

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

**PERSONAL & CONFIDENTIAL**

NOV 08 2011

Mr. Duff Conacher  
Democracy Watch  
39 Chicora Ave, Upper Unit 2  
Toronto, Ontario  
M5R 1T7

Dear Mr. Conacher:

The purpose of this letter is to advise you that I have closed an administrative review of your allegation that lobbyists who paid to attend a charitable golf tournament held by the Liberal Party of Canada on August 19, 2002 in Chicoutimi, Quebec were in breach of Rule 8 (Improper Influence) of the *Lobbyists' Code of Conduct*.

Your allegation was made in a letter to the former Ethics Counsellor dated September 26, 2002, and was transferred to the Registrar of Lobbyists on May 17, 2004. In correspondence dated July 22, 2005, and April 13, 2006, you were advised that the Registrar was prepared to reconsider this complaint, and other matters for which Democracy Watch had previously sought judicial review. I inherited the file on July 2, 2008, when responsibility for the administration and enforcement of the *Lobbying Act* and the Code was transferred to the Commissioner of Lobbying.

As you are aware, Rule 8 of the Code was the subject of review and analysis in the Federal Court and the Federal Court of appeal, beginning with an application for judicial review made by Democracy Watch in November 2006 following a decision taken by the Registrar in a matter relating to Mr. Barry Campbell. At that time, the former Registrar placed all files containing allegations that lobbyists were in breach of Rule 8 in abeyance. When I became Commissioner, I maintained that position.

On March 12, 2009, the Federal Court of Appeal held that guidance issued by the former Ethics Counsellor was unreasonable and that a new interpretation should be applied. In November 2009, I published new guidance on conflict of interest based on the Federal Court of Appeal decision in *Democracy Watch v. Barry Campbell* and the Attorney General of Canada (Office of the Registrar of Lobbyists). In the annex to my guidance, I made reference to the fact that this interpretation of conflict of interest in the context of Rule 8 represented a shift in understanding from the Ethics Counsellor's guidelines issued in 2002, which the Federal Court of Appeal concluded were unreasonable. In August 2010, I provided further clarification about political activities in the context of Rule 8.

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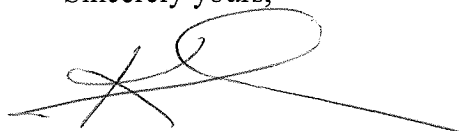
After reviewing the Investigations Directorate's report on your allegation concerning the golf tournament held by the Liberal Party of Canada on August 19, 2002, I have decided to close the administrative review, for the following reasons:

- The evidence currently on file appears to indicate that the lobbyists were not in breach of Rule 8;
- The availability of evidence and the reliability of potential witnesses are limited due to the length of time that has elapsed since the alleged breaches occurred (2002). The Directorate's ability to verify the accuracy of information contained in the file is thus restricted;
- The alleged breach occurred prior to the March 12, 2009 Federal Court of Appeal judgement in *Democracy Watch vs. Campbell* which concluded that the Ethics counsellor's interpretation of Rule 8 was unreasonable. Up until that point, the Ethics Counsellor's interpretation of Rule 8 had been upheld by the Federal Court in 2004 and 2008 (*Democracy Watch v. Attorney General of Canada (Office of the Ethics Counsellor)* and *Democracy Watch vs. Campbell*) and may have formed the basis of decisions made by lobbyists regarding their interaction with public office holders. It would be unfair to apply the approach set out in the Federal Court of Appeal judgement to events that took place in 2002.
- The decision to close would be consistent with the approach taken by the Federal Court of Appeal (*Democracy Watch v. Barry Campbell*) when considering whether to refer the matter back "for a continuance of the trial on the issues that remain to be determined in light of that declaration." In paragraph 56 of the decision, the FCA wrote:

"...given that the events underlying Democracy Watch's complaint are almost ten years old, it is doubtful that the interests of justice require that this complaint be returned for a new hearing and a fresh decision. Enough time has passed that this matter should be allowed to lapse."
- In February 2011, I tabled in Parliament two Reports on Investigation concerning breaches of Rule 8 by Mr. Michael McSweeney and Mr. Will Stewart. The Reports are precedent-setting and reflect the current guidance and approach to conflicts of interest and improper influence.

In view of this, a formal investigation pursuant to subsection 10.4(1) of the *Lobbyists' Code of Conduct* will not be undertaken and this file will be closed.

Sincerely yours,



Karen E. Shepherd  
Commissioner of Lobbying