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)

Respondent

DEMOCRACY WATCH'S
MEMORANDUM OF FACT AND LAW

PART I - THE FACTS

OVERVIEW OF THE APPLICATION

1. This case concerns the ongoing and serious problem of achieving ethical accountability within the federal government. Despite repeated changes in the last number of years to the organization and structures of the regimes in place to police ethics in government, and despite the advocacy of Democracy Watch, certain ethical rules promulgated years ago have still not been interpreted and applied in a meaningful matter. This application for judicial review deals with the failure of the Registrar of Lobbyists (the "Registrar") to interpret and apply Rule 8 of the Lobbyists' Code of Conduct ("Lobbyists' Code") in a manner consistent with the stated goals of the Lobbyists' Code.

2. The foundation of democratic government is public confidence in the integrity of government. Without that trust, the entire democratic system is a farce. Events of the last few years have shown that Canadians' confidence in their government and the entire system of government, is low, and with good reason. Scandals ranging from misuse of public funds, to

cronyism and favouritism have rocked this nation and shamed its democratic institutions. To regain the trust of Canadians, not only must ethics in government be a priority, and ethical rules be interpreted and applied in a robust and meaningful manner, but Canadians must be able to see this occur.

3. Democracy Watch applies for judicial review of the decision of the Registrar made October 10, 2006 (the "Ruling"), in connection with a complaint lodged by Democracy Watch in 2000 against Barry Campbell. Democracy Watch challenges the Ruling of the Registrar on the basis of bias. The Registrar lacks independence and is thus disabled by institutional bias in much the same way as was the previous Ethics Counsellor. Democracy Watch also seeks review of the Ruling on the basis that it is both incorrect and unreasonable in substance.

THE NATURE OF THE COMPLAINT AGAINST BARRY CAMPBELL

4. On April 13, 2000, Democracy Watch made a complaint to the Ethics Counsellor, Howard Wilson ("Ethics Counsellor Wilson" or "Ethics Counsellor") about lobbyist Barry Campbell ("Campbell") having actively raised funds for the re-election of Jim Peterson ("Peterson"), who was the Secretary of State (International Financial Institutions) Department of Finance, at the same time that he acted for approximately ten companies on whose behalf he lobbied the Finance Ministry (the "Complaint"). Democracy Watch asserted, among other things, that Campbell had contravened Rule 8 of the Lobbyists' Code, made pursuant to the *Lobbyists Registration Act* ("LRA"). Rule 8 of the Lobbyists' Code precludes conduct which places "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".

Affidavit of Duff Conacher, para. 3 and Exhibits A and B

5. Specifically, Democracy Watch alleged that Campbell organized a benefit dinner for Peterson's re-election campaign in which Campbell raised approximately $70,000 for Peterson at the same time that Campbell was registered to lobby Peterson's Ministry. Campbell sent out invitations identifying himself as the Chair of the "Friends of Jim Peterson" and the letter, envelope and return envelope (copies of which were provided by Democracy Watch to Ethics Counsellor Wilson) all identified Campbell's lobbying company APCO Canada. As Campbell was registered as a lobbyist to lobby the Ministry of Finance on behalf of such clients as Royal

Bank of Canada, State Street Trust Company Canada and Morgan Stanley Canada at or around the time of the fundraiser, Democracy Watch was concerned that Rule 8 of the Lobbyists' Code had been breached, as well as various provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders ("Conflict of Interest Code").

Affidavit of Duff Conacher, Exhibit "A" Letter of Complaint

6. Following the making of the Complaint, Democracy Watch made further complaints to the then Ethics Counsellor, nine of which dealt with the contravention of Rule 8, for a total of eleven complaints in 2000, 2001 and 2002. The Ethics Counsellor made rulings on some of those complaints, but did not respond to others. The Ethics Counsellor never provided Democracy Watch with a ruling on the Complaint.

Affidavit of Duff Conacher, para. 3 and Exhibits A and B

7. In May 2003, Democracy Watch filed judicial review applications in Federal Court relating to certain rulings of the Ethics Counsellor on complaints by Democracy Watch. The application was heard in May 2004 in the Federal Court by Justice Gibson, and a decision was rendered on July 9, 2004 (the "Federal Court Decision"). The Federal Court Decision held that the complaints had to be reconsidered on the basis of bias. Ultimately, due to changes in the ethics regime, the responsibility for reviewing those and certain other complaints (a total of 8) fell to the Registrar.

Affidavit of Duff Conacher, paras. 5, 6 and Exhibit C

8. On October 10, 2006, the Registrar issued the Ruling in connection with the Complaint, holding that Rule 8 of the Lobbyists' Code was not violated. To date, the Registrar has only issued the Ruling on the Complaint. The other seven complaints remain outstanding.

Affidavit of Duff Conacher, para. 7

DEMOCRACY WATCH

9. Democracy Watch was founded in September 1993 and incorporated pursuant to federal law as a not-for-profit corporation. Democracy Watch is a non-partisan organization that advocates democratic reform, citizen participation in public affairs, government and corporate accountability, and ethical behaviour in government and business in Canada. In pursuit of its

mandate, Democracy Watch has initiated various campaigns, including a campaign relating to lobbyist ethics. These individuals are subject to ethical obligations, as set out in codes of conduct which are administered by the Ethics Commissioner and the Registrar.

Affidavit of Duff Conacher, paras. 9-10

UNDERSTANDING THE CONTEXT

10. Since 2000, Democracy Watch in furtherance of its campaign for ethics and accountability, has made a series of complaints related to, among other things, Rule 8 of the Lobbyists' Code. The failure of the Ethics Counsellor to respond to those complaints spawned first a mandamus application. Later, when decisions were made, Democracy Watch pursued judicial review applications, which resulted in the Federal Court Decision. All the while, Democracy Watch has had to contend with a changing ethics regime.

Affidavit of Duff Conacher, paras. 11-13

THE ETHICS REGIME – THEN AND NOW

The Changes in the Regime

11. Until the Spring of 2004, the Ethics Counsellor held two positions, one under a statute, and the other under a parliamentary code of conduct. Under the LRA, the Ethics Counsellor was responsible for administering and enforcing the Lobbyists' Code. Under the Conflict of Interest Code, which was created and published by the Prime Minister, the Ethics Counsellor was administrator and advisor to the Prime Minister. The situation changed in May 2004 with the enactment of Bill C-4, *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)* and other Acts in consequence, assented to on March 31st, 2004 and proclaimed into law on May 10, 2004 ("Bill C-4"). Bill C-4 eliminated the position and Office of the Ethics Counsellor only days before Democracy Watch's judicial review application was set to be heard.

Affidavit of Duff Conacher, para. 14

12. Before the proclamation of Bill C-4, the Registrar worked within the Office of the Ethics Counsellor and was responsible only for the administration of the LRA, while the Ethics

Counsellor enforced the Lobbyists' Code. Bill C-4 added the duty of enforcing the Lobbyists' Code to the responsibilities of the Registrar. Following the enactment of Bill C-4, the Minister of Industry, in his position of Registrar General, appointed Michael Nelson as the Registrar and created the Lobbyists Registration Branch within Industry Canada as the office for the Registrar and his staff. Under this new structure, the Registrar reported to Parliament through the Registrar General (the Minister of Industry) and operated as a branch of the Industry Ministry, rather than through the Ethics Counsellor.

Affidavit of Duff Conacher, para. 15

13. Since the above fundamental change was made dividing the responsibilities of the Ethics Commissioner and the Registrar, a series of further changes have been made which affect the Registrar:

(a) in October 2005, the Registrar's office was physically moved outside of the Industry Ministry offices;

(b) in February 2006, responsibility for the Registrar was switched to the Treasury Board minister (whose ministry is twelfth out of the twenty federal government ministries most frequently lobbied); and

(c) an Investigations Directorate was established under the newly created position of Director of Investigations and Deputy Registrar ("Deputy Registrar") to focus resources on investigations.

Affidavit of Duff Conacher, paras. 14-15 and 23-24 and Exhibit "L", The Lobbyists Registration Act Annual Report 2005-2006

Affidavit of Karen E. Shepherd, Director of Investigations, paras. 24-25

14. Still today, the Registrar has no security of tenure in his position as Registrar, and the Treasury Board Minister has the legal power to control the Registrar's office budget. Further, staffing decisions, while currently delegated to the Registrar, can be revoked by Order in Council.

Affidavit of Duff Conacher, para. 18

The LRA and Lobbyists' Code

15. The LRA sets out the framework within which federal lobbying is permitted to take place in Canada. The LRA begins by indicating that free and open access to government is an important matter of public interest and that while lobbying public office holders is a legitimate activity, it is desirable to know who is engaged in lobbying activities.

Affidavit of Duff Conacher, para. 19

LRA, s. 5(1) and s.7

16. The LRA defines a lobbyist as a person who is paid to communicate with a public office holder in respect of a wide range of legislative and policy matters. The LRA sets out registration and disclosure obligations for those individuals who are identified under the LRA as lobbyists.

Affidavit of Duff Conacher, para. 21

LRA, s. 10.2(1), The Lobbyists' Code

17. The requirement to create the Lobbyists' Code is set out in s. 10.2(1) of the LRA. The Lobbyists' Code entered into force on March 1, 1997, and has not been amended since that time.

LRA, s.10.2(1)

Affidavit of Duff Conacher, para. 22

18. The LRA delineates the Registrar's duties, which include establishing and maintaining the lobbyists' registry, overseeing compliance with the Lobbyists' Code, and investigating alleged breaches of the Lobbyists' Code. The newly established position of Deputy Registrar takes on many of these same duties. Indeed, as is apparent from the Registrar's file in this matter, the investigation into the Complaint was performed by Senior Investigations Officer Stephanie Grassi, who reported to the Deputy Registrar by way of memo dated September 21, 2006, whose memo was adopted almost verbatim and passed on to the Registrar on September 22, 2006. That memo is the foundation for the Ruling by the Registrar.

LRA, s.8-11, The Lobbyists' Code

Affidavit of Duff Conacher, para. 23

Affidavit of Karen Shepherd, Memo from Stephanie Grassi to Karen Shepherd, dated September 21, 2006, Tab Q

Affidavit of Karen Shepherd, Memo from Karen Shepherd to Registrar, dated September 22, 2006, Tab R

19. Despite the changes to the Office of the Registrar of Lobbyists ("ORL") over the last two years, the Registrar still does not enjoy the institutional independence granted to the Ethics Commissioner in 2004, or as is proposed under the FAA for the "Commissioner of Lobbyists".

The Registrar under The Federal Accountability Act

20. On December 12, 2006, Bill C-2, The *Federal Accountability Act* ("FAA") received Royal Assent, however the provisions of the FAA relating to lobbying are not yet in force. They will come into force by Order in Council once the necessary regulatory amendments are made. The FAA will usher in a number of changes including transitioning responsibility for lobbying from the Registrar to the "Commissioner of Lobbying", who will be given the statutory discretion to decline to review complaints left with the Registrar, which of course places all of Democracy Watch's long outstanding complaints to the Registrar at risk.

Affidavit of Duff Conacher, paras. 41, 62

Bill C-2, *The Federal Accountability Act* ("FAA"), ss. 65-78

SUMMARY OF DEMOCRACY WATCH'S COMPLAINTS

21. As a result of the Federal Court Decision, Democracy Watch pursued eight complaints with the Registrar, consisting of the four which were the subject of the judicial review, two complaints which were affected by the Federal Court Decision based on the agreement of counsel due to the finding of bias, and two complaints which remained outstanding, which included the Complaint. All but one of those eight complaints deal with the interpretation of Rule 8 of the Lobbyists' Code.

Affidavit of Duff Conacher, para. 4

22. Of the above eight complaints, the Registrar has ruled only on the Complaint (after an elapsed time from filing of over 6 years), and has failed to provide Democracy Watch with any information about the status of his consideration or re-consideration of the other seven complaints.

Affidavit of Duff Conacher, para. 28

THE FEDERAL COURT DECISION

23. The judicial review application leading to the Federal Court Decision began with a challenge that the application was moot, as a mere week before the hearing, the government proclaimed Bill C-4 into law. That motion was dismissed as the Federal Court recognized that the treatment of Democracy Watch's complaints was important, and there were still issues of national importance that warranted a ruling.

> ***Democracy Watch v. Canada (Attorney General),*** **[2004] F.C.J. No. 1195, paras. 25-31**

24. On July 9, 2004, the Federal Court ruled that the Ethics Counsellor was institutionally biased, in part because of his lack of security of tenure and the fact that decisions concerning his office budget and staffing were under the control of the Industry Minister. The Ethics Counsellor was also found to be specifically biased against Democracy Watch because of his delay and failure to adhere to principles of natural justice in dealing with Democracy Watch's complaints. The Federal Court in effect ordered that Democracy Watch's complaints must be re-considered.

> ***Democracy Watch v. Canada (Attorney General),*** **[2004] F.C.J. No. 1195**
>
> **Affidavit of Duff Conacher, para. 32**

25. In the Federal Court Decision, the following observations were made:

(a) The mode of appointment of the Ethics Counsellor is "informal in the extreme". With respect to the functions under the *LRA*, the Ethics Counsellor was "designated"; however the *LRA* reflects no particular qualifications which would warrant designation and the Governor in Council is authorized to designate "any person"; (paras. 42 and 54)

(b) While the Ethics Counsellor was a long standing public servant, the Court concluded that there was no evidence to demonstrate that the Ethics Counsellor had any security of tenure *qua* Ethics Counsellor, as opposed to as a public servant; (para. 45)

(c) No investigation under s. 10.4 of the Lobbyists' Code had ever been undertaken, notwithstanding that a belief of a breach of the Lobbyists' Code "on reasonable grounds" was not a "particularly high threshold or standard". In particular, as at the date of filing the application materials for the Federal Court Decision, seven of Democracy Watch's eleven complaints had been responded to, and in each case a request for a formal investigation was rejected; (para. 46)

(d) The Ethics Counsellor failed to respond to three complaints made by Democracy Watch after 31, 33 and 39 months respectively, as at the time of hearing. Of the complaints that did receive a response, response times ranged from one to twenty-four months; (para. 47)

(e) The LRA, the Conflict of Interest Code and the Lobbyists' Code, as they then were, did not contain any provisions that might counter negative institutional characteristics (para. 53);

(f) The dual role of the Ethics Counsellor in relation to applying and upholding the LRA, Lobbyists' Code and the Conflict of Interest Code, together with the Ethics Counsellor's lack of independence, gave rise to questions of impartiality of the office as a whole, and placed a conflict of interest in allocating resources and fully and effectively carrying out both mandates (para. 54); and

(g) The evidence showed that the Office of the Ethics Counsellor was under-resourced and was accordingly unable to respond in a timely manner to the range of issues presenting themselves (para. 54);

***Democracy Watch v. Canada (Attorney General) [2004],* F.C.J. No. 1195**

26. Ultimately, the Court concluded that, "a well-informed person, viewing the matter realistically and practically – and having thought the matter through – would have a reasonable apprehension of bias on the part of the institution, the office of the Ethics Counsellor, in a substantial number of cases". A finding that the Ethics Counsellor was specifically biased against Democracy Watch was also made.

Democracy Watch v. Canada (Attorney General),* [2004] *F.C.J. No. 1195, paras. 49, 55

27. In the result, each of the four rulings by the Ethics Counsellor which were under judicial review, were quashed by the Federal Court. That result was confirmed following a motion for reconsideration October 19, 2004.

Affidavit of Duff Conacher, para. 35, Exhibit "E"

EVENTS FOLLOWING THE FEDERAL COURT DECISION

Democracy Watch's 2005 Application

28. The changes to the ethics regime effected by Bill C-4 in the spring of 2004 did not address Democracy Watch's concerns about the Lobbyists' Code or the Registrar and as a result of those concerns, as well as concerns relating to the Ethics Commissioner, Democracy Watch initiated a court application; however the government then introduced the FAA and the application was adjourned to allow that legislation to be implemented.

Affidavit of Duff Conacher, paras. 36-38

Efforts to have the Eight Complaints Heard

29. Democracy Watch's efforts to implement the Federal Court Decision and have all eight complaints addressed began following the Federal Court Decision and have continued to date. Given that the 2004 regime change meant that enforcement responsibilities were then split between the Registrar and the Ethics Commissioner, it was necessary to pursue enforcement with both entities. While the Registrar did agree to carry out a review of the eight complaints as they related to the Lobbyists' Code, the Ethics Commissioner refused to review the issues that related to the Conflict of Interest Code.

Affidavit of Duff Conacher, para. 39, Exhibit "G" and "H"

RULE 8 AND THE ADVISORY OPINION

30. Rule 8 of the Lobbyists' Code focuses on actions which constitute an "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.

Lobbyists' Code, Rule 8

31. In September 2002, the Ethics Counsellor published an "Advisory Opinion" that interpreted Rule 8 of the Lobbyists' Code. That opinion states that in order to violate Rule 8 a lobbyist would, among other things which are not specified, have to "interfere with the decision, judgment or action" of a public official in a way that amounts to "a wrongful constraint whereby the will of the public office holder was overpowered . . . and induced to do or forbear an act which he or she would not do if left to act freely" involving "a misuse of a position of confidence" or taking "advantage of a public office holder's weakness, infirmity or distress". That "Advisory Opinion" was adopted by the Ethics Counsellor in direct response to the Complaint, was applied by the Registrar in the Ruling and continues to be posted on the web page of the Registrar to provide interpretive guidance to lobbyists.

Affidavit of Duff Conacher, para. 43, Exhibit "J", Advisory Opinion

THE RULING

32. The affidavit of Karen Shepherd, the Deputy Registrar, and in particular the "Administrative Review" (Exhibit "P" to the affidavit), describes the Administrative Review process undertaken by the ORL in connection with the Complaint to determine whether the threshold was met and there were reasonable grounds to proceed with an investigation pursuant to s.10.4 of the LRA to determine whether a breach in fact occurred. According to the Deputy Registrar, the ORL:

(a) Reviewed the file of the former Ethics Counsellor himself as well as a file from the Office of the former Ethics Counsellor;

(b) Reviewed media articles and Hansard;

(c) Interviewed Robert Benson, the current Deputy Ethics Commissioner, former Ethics Counsellor Wilson, Barry Campbell, and Eleanor Ryan, Finance Department Official;

(d) Reviewed lobbyists' registrations of Campbell; and

(e) Identified Jim Peterson as a key witness whose evidence was essential to the matter, but declined to interview him on the basis that the information he had

already provided in the House of Commons and to the Ethics Counsellor was sufficient.

Affidavit of Karen Shepherd, para. 54, Exhibit "P" Administrative Review

33. The factual information obtained from the Administrative Review includes the following:

(a) According to media reports at the time the Complaint was made public:

(i) Peterson told the media that he denied being put in a conflict of interest and that he never discussed any Finance Department matters with Campbell while the fundraiser was being organized, during it or since the event;

(ii) Peterson obtained advice from Ethics Counsellor Wilson to obtain guidance about soliciting support from the financial sector and was told it was not a problem as long as it was part of a broadly based fundraising effort;

(iii) Peterson returned some cheques provided by members of the financial sector;

(b) Peterson is recorded in Hansard as having asked Campbell, a former colleague and long-time friend, to organize the fundraising event and confirming that he did not have dealings with Campbell in any area of his responsibility;

(c) The files obtained from the Ethics Counsellor's office provide the following information:

(i) A draft review report on the Complaint had been prepared by staff member Corinne MacLaurin based on information obtained by that office, and it appears to have been circulated to others;

(ii) There were handwritten notes indicating that the Campbell matter was resolved;

(iii) Campbell spoke by phone with Corinne MacLaurin in 2000 and asked to be provided with the questions in writing, in advance;

(iv) Peterson had contacted the Ethics Counsellor's office to agree on common messaging to the media;

(v) Campbell managed Peterson's blind trusts up until 1998; and

(vi) There is ambiguity around whether the fund raiser was "pre-cleared" with the Ethics Counsellor, and communications with the Ethics Counsellor's office suggest some discomfort with Peterson's claim on that point;

(d) Ethics Counsellor Wilson provided the following information:

(i) He was of the view, based on the information his office obtained, that there was no improper influence. His rationale was that lobbying was a legitimate activity and improper influence is a "high test";

(ii) Although Ethics Counsellor Wilson reached this conclusion, he did not communicate it because he did not have guidelines in place to address the issue so he decided to prepare the Advisory Opinion on improper influence;

(iii) Although there is a handwritten notation that appears to suggest that Ethics Counsellor Wilson told Campbell that the matter was resolved back in 2002, and although Campbell himself has a similar recollection, Ethics Counsellor Wilson said that he did not communicate this to Campbell and in fact told Campbell in 2004 that the investigation would be continued by the newly created Registrar;

(e) Of Campbell's 11 registrations for lobbying made in or around the time of the fundraising dinner, only the State Street registration was deemed relevant as it was in connection with Bill C-67, the foreign entry bank bill and the registration was in effect at the time of the fundraiser. Campbell indicated that with respect to

State Street, he worked with officials, and not Peterson, to ensure the regulations were appropriate, although he could not recall who he lobbied; and

(f) Eleanor Ryan, who was involved in the Finance Ministry on Bill C-67 issues, indicated that discussions and lobbying relating to the Bill were within the normal course and she did not experience pressure to make recommendations to favour State Street, although certain changes requested by State Street were made.

Affidavit of Karen Shepherd, para. 54, Exhibit "P" Administrative Review

Appendix to the letter to Howard Wilson dated March 29, 2006 setting out the information obtained in his interview, Registrar File Materials Tab 4-53

Appendix to the letter to Eleanor Ryan dated May 29, 2006 setting out the information obtained in her interview, Registrar File Materials Tab 3-103

Note marked tab 7, Registrar File Materials, Tab 7-44

34. Following an assessment of the facts, which basically conclude that Campbell did not actually influence Peterson or the Finance Ministry, the Administrative Review then sets out an analysis of the Lobbyists' Code and Rule 8, and relies specifically on the Advisory Opinion prepared by Ethics Counsellor Wilson. That Advisory Opinion requires proof of either actual interference with the decision, judgment or action of a Public Office Holder, or wrongful constraint of the Public Office Holder. Applied to the Complaint, the Administrative Review concludes that reasonable grounds do not exist to pursue an investigation. That conclusion was communicated to Democracy Watch by way of letter on or about October 10, 2006.

Affidavit of Karen Shepherd, para. 54, Exhibit "P" Administrative Review; Exhibit "S" Letter to Democracy Watch

DEMOCRACY WATCH'S CRITICISM OF THE RULING

35. Democracy Watch criticizes the Ruling on a number of bases:

(a) the Ruling interprets Rule 8 to require proof a Public Office Holder was influenced, which is an extreme standard, and not consistent with the basic approach to conflicts of interest, which recognize that the appearance of conflict must be the standard by which individuals are to be judged;

(b) the meaning of "improper" influence is essentially treated as "illegal" influence, suggesting that the action undertaken must be in the form of a bribe or other type of coercion, rather than improper in the context of the ethical standards expected of politicians;

(c) the Ruling provides an interpretation of Rule 8 which is based on and consistent with the Advisory Opinion on Rule 8 written by the former Ethics Counsellor, whom the Federal Court ruled was biased against Democracy Watch, and who essentially provided his decision on this Complaint by way of issuance of the Advisory Opinion;

(d) the Ruling mischaracterizes Democracy Watch's complaint as relating to Campbell breaching Rule 8 when he became the chair of the Friends of Jim Peterson while being a registered lobbyist to the Department of Finance. In fact, Democracy Watch's complaint clearly alleges that the violation by Campbell occurred when, in his role as an APCO Canada lobbyist, registered to Lobby Peterson, Campbell used his lobbying firm letterhead and envelopes for invitations he sent out, as the Chair of a fundraiser directly benefiting Peterson. The Registrar failed to even mention the fundraising event in his Ruling; and

(e) The Registrar's ruling makes no sense in light of the overall scheme of the LRA and the Lobbyists' Code and the Conflict of Interest Code, and the legitimate concerns of the Canadian public about the lack of ethical conduct in government. The narrow interpretation of Rule 8 renders the rule itself meaningless.

May 29, 2006 letter from Stephanie Grassi to Eleanor Ryan at Finance Canada, Registrar File Materials Tab 3

Affidavit of Duff Conacher, paras. 56-61, Exhibit "D" Ruling

THE REGISTRAR'S APPEARANCE OF BIAS

36. The ORL and position of Registrar has evolved since the Registrar took responsibility for evaluating the Complaint. Information relevant to the status of the Registrar during the period in which the Complaint was under consideration includes:

(a) The Registrar was appointed as Registrar on July 29, 2004;

(b) The Registrar identified his priorities as follows:

(i) to ensure he could administer the LRA, and to hire the staff to do that;

(ii) to get ready for the amendments relating to registration, including getting the computer system ready, since almost all registrations are online; and

(iii) to clean up any cases that had been inherited from his predecessor.

(c) Sometime in 2005, the Registrar began to act as Registrar on a full time basis;

(d) The ORL's budget is subject to approval by the President of the Treasury Board, and has ceased to be an appropriated budget from the Industry Ministry;

(e) While the Registrar may have security of employment as a federal government employee, he does not have security of tenure as Registrar;

Affidavit of Duff Conacher, para. 48-51, Exhibit "K"

Affidavit of Karen Shepherd, paras. 27-28 and 33-34

37. In June 2005, the Registrar posted a new interpretation bulletin on the Lobbyists' website relating to "communicating" for the purpose of lobbying in which the Registrar has taken the lobbying exemption found in s. 4(2)(c) of the LRA, and significantly expanded it beyond the ambit of the legislation. That section states that the LRA does not apply in respect of "any oral or written communication made to a public office holder by an individual on behalf of any person or organization if the communication is restricted to a request for information". The interpretation bulletin cites that exclusion and goes on to list examples of exclusions which would not normally require registration, including "participation in consultations, hearings, roundtables, or like activities when the name of the participants, the government participating organizations and the subject matters are readily available publicly".

Affidavit of Duff Conacher, paras. 52-54

PART II – ISSUES

38. Democracy Watch submits that the issues for consideration are

(a) Whether the Ruling is defective because the Registrar:

(i) did not adhere to the principles of fundamental justice insofar as the Registrar is biased; and

(ii) committed an error of law in his interpretation of Rule 8; and

(b) If the Ruling is defective, what is the appropriate remedy?

PART III – SUBMISSIONS

PRINCIPLES OF NATURAL JUSTICE

39. The requirements of natural justice have not been met by the Registrar insofar as the Registrar is biased. The failure to accord a party natural justice is a flaw so basic to the process that considerations of standard of review are not invoked. Where a tribunal is said to have failed to give a party natural justice, the Court does not engage in an assessment of the appropriate standard of review, but evaluates whether the rules of procedural fairness or the duty of fairness have been adhered to.

C.U.P.E. v. Ontario (Minister of Labour), **[2003] S.C.J. No. 28 paras. 100-103**

THE REGISTRAR WAS DISABLED BY BIAS

40. "[P]ublic confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so."

Wewaykum Indian Band v. Canada**, [2003] S.C.J. No. 50, para. 57**

41. Bias or prejudice has been defined as

> "... a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction.

> Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case."
>
> ***Ibid.*** **at para. 58, quoting with approval *R. v. Bertram*, [1989] O.J. No. 2123 (QL) (H.C.), quoted in turn by Cory J. with approval in *R. v. S. (R.D.).*, [1997] 3 S.C.R. 484 at para.. 106**

42. Under Canadian law, one standard has emerged as the criterion for disqualification — the "reasonable apprehension of bias". The standard is set out in *Committee for Justice and Liberty v. National Energy Board*:

> "... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."
>
> ***Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at p. 394; quoted with approval by SCC in *Weywaykum*, *supra*, at para. 60**

43. The emphasis on the appearance of bias rather than with the actual existence of bias is a product of two key principles. First, the courts have recognized the difficulties associated with having to prove in a satisfactory manner whether a decision-maker is actually biased. The law does not generally countenance direct questioning and probing of a decision-maker about the influences on his or her mind. Concerns of invasiveness, lack of decorum, and fruitlessness, are exacerbated once the problem of "unconscious bias" is recognized. The seminal statement about unconscious bias was made by Lord Devlin:

> "Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."
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> ***Newf. Tel. Co. v. Newf. (Bd. of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 at p. 636, per Cory J., cited with approval in *Wewaykum*, *supra*, para. 64.**
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> ***R. v. Gough,*** **quoted with approval in *Queen v. Barnsley Licensing Justices*, [1960] 2 Q.B. 167 (C.A.) [1993] A.C. 646 (H.L.) at p. 665 and *Wewaykum*, *supra*, para. 65**

44. Second, Justice Hewart's famous principle that "justice should not only be done, but should manifestly and undoubtedly be seen to be done," has become a standard of superordinate importance in Anglo-Canadian administrative law. As the Supreme Court of Canada has stated:

> "In cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge [or decision-maker] but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in *Gough*, *supra*, at p. 659, 'there is an overriding public interest that there should be confidence in the integrity of the administration of justice.'"

***King v. Sussex Justices, ex parte McCarthy*, [1924] 1 K.B. 256 at p. 259**

***Wewaykum*, *supra*, at para. 66**

45. Independence is a fundamental component of the rule against bias. A party is entitled to receive a hearing before a tribunal that is not only independent in fact, but appears independent.

***Can. Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 SCR 3 at 49**

46. The nature of the requirement of tribunal independence is akin to the requirement of judicial independence, which has been defined by the Supreme Court as follows:

> "I thus define judicial independence as the capacity of the courts to perform their constitutional function free from actual or apparent interference by, and to the extent it is constitutionally possible, free from actual or apparent dependence upon, any persons or institutions, including, in particular, the executive arm of government, over which they do not exercise direct control."

***R. v. Valente (No. 2)*, [1985] 2 S.C.R. 673 at 688**

47. In *Lippe*, the Supreme Court referred to independence as the "cornerstone" of a tribunal's impartiality. A decision-maker who is dependent (or appears to be dependent) on others with an interest in the proceedings will not be able to bring an open mind to the task of decision-making.

***Lippe v. Charest*, [1991] 2 SCR 114**

48. It is now trite law, therefore, that it is not necessary in proving bias to engage in an objective inquiry into the decision-maker's subjective state of mind. It is sufficient to identify objective indicia of bias. In considering particular decision-makers the reasonable member of the public will consider objective guarantees of independence such as security of tenure and financial security, and, in the context of institutional bias (discussed below), the "objective status" of the tribunal as evidenced by recruitment and appointment of members, institutional structures defined by statute and regulation, and the pattern of case results. All of these attributes

are observable, and so capable of proof, in a way that the metaphysical operation of the mind is not.

> ***Valente*, supra.**
>
> ***Lippe*, supra.**

49. Delay, or at least inordinate delay, is also an important indicator of disabling bias, because it reflects badly on the appearance of the administration of justice. An agency or tribunal with a reputation for delay jeopardizes public "respect and confidence in the administration of justice".

> ***Sask. (Human Rights Comm.) v. Kodellas* (1989), 60 DLR (4th) 143 at 196 (Sask. C.A.)**

50. One sub-type of disabling bias is termed "institutional bias". This is a reasonable apprehension of bias generated by the structure of an institution, rather than from the words or actions of an individual.

> ***Ibid***

51. The test for institutional bias flows from the *National Energy Board* test for reasonable apprehension of bias, and was articulated by the Supreme Court with an additional, important, caveat as follows:

> "As a result of *Lippe*, *supra*, and *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, *inter alia*, the test for institutional impartiality is well established. It is clear that the governing factors are those put forward by de Grandpre J. in *Committee for Justice and Liberty v. Nat. Energy Bd.*, [1978] 1 S.C.R. 369, at p. 394. The determination of institutional bias presupposes that a well-informed person, viewing the matter realistically and practically — and having thought the matter through — would have a reasonable apprehension of bias in a substantial number of cases. In this regard, all factors must be considered, but the guarantees provided for in the legislation to counter the prejudicial effects of certain institutional characteristics must be given special attention."
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> **2747-3174 Quebec Inc. v. Quebec (Regie des permis d'alcools), [1996] 3 S.C.R. 919, at p. 951 [emphasis added.]**

52. In its decision in *Ocean Port*, the Supreme Court articulated one further limit to the reach of the institutional bias principle, as set out in *Regie*. The Court noted that, when confronted with silent or ambiguous legislation, it is inferred generally that "Parliament or the legislature intended the tribunal's process to comport with the principles of natural justice. In such

circumstances, administrative tribunals may be bound by the requirement of an independent and impartial decision-maker, one of the fundamental principles of natural justice . . . Indeed, Courts will not likely assume that legislators intended to enact procedures that run contrary to this principle ...." The Court held, however, that "like all principles of natural justice, the degree of independence required of tribunal members may be ousted by express statutory language or necessary implication."

> ***Ocean Port Hotel Ltd. v. B.C. (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, at paras. 21, 22**

53. In this case, there is no express statutory language or necessary implication which would serve to lessen the degree of independence required by the Registrar when approaching the Complaint. Indeed, the Registrar has been at pains to show that his role and office has evolved to the point of having the independence required of a decision maker employed in this important capacity. Nevertheless, those key features which would furnish independence and negate the appearance of bias are missing. The Registrar lacks the requisite independence to be seen by the reasonable person as being capable of acting impartially. In that sense, the Registrar is not in a position significantly different from the Ethics Counsellor who was found to be both institutionally and personally biased in the Federal Court Decision.

54. In support of its conclusion that the Registrar is biased, Democracy Watch relies on the following factors:

(a) The Registrar lacks security of tenure as Registrar. He can be replaced at any time by the Ministry of the Treasury Board, one of the most lobbied Ministries. This same issue was of concern to Gibson J. in the Federal Court Decision (para. 45);

(b) Like the Ethics Counsellor before him, the Registrar was “designated” without reference to particular qualifications or appointment criteria;

(c) The budget of the ORL is subject to approval by the Treasury Board, a frequently lobbied entity;

(d) The Respondent suggests that ORL has prioritized issues to be addressed based on workload and resources. While this may be true, it merely suggests that the ORL and the Registrar are not capable of carrying out their obligations with their allotted budget and/or staff, and like the Ethics Counsellor, this resource issue can be seen as indicative of bias;

(e) Like the Ethics Counsellor before him, the Registrar has been delinquent in responding to Democracy Watch's complaints. The Registrar's obligation was not to conduct a full investigation under s. 10.4 of the LRA, but rather to review the Complaint to ascertain whether there were reasonable grounds for an investigation (a test which Gibson J. referred to as not a "particularly high threshold or standard" in the Federal Court Decision). There is no reasonable explanation for the delay of almost two years in reaching this preliminary, negative decision. Indeed, such delay sends a clear signal discouraging Democracy Watch and others from raising complaints and concerns, and seeking a fair and impartial enforcement of the Lobbyists' Code;

(f) The Registrar has not provided rulings on the remaining 7 complaints, notwithstanding the elapse of years from when the Registrar accepted responsibility to evaluate those complaints; and

(g) The Registrar continues to support and apply the Advisory Opinion which was established by the Ethics Counsellor in direct response to complaints made by Democracy Watch regarding the scope and application of Rule 8.

55. The Registrar's contention that changes have been made to the ORL which insulate it from attacks of bias only serve to emphasize the vulnerability of the Registrar and the ORL. The anticipated changes stemming from the FAA provide the same contrast. Those measures to provide independence constitute a recognition that independence is lacking. Those anticipated changes were not in place during the review of the Complaint, nor at the time of the Ruling.

56. On the whole, the case of the Registrar, even now, is so similar to that of the Ethics Counsellor in the Federal Court Decision that it is hard to see how the institutional problems with

the Registrar's office do not constitute a disabling bias rendering the Ruling defective. More specifically, however, the fact that the Registrar adopted the Advisory Opinion created by the Ethics Counsellor in response to this Complaint amply demonstrates the bias of the Registrar.

THE REGISTRAR'S RULING WAS INCORRECT AND UNREASONABLE

Standard of Review

57. The Supreme Court of Canada has set out an analysis for determining the standard of review. As stated by Iacobucci J. in the Supreme Court of Canada in *Ryan:*

> "According to the governing jurisprudence, a court reviewing the decision of an administrative tribunal should employ the pragmatic and functional approach to determine the level of deference to be accorded to the decision in question. The appropriate level of deference will, in turn, determine which of the three standards of review the court should apply to the decision: correctness, reasonableness simpliciter, or patent unreasonableness."

***Canada New Brunswick v. Ryan*, [2003] SCJ No. 17, para. 1**

58. As further set out in *Ryan*:

> "The pragmatic and functional approach determines the standard of review in relation to four contextual factors: (1) the presence or absence of a privative clause or statutory right of appeal; (2) the expertise of the tribunal relative to that of the reviewing court on the issue in question; (3) the purposes of the legislation and the provision in particular; and (4) the nature of the question -- law, fact, or mixed law and fact".

***Canada New Brunswick v. Ryan,* [2003] SCJ No. 17, 2003 SCC 20, at para. 27**

***Dr. Q. v. College of Physicians and Surgeons of B.C.,* 2003 SCC 19, at para. 26**

59. In the present case, the application of the pragmatic and functional approach yields a standard of review of correctness, primarily because the Registrar has provided a legal interpretation.

60. First, under the Lobbyists' Code, there is neither a privative clause nor a statutory right of appeal. Therefore the first factor is neutral.

61. Second, the expertise of the tribunal relative to the reviewing court strongly favours a correctness standard. The Registrar has held the position for an admittedly short period of time, during which the Registrar has spent little time interpreting the LRA or the Lobbyists' Code. Rather, the Registrar has been focused on responding to the changes in the ORL, staffing his

office, and putting in place the resources and infrastructure to manage the registration process. Moreover, the Registrar is not a lawyer, nor does it appear that he has had any legal or other training to afford him expertise in matters of legal interpretation.

62. The third factor, the purpose of the legislation, also supports a correctness standard. The issue of ethics in government is a matter of significant public importance, but it is not an issue which gives rise to experience or expertise in the hands of the decision maker greater than that of the courts on like issues.

63. Finally, the fourth factor is central to this analysis, and, Democracy Watch submits, determinative of the issue. The Registrar has been asked to interpret the LRA and the Lobbyists' Code. This is a question of law. On questions of law, the standard of review is correctness.

> ***Pushpanathan v. Canada (Minister of Citizenship and Immigration),* [1998] 1 SCR 982 at paras. 43-50 and 82**
>
> ***Chieu v. Canada (Minister of Citizenship and Immigration),* 2002 CarswellNat 5 (S.C.C.) para. 26**
>
> ***Astrazeneca Canada Inc. v. Canada (Minister of Health),* 2006 CarswellNat 3536 (S.C.C.) para. 25**

64. Although a correctness standard ought to be applied, Democracy Watch submits that the Ruling was in fact unreasonable, and ought to be rectified under both the "correctness" standard and the "reasonableness" standard, the latter of which requires a decision to stand up to a "somewhat probing examination".

> ***Ryan, supra, at paras. 50-52***

An Analysis of the Ruling

65. The facts behind the Ruling are not really in dispute. Rather, it is the interpretation given to Rule 8 as applied to the facts which is objectionable. It is not disputed that Campbell was asked whether he sought to influence Peterson, and Campbell said no. It is not disputed that Peterson publicly denied that he was in a conflict of interest. While Democracy Watch is concerned about much of the information found in the Ethics Counsellor's files, such as the appearance of a coordinated media effort with Peterson after the Complaint became public, and the fact that the Ethics Counsellor apparently gave advice which would put him in a conflict of

interest in dealing with the Complaint, and even the appearance that the Ethics Counsellor made a decision on this Complaint in 2002 but failed to tell Democracy Watch, it is not the conduct of the Ethics Counsellor which is under review here – that Ethics Counsellor has already been found by this court to be biased. Rather, it is the narrow interpretation of Rule 8 which concerns Democracy Watch.

66. Rule 8 provides: *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 reference to the public office holders' conflict of interest must be understood in the context of the definition of public office holders, as set out in the LRA. That definition includes, *inter alia*, members of the Senate and House of Commons and their staff, a person appointed by the Governor in Council or a Minister of the Crown (other than a judge or lieutenant governor of a province), an officer, director or employee of any federal board, commission or other tribunal. Those public office holders are themselves subject to ethical codes, such as the Conflict of Interest Code, and the *Conflict of Interest Code for Members of the House of Commons* (the "MP's Code"), both of which codes are similar in that they establish as principles the need to maintain and enhance public trust and confidence in the integrity of government.

Conflict of Interest Code, s.3

MP's Code, s.2

67. The Conflict of Interest Code and the MP's Code also expressly require those subject to them to avoid real or apparent conflicts of interest, and to resolve any conflicts that may arise in a manner which protects the public interest. These codes expressly demand more from public office holders than simply avoiding breach of the Criminal Code. These codes demand that public office holders uphold the highest ethical standards, and be seen to be doing so. The Lobbyists' Code, working together with those codes, likewise demands more. If the obligation on the lobbyist is simply to not breach the Criminal Code, the Lobbyists' Code would be redundant. According to the Registrar, and in particular the Advisory Opinion, the standard for understanding the conduct required of a lobbyist under Rule 8 is simply that the lobbyist not breach the criminal law. Indeed, that is what the Advisory Opinion seems to suggest, by limiting prohibited conduct to bribery and like circumstances.

Conflict of Interest Code, s.3(5)

MP's Code, s.2(b) and s.2(d)

Criminal Code, ss.119-122 –Corruption and Bribery of Officials

68. The demand for proof of malfeasance makes no sense. Consistent with the cases outlined above on the topic of bias, proof of actual misconduct will be rare. If lobbyists and public office holders can simply deny that there was any attempt to influence when the appearance of a conflict is strong, as in this case, then Rule 8 means nothing.

69. Moreover, the Registrar's interpretation of Rule 8 ignores the reality, which is that a person is influenced by gifts and favours, whether they acknowledge it or not. This is self evident and has been acknowledged in codes of conduct in many different circumstances, and has also been acknowledged by the court in the bias decisions discussed above. People feel obliged to return the favour, which is why actual proof that Peterson did something in return for Campbell's raising approximately $70,000 towards Peterson's re-election is a naive response by the Registrar.

70. By requiring actual proof of improper influence, the Registrar has set the threshold for an investigation into a potential breach of Rule 8 far too high. It is trite to observe that if favours are exchanged, particularly in a subtle way, between a lobbyist and a politician, those two would be the last to confess it. Proof by other means is unlikely, and therefore proof by any means is unlikely and the requirement for such proof means that Rule 8 will rarely apply and will therefore serve as no deterrent.

71. A review of the documents provided by the Registrar, from the Administrative Review to the Ruling shows how certain circumstances were filtered out of consideration, and the final analysis contained in the Ruling was quite narrow. Missing from the Ruling, but found in the Registrar's file, is evidence that suggests Peterson did not "pre-clear" the fundraiser with the Ethics Counsellor, as told to the media; that the Ethics Counsellor and Peterson coordinated their response to the media; and that the Ethics Counsellor had decided his position on the Complaint at least as early as 2002, but instead of disclosing that fact to Democracy Watch chose instead to issue the Advisory Opinion, which neutered Rule 8. Instead of acknowledging that those kinds of facts are the type to raise suspicion, the Registrar simply adopted the Ethics Counsellor's

Advisory Opinion and required actual proof of influence having been successfully applied, and requiring that influence to be improper as akin to illegal.

72. The interpretation of Rule 8 provided by the Ethics Counsellor and adopted by the Registrar denudes the ethical standard of meaning, and if adopted by this court, will send a strong, negative signal that ethical rules and standards are low, which low threshold will be adopted beyond this case.

The Correct Interpretation of Rule 8

73. Rule 8 contains three elements: (1) Lobbyists shall not place public office holders in a conflict of interest (2) by proposing or undertaking any action (3) that would constitute an improper influence on a public office holder.

74. The first criteria, a "conflict of interest", simply means competing interests. In this case, Peterson had competing interests between advancing Campbell's interests and causes and advancing those interests and causes that were part of his portfolio within the Finance Ministry.

75. Proposing or undertaking any action is also simple in this case. Campbell's undertaking of the chairmanship of Friends of Jim Peterson and the organizing of the fundraising event was the relevant action.

76. Finally, it is the meaning of "improper influence" that requires scrutiny. Improper influence does not mean illegal influence. If that were the case, the Rule would add nothing to the Criminal Code. Rather, improper influence must be understood in the context of the LRA, the Lobbyists' Code and the Conflict of Interest Code. The ethics regime established by those instruments is intended to prevent conflicts of interest and ensure the appearance of propriety. The ethics regime is established to develop and maintain the confidence of the public in the fairness of our government. Citizens should not be left wondering whether raising $70,000 for a politician will buy his support for a particular cause. Therefore, the mere fact that the inquiry is alive in the circumstances means the influence is improper. Indeed, interviewing Campbell and divining the position of Peterson through messages to the media to determine whether Campbell secured favour for his clients as a result of raising $70,000 for his friend emphasizes the fact that

there is a strong appearance of impropriety. In this context then, the act of raising funds must be seen as an improper influence.

77. Fundraising is not in and of itself an improper activity, but in this context, the raising of funds by Campbell while he was registered to lobby Peterson makes the influence improper.

78. Democracy Watch submits that the above analysis is the correct one, and that the interpretation offered by the Ethics Counsellor and adopted by the Registrar, a standard which the Ethics Counsellor himself described as high, should be condemned.

79. The respondent seeks deference for the Registrar and suggests it is for him to tell us what the rules of ethics mean, but that submission is mistaken. As citizens, we have been asked to trust our government, and we have been offered these ethics rules as a rationale for why that trust is founded, notwithstanding daily evidence to the contrary. In these circumstances, it is our right and our duty to demand that the ethics regimes be interpreted in a meaningful way. To demand less from the Registrar, or to accept less from the government, is to abdicate our duties as citizens and condemn ourselves to a farcical democracy.

THE APPROPRIATE RELIEF

80. Democracy Watch submits that whether this court finds that the Registrar is biased, or that the interpretation of Rule 8 and its application to the Complaint is flawed, the appropriate relief is to quash the Ruling, provide the correct interpretation of Rule 8, and send the matter back to the Registrar to initiate an investigation pursuant to 10.4 of the LRA based on that interpretation.

81. Alternatively, Democracy Watch asks this court to quash the Ruling, provide a reasonable interpretation of Rule 8, and return this matter to the Registrar for further consideration. However, Democracy Watch submits that if this court finds that the Registrar is biased, it should not allow the Registrar to determine how to proceed with the interpretation of Rule 8, but should instead order that the Complaint be investigated pursuant to s.10.4 of the LRA.

82. Finally, Democracy Watch submits that declaratory relief is appropriate with respect to the issues of bias surrounding the Registrar. This relief is particularly important as the Registrar must still provide rulings on a number of complaints made by Democracy Watch.

PART IV – ORDER REQUESTED

83. Democracy Watch requests the following order:

(a) An order quashing the Ruling and substituting therefor a decision of this court that the Complaint be investigated pursuant to s. 10.4 of the LRA on the basis that there are reasonable grounds to believe Rule 8 has been breached;

(b) 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;

(c) 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; and

(d) Its costs of this application on a substantial indemnity basis, inclusive of GST, and such other relief as this court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF FEBRUARY, 2007

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Martin J. Doane and Laura C. Young

PART V – AUTHORITIES CITED

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