

Court File No. T-1942-06

FEDERAL COURT – TRIAL DIVISION

BETWEEN:

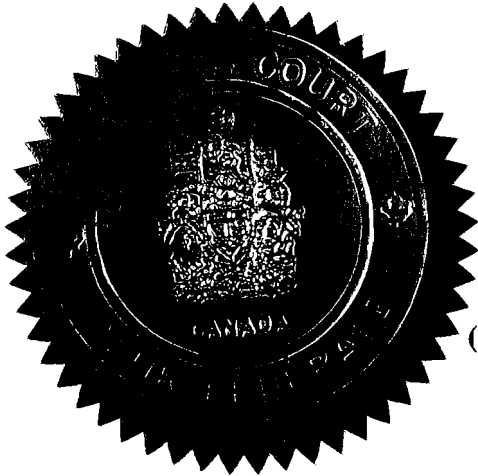
DEMOCRACY WATCH

Applicant

- and -

BARRY CAMPBELL and
THE ATTORNEY GENERAL OF CANADA
(OFFICE OF THE REGISTRAR OF LOBBYISTS)

Respondents



NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the applicant appears on the following pages.


THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The Applicant requests that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a Notice of Appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor or, where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request

to the Administrator of this Court at Ottawa (telephone 613.992.4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.


Mavis Griffith
Registry Officer
Agent du greffe
Registry Officer

Date: November 7, 2006

Issued by: _____
Registry Officer

Address of
local office: Toronto Local Office
Federal Court of Canada
7th Floor
330 University Ave.
Toronto, ON M5G 1R7

Tel: 416.973.3356
Fax: 416.954.0647

TO: The Attorney General of Canada
Department of Justice
Ontario Regional Office
130 King Street West
Suite 3400, Box 36
Toronto, ON
M5X 1K6

AND TO: Barry Campbell
95 Wellington Street West
Toronto, Ontario
M5J 2N7

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of a ruling made by the Registrar of Lobbyists (“Registrar”) dated October 10, 2006 (the “Ruling”).

DEMOCRACY WATCH MAKES APPLICATION FOR:

1. An order quashing the Ruling issued by the Registrar under the *Lobbyists Registration Act* (the “LRA”) and the *Lobbyists’ Code of Conduct* under the LRA (the “Lobbyists’ Code”) arising from a complaint made by Democracy Watch on April 13, 2000 into the conduct of Barry Campbell (the “Complaint”), and substituting therefore its own decision directing that the Registrar, or any entity which may succeed the Registrar and take on the responsibilities of the Registrar, proceed with a full investigation into the Complaint pursuant to s.10.4 of the LRA;
2. In the alternative, an order quashing the Ruling and sending the Complaint back to the Registrar, or any entity which may succeed the Registrar and take on the responsibilities of the Registrar, for reconsideration with directions regarding the appropriate interpretation of Rule 8 of the Lobbyists’ Code;
3. A declaration that Democracy Watch was deprived of its right to a fair hearing by the Registrar in accordance with the principles of fundamental justice in connection with its Complaint, in contravention of common law requirements and the principles of fundamental justice under s. 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44;

4. its costs of this application on a substantial indemnity basis; and
5. such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

BACKGROUND

1. The Registrar administers and oversees compliance with the Lobbyists' Code, including investigating alleged breaches of the Lobbyists' Code, with a view to reporting, through the Registrar General, to Parliament;
2. On April 13, 2000, Democracy Watch petitioned the Ethics Counsellor, then responsible for administering the Lobbyists' Code, to investigate the Complaint, consisting of alleged violations of the Lobbyists' Code by former Liberal MP and Lobbyist Barry Campbell ("Campbell");
3. The Complaint alleges that Campbell violated the Lobbyists' Code by organizing a fundraising event in September 1999 that raised about \$70,000 for Liberal MP and Minister of Finance, Jim Peterson. At the time, Campbell represented ten corporations that were lobbying the Department of Finance;

THE LOBBYISTS' CODE

4. 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 LRA's registration requirements, and that lobbyists conduct all their relations with "integrity and honesty" and "observe the highest professional and ethical standards.";

5. Rule 8 of the Lobbyists' Code provides that "[l]obbyists 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.";

6. Democracy Watch asserts that by fundraising for Jim Peterson, Campbell placed Jim Peterson in a conflict of interest, contrary to Rule 8 of the Lobbyists' Code;

HISTORY OF THE COMPLAINT

7. Democracy Watch made other complaints in 2000, as well as 2001 and 2002, for a total of 11 complaints during this time period. Many of those complaints related to alleged breaches of the Lobbyists' Code, including several which related specifically to Rule 8 of the Code. Democracy Watch brought petitions to judicially review 4 of the rulings arising out of those complaints and they were heard together by Gibson J. of the Federal Court in 2004. The Federal Court rendered its decision on July 9, 2004 (the "Federal Court Decision");

