted along with the reason(s) why they were granted are available on the OCL's website.
- In light of the fall 2019 federal election, we devoted much of our outreach efforts to ensuring that DPOHs, departing and new, are aware of their legal obligations.
- We proactively contact individuals when we become aware of their departure from a position as a designated public office holder to remind them of their post-employment restriction related to lobbying.
- Under an MOU signed with the Conflict of Interest and Ethics Commissioner, we have held joint teleconferences for MPs and their staff, to increase awareness of the rules related to ethics, conflicts of interest and lobbying.

### **LEGISLATIVE REVIEW**

- The Lobbying Act works largely as intended and is often referred to as a model for other jurisdictions. However, there is always room for improvement.

- I have been diligently preparing and I will be ready to share my thoughts on how to further strengthen the lobbying regime should Parliament wish to initiate the legislative review of the Lobbying Act.
- Some changes could also be made without the need to amend the Lobbying Act and the accompanying regulations.
- Should legislative review not be a priority at this time, I will continue to explore ways in which the lobbying regime could be further improved through non-statutory instruments.

#### **FOREIGN LOBBYISTS**

- The Lobbying Act applies to those who lobby the federal government, regardless of whether they are located in Canada or outside Canada.