Federal Court  Cour fédérale

Date: 20211214

Docket: T-915-20
T-916-20

Citation: 2021 FC 1417

Ottawa, Ontario, December 14, 2021

PRESENT: Hon. Mr. Justice Henry S. Brown

BETWEEN:

DEMOCRACY WATCH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

OFFICE OF THE COMMISSIONER OF LOBBYING OF CANADA

Moving Party

ORDER AND REASONS

I. Nature of proceeding

[1] This is a motion in writing by the Office of the Commissioner of Lobbying of Canada [Lobbying Commissioner], pursuant to Rules 151, 318, and 369 of the *Federal Courts Rules*,

SOR/98-106 [*Federal Courts Rules*] for: (1) an order that the Commissioner is precluded from providing certain confidential investigative materials in the Certified Tribunal Record it is required to produce, or in the alternative, (2) a confidentiality order for anonymization of portions of the Court's file, and the creation and filing of a redacted public version of the Certified Tribunal Record, along with a confidential version of the Certified Tribunal Record for the Court and for the Parties, and for a necessary extension of time.

[2] For the reasons below the alternative Order is granted with modification.

II. Background

[3] The facts are set out in paragraphs 9 to 18 of my judgment in these matters dated June 15, 2021, *Democracy Watch v Canada (Attorney General)*, 2021 FC 613 [*DW 2021*]:

> [9] On March 12, 2020, the Lobbying Commissioner tabled two reports [Reports] before Parliament regarding an investigation by her office into whether Mr. Benjamin Bergen and Ms. Dana O'Born, respectively, both registered in-house organization lobbyists employed by the Council of Canadian Innovators [CCI], contravened the *Lobbyists' Code of Conduct* [*Code*].
>
> [10] Democracy Watch filed the initial requests (which it called "petitions" although they are simply letters) asking the Lobbying Commissioner to investigate and rule on whether the actions of Mr. Bergen and Ms. O'Born violated Rules 6, 7, 8 or 9 of the *Code.*
>
> [11] Rules 6, 7, 8, 9 of the *Code* state:
>
> > **Conflict of interest**
> >
> > 6. A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.

> In particular:
>
> ***Preferential access***
>
> 7. A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.
>
> 8. A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.
>
> ***Political activities***
>
> 9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).

[12] The Lobbying Commissioner conducted its assessment pursuant to Rules 6 and 9 of the *Code.* The Reports concluded neither Mr. Bergen nor Ms. O'Born contravened the *Code*.

[13] The Report for Mr. Bergen is the decision under review in Court file T-915-20. Mr. Bergen had previously volunteered for the Honourable Chrystia Freeland's by-election campaign in 2013 and acted as co-campaign manager of her re-election campaign in 2015. He also was an executive of Ms. Freeland's electoral district association. The Lobbying Commissioner conducted an investigation "on whether Mr. Bergen contravened Rule 6 (Conflict of Interest) or Rule 9 (Political Activities) of the [*Code*] by lobbying the Honourable Chrystia Freeland or members of her ministerial staff after undertaking political activities on behalf of Ms. Freeland". The investigation found no evidence of lobbying Ms. Freeland, however, "while Ms. Freeland was Minister of International Trade, Mr. Bergen attended a meeting with the Honourable David Lametti, in his former capacity as Parliamentary Secretary to the Minister of International Trade, and with a member of his constituency (MP) staff. CCI reporting this communication in the Registry of Lobbyists."

[14] Pursuant to Rule 9 the Lobbying Commissioner found neither Mr. Lametti in his capacity as Parliamentary Secretary, nor the

member of Mr. Lametti's constituency staff, were "staff" in Ms. Freeland's office for the purposes of Rule 9. Therefore, Mr. Bergen did not contravene Rule 9.

[15] The Lobbying Commissioner also found no basis to conclude Mr. Bergen placed Ms. Freeland in a "real" or "apparent" conflict of interest contrary to Rule 6.

[16] The Report for Ms. O'Born is the decision under review in file T-916-20. Ms. O'Born previously acted as co-campaign manager for Ms. Freeland's re-election campaign in 2015. She also was an executive of Ms. Freeland's electoral district association. The Lobbying Commissioner conducted an investigation "on whether Ms. O'Born contravened Rule 6 (Conflict of Interest) or Rule 9 (Political Activities) of the [*Code*] by lobbying the Honourable Chrystia Freeland or members of her ministerial staff after undertaking political activities on behalf of Ms. Freeland". The investigation found no evidence of lobbying Ms. Freeland, however, "while Ms. Freeland was Minister of International Trade, Ms. O'Born had two logistical telephone conversations to finalize arrangements in relation to CCI's lobby day meeting with the Honourable David Lametti in his former capacity as Parliamentary Secretary to the Minister of International Trade. One of these logistical conversations was with Ms. Gillian Nycum, a member of Mr. Lametti's constituency (MP) staff, on October 13, 2016. The other was with Ms. Megan Buttle, Special Assistant to Mr. Lametti, on October 17, 2016. Ms. O'Born also arranged and attended CCI's lobby day for the clean technology industry on October 20, 2016, which was attended by Mr. Lametti and Ms. Buttle. CCI reported these communications in the Registry of Lobbyists."

[17] Pursuant to Rule 9 the Lobbying Commissioner found neither Mr. Lametti nor Ms. Nycum qualify as "staff" in Ms. Freeland's office for the purposes of Rule 9, and found Ms. Buttle was identified to Ms. O'Born as Special Assistant to Mr. Lametti in his capacity at Parliamentary Secretary. The Lobbying Commissioner found Ms. O'Born did not contravene Rule 9.

[18] The Lobbying Commissioner also found no basis to conclude Ms. O'Born placed Ms. Freeland in a "real" or "apparent" conflict of interest contrary to Rule 6 of the *Code*.

[4] Importantly, the Lobbying Commissioner made "Observations" at the conclusion of both the Bergen and O'Born Reports (subject of T-915-20 and T-916-20). Each called for the expansion of Rule 9 and the redrafting of Rule 6 of the *Code*:

> **Observations**
>
> **RULE 6**
>
> This investigation is the first during my tenure as Commissioner of Lobbying in which I was required to evaluate whether a lobbyist contravened Rule 6 of the Code by acting to place a public office holder in a real or apparent conflict of interest.
>
> Although I determined that Rule 6 had not been contravened in the factual circumstances at issue in this investigation, the analysis required by Rule 6 raised concerns about the manner in which this provision is currently drafted.
>
> My jurisdiction as Commissioner of Lobbying is confined to regulating the conduct of lobbyists. However, by prohibiting lobbyists from placing federal public office holders in real and apparent conflicts of interest, Rule 6 requires the Commissioner of Lobbying to make findings that implicate the conduct of public office holders who may be subject to separate ethical regimes, including those overseen by the Senate Ethics Officer and the Conflict of Interest and Ethics Commissioner.
>
> For example, if I were to determine that a lobbyist placed a federal public office holder in a real conflict of interest, one implication of such a determination would be that the public office holder exercised his or her official public powers, duties and functions knowing that, in doing so, he or she had an opportunity to further his or her own private interests or those of his or her relatives or friends. To the extent that the public office holder was subject to the Ethics and Conflict of Interest Code for Senators, the Conflict of Interest Act or the Conflict of Interest Code for Members of the House of Commons, such conduct would fall squarely within the mandate of either the Senate Ethics Officer or the Conflict of Interest and Ethics Commissioner.
>
> There is also a risk that, in applying rules of conduct under these separate ethics regimes, the Senate Ethics Officer or the Conflict of Interest and Ethics Commissioner may not reach the same conclusion as I do with respect to whether the public office holder was in a situation of real conflict of interest.

In such an eventuality, I am concerned that I would exceed my jurisdiction, trench on the jurisdiction of the Senate Ethics Officer or the Conflict of Interest and Ethics Commissioner and produce conflicting decisions in respect of the same set of facts.

Although none of these outcomes materialized in the particular circumstances at issue in this investigation, they are a potential consequence of the manner in which Rule 6 is currently drafted.

For these reasons, I am of the view that these concerns with Rule 6 should be addressed as part of any future amendments to the Code, the process for which will require stakeholder consultations as contemplated by the *Lobbying Act.* In doing so, it will be necessary to consider amending the rules of conduct to focus exclusively on the specific behaviours of lobbyists without importing the regime governing the ethical conduct of public office holders by implied reference.

RULE 9

In determining that Rule 9 had not been contravened in the circumstances of this particular investigation, I found that parliamentary secretaries do not qualify as "staff" in a minister's office for the purposes of Rule 9.

I found that parliamentary secretaries' status as elected public office holders in their own right militates against the view that they can be understood to qualify as "staff" in a minister's office within the meaning of Rule 9.

I also noted that, although the role of the parliamentary secretary is to assist a minister as directed by the minister, the minister does not have authority over the terms and conditions of the parliamentary secretary's appointment, which is governed by the *Parliament of Canada Act*. Parliamentary secretaries are appointed by Order of the Governor in Council on the recommendation of the Prime Minister pursuant to section 46 of the *Parliament of Canada Act*. The legislative regime governing the appointment of parliamentary secretaries reinforces the view that they do not qualify as "staff" in the office of a minister.

Although parliamentary secretaries do not qualify as staff in a minister's office for the purposes of Rule 9, they share the same political commitments as the minister they are appointed to assist. As such, the rationale for prohibiting lobbyists from lobbying the political staff of an elected official for whom they have undertaken political activities should also apply to parliamentary secretaries.

> For this reason, I am of the view that the scope of application of Rule 9 should be expanded to include individuals, such as parliamentary secretaries, who do not qualify as political staff in the office of an elected official, but who share the same political commitments as the elected official under whose purview they operate. This issue should be addressed as part of any future consultations aimed at revising the Code in accordance with the *Lobbying Act*.

[5] In *DW 2021*, I dismissed the Lobbying Commissioner's motions to dismiss both the Bergen and O'Born applications. However, I struck out certain portions of each. In addition, I granted Democracy Watch public interest standing in each, with costs to the successful party in the cause.

[6] *DW 2021* was not appealed. Therefore the judicial review is proceeding.

[7] The next step in this matter is the filing of a Certified Tribunal Record [CTR], However, despite encouragement from the Court and their best efforts, the parties been unable to agree on what to include in the CTR. As a result, it appears they agreed that the Lobbying Commissioner would apply for an Order withholding from the CTR all material not already public (which Democracy Watch opposes), or in the alternative, the Lobbying Commissioner would apply for a confidentiality Order (to which Democracy Watch consents).

[8] The alternative order drafted by the Lobbying Commissioner provides for a Public CTR and a Confidential CTR. The Confidential CTR would include material before the Lobbying Commissioner with the exception of information on an unrelated matter and certain personal

identifiers and the like which are to be redacted. The Public version would be the same with redactions.

III. Discussion and analysis

A. *The statutory scheme of the Act*

[9] The *Lobbying Act*, RSC 1985, c 44 (4th Supp.) [*Act*] empowers the Lobbying Commissioner to investigate allegations of non-compliance with the *Act* and or with the *Lobbyists' Code of Conduct* [*Code*]. However, Parliament has decided the Lobbying Commissioner – who is an officer of Parliament pursuant to subsection 4.2(1) of the *Act* - must conduct her investigations in private and not disclose any information that comes to her knowledge in the course of an investigation, subject to narrow exceptions:

Investigation in private	**Secret de l'enquête**
10.4(3) The investigation shall be conducted in private.	**10.4(3)** L'enquête menée par le commissaire est secrète.
…	…
Confidentiality	**Caractère confidentiel**
10.4(6) The Commissioner, and every person acting on behalf of or under the direction of the Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless	**10.4(6)** Le commissaire et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements dont ils prennent connaissance dans l'exercice des attributions que leur confère la présente loi. Ces renseignements peuvent toutefois être divulgués :
(a) the disclosure is, in the opinion of the	**a)** si, de l'avis du commissaire, leur

Commissioner, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under section 10.5;	divulgation est nécessaire pour mener une enquête en vertu du présent article ou pour motiver les conclusions contenues dans son rapport;
(b) the information is disclosed in a report under section 10.5 or in the course of a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made to the Commissioner; or	**b)** dans le rapport du commissaire ou dans le cadre de procédures intentées pour infraction à l'article 131 du Code criminel (parjure) relativement à une déposition faite au cours d'une enquête;
(c) the Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising a peace officer having jurisdiction to investigate an alleged offence under this or any other Act of Parliament or of the legislature of a province.	**c)** si le commissaire a des motifs raisonnables de croire que la divulgation est nécessaire pour aviser un agent de la paix compétent pour mener une enquête relativement à une infraction présumée à la présente loi ou à toute autre loi fédérale ou provinciale.
[Emphasis added]	[Je souligne]

[10] Therefore and as I understand the legislation, in part to maintain trust and confidence in the investigation process, the *Act* requires confidentiality, subject to the exceptions in sections 10.4(6)(a), (b), and (c). These exceptions are limited to disclosure of information that is necessary to conduct an investigation, necessary to ground findings or conclusions included in a Report to Parliament, needed for the prosecution of an offence, or needed for the purpose of advising a peace officer with jurisdiction to investigate an alleged offence. Such information is to

be kept confidential, an obligation that Democracy Watch submits and I agree continues even after an investigation has concluded and or a Report to Parliament is made.

[11] In my view, the general importance of confidentiality to the exercise of the Lobbying Commissioner's duties and functions is also reflected in s. 16.2(1) of the *Access to Information Act*, RSC, 1985, c A-1 [*ATIA*] which provides that the "Commissioner of Lobbying shall refuse to disclose any record requested under this Part that contains information that was *obtained or created* by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by or under the authority of the Commissioner." Pursuant to s. 16.2(2), this prohibition continues with respect to information *created* by the Lobbying Commissioner until the investigation and all related proceedings, such as the present judicial review, are concluded. I agree with the Lobbying Commissioner that while subsection 16.2(2) of the *ATIA* is not directly applicable, this is further evidence Parliament intended to create a statutory regime that generally protects the confidentiality of information obtained as a result of investigations pursuant to the *Act*.

B. *The important duty to disclose relevant material: the Federal Courts Rules*

[12] On the other hand, and quite different from the ongoing statutory requirement for confidentiality in the *Act*, Rules 317 and 318 of the *Federal Court Rules* require a "tribunal" (such as the Lobbying Commissioner) to produce a CTR containing all "relevant" materials before the Lobbying Commissioner when she made her decision. Rules 317 and 318 state:

Material from tribunal	**Matériel en la possession de l'office fédéral**

317(1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.	**317 (1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.
…	…
Material to be transmitted	**Documents à transmettre**
318(1) Within 20 days after service of a request under rule 317, the tribunal shall transmit	**318 (1)** Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet:
(a) a certified copy of the requested material to the Registry and to the party making the request; or	**a)** au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;
(b) where the material cannot be reproduced, the original material to the Registry.	**b)** au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.
Objection by tribunal	**Opposition de l'office fédéral**
(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the administrator, in writing, of the reasons for the objection.	**(2)** Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

…	…
[Emphasis added]	[Je souligne]

[13] I agree with the Lobbying Commissioner that Rules 317 and 318 embody the principle that "judicial review is premised on review of the record before the tribunal", see *Canadian National Railway Company v Canada (Transportation Agency)*, 2019 FCA 257 [per Rennie JA] at para 12. I agree with Democracy Watch this foundational principle of judicial review – that judicial review requires production of the record before the tribunal – is not only the general law, but is consistent with the purpose of the *Act*, which is meant to provide transparency in federal lobbying activities. After all, the preamble of the *Act*, declared principles upon which the *Act* is based, including: "free and open access to government is an important matter of public interest," and that "it is desirable that public office holders and the public be able to know who is engaged in lobbying activities". The Respondent's interpretation of the *Act* could if pressed too far, defeat the purposes of the *Act* as determined by Parliament itself.

[14] In *Lukács v Canada (Transportation Agency)*, 2016 FCA 103 [per Stratas JA] at para 12, the Federal Court of Appeal held when determining an objection under Rule 318(2), a court must decide the content of the evidentiary record in the application for judicial review and must apply its own standards rather than defer to the administrative decision-maker's view. The Federal Court of Appeal at paragraph 15 also highlighted the Court's remedial flexibility. This flexibility permits a Court to "craft a remedy that furthers and reconciles, as much as possible, three objectives: (1) meaningful review of administrative decisions […]; (2) procedural fairness; and, (3) the protection of any legitimate confidentiality interests while permitting as much openness as possible in accordance with the Supreme Court's principles in *Sierra Club of Canada v*

Canada (Minister of Finance), 2002 SCC 41 [per Iacobucci J] [ed.].” In my respectful view, each aspect of these reasons are met and implemented in the Order to be issued in this matter.

[15] However, I stress the use of the word “relevant” in Rule 317(1), which triggers the obligation to produce a CTR in Rule 318. In my view, in preparing a CTR in response to a request under Rule 317, there is no requirement to produce all material, only all “material relevant to an application that is in the possession of a tribunal.” [Emphasis added]

[16] Democracy Watch submits the Lobbying Commissioner incorrectly interprets subsection 10.4(6), which allows the Lobbying Commissioner to disclose material if it is necessary to establish the grounds or any findings or conclusions in its report:

Confidentiality	**Caractère confidentiel**
10.4(6) The Commissioner, and every person acting on behalf of or under the direction of the Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless	**10.4(6)** Le commissaire et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements dont ils prennent connaissance dans l’exercice des attributions que leur confère la présente loi. Ces renseignements peuvent toutefois être divulgués:
(a) the disclosure is, in the opinion of the Commissioner, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under section 10.5;	**a)** si, de l’avis du commissaire, leur divulgation est nécessaire pour mener une enquête en vertu du présent article ou pour motiver les conclusions contenues dans son rapport;

[Emphasis added] [Je souligne]

[17] Democracy Watch argues in effect that Parliament enacted this provision in contemplation of judicial review proceedings such