8. The Federal Court Decision resulted in a requirement to rehear the 4 subject complaints, and by agreement between counsel, the Federal Court Decision applied to 2 additional complaints which had been ruled on by the Ethics Counsellor but were not part of that application. As the Ethics Counsellor had not ruled on 2 other complaints, including the Complaint, a total of 8 complaints required consideration following the Federal Court Decision;

9. As a result of changes in the statutory ethics regime, those complaints were returned to the Registrar for review insofar as they related to the Lobbyists' Code, in accordance with the Federal Court Decision. The Registrar has now issued the Ruling on the Complaint, although without contacting or speaking to Democracy Watch. None of the other 7 complaints have yet received a ruling;

10. Democracy Watch believes that there is a reasonable apprehension that the Registrar and members of the Office of the Registrar are biased against Democracy Watch. This apprehension arises from the following factors:

- (a) The Federal Court Decision found that the members of the office of the former Ethics Counsellor were biased against Democracy Watch, and the Registrar drew his staff, including his senior staff, from among that same group;
- (b) Democracy Watch brought an application against the Registrar in 2005, alleging, *inter alia*, structural bias. The internal reporting structure of the Registrar was changed in early 2006, such that the Registrar now reports to the Treasury Board, rather than the Minister of Industry; and
- (c) There has been an inordinate delay in obtaining the Ruling, and the other complaints have not yet been ruled on, even though information was readily available to the Registrar to deal with this Complaint, as well as the other 7 complaints, on a more expedited basis;

THE RULING AND ITS DEFECTS

16. On or about October 13, 2006, Democracy Watch received the Ruling from the Registrar of Lobbyists, dated October 10, 2006. The Registrar concluded that Rule 8 of the Lobbyists' Code had not been violated by Campbell. The Registrar referred specifically to an interpretation bulletin of the former Ethics Counsellor, implemented in 2002, which narrowly defines the scope of Rule 8;

Failures to observe principles of Natural Justice:

17. The Registrar's Ruling is procedurally defective insofar as

- (a) There is a reasonable apprehension of bias on the part of the Registrar as

against Democracy Watch, both specifically and structurally; and

- (b) The Registrar did not contact Democracy Watch or give it an opportunity to present its Complaint to the Registrar, and as such failed to accord Democracy Watch the participatory rights consistent with procedural fairness;

The Registrar Erred in Law

18. In making the Ruling

- (a) The Registrar erred in law in holding that Rule 8 under the Lobbyists' Code is not to be interpreted under a "reasonable apprehension" standard, but rather is to be interpreted as requiring proof of actual undue or improper influence;
- (b) The Registrar took into account irrelevant factors by accepting and applying an interpretation of Rule 8 of the Lobbyists' Code which had been made by the former Ethics Counsellor and with which the Registrar did not agree;
- (c) The Registrar interpreted the concept of "improper influence" and the general scope of Rule 8 under the Lobbyists' Code in an overly narrow manner, essentially requiring a lobbyist to violate the *Criminal Code* in order to violate the Lobbyists' Code;
- (d) The Registrar ignored his mandate to observe the "spirit as well as the letter" of the Lobbyists' Code in overseeing the conduct of Lobbyists;
- (e) The Registrar failed to interpret Rule 8 of the Lobbyists' Code in the context of the LRA and other provisions of the Lobbyists' Code, as well as

the Conflict of Interest and Post-employment Code for Public Office Holders;

- (f) The Ruling is patently unreasonable; and
- (g) The Registrar appears to have improperly delegated the responsibility for decision making to another party, as his Ruling states that “we have concluded”, which implies that some other party was instrumental in making the Ruling;

LEGISLATION AND RELATED GROUNDS

- 19. LRA, as amended;
- 20. Lobbyists’ Code;
- 21. *Canadian Bill of Rights*, S.C. 1960, c.44;
- 22. *Conflict of Interest and Post-employment Code for Public Office Holders*;
- 23. *Federal Court Act*, R.S.C. 1985, c.F-7, as amended;
- 24. *Federal Court Rules*, 1998, SOR/98-106; and
- 25. Such further and other grounds as Democracy Watch may submit and this Honourable Court may accept.

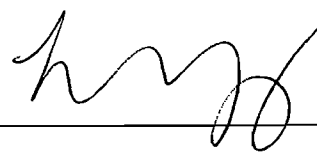
THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING:

- 1. The Application Record of Democracy Watch, including the Affidavit of Duff Conacher, to be filed;
- 2. The October 10, 2006 ruling by the Registrar of Lobbyists; and,

3. such further material as counsel may advise and this Honourable Court may permit.

DEMOCRACY WATCH REQUESTS the Office of the Registrar of Lobbyists to send a certified copy of all documents relating to the Ruling that are not in the possession of Democracy Watch but are in the possession of the Office of the Registrar of Lobbyists, to Democracy Watch's counsel and to the Registry.

November 7, 2006



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Barristers

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Solicitors for the Applicant,
Democracy Watch

Court No.

**FEDERAL COURT
- TRIAL DIVISION**

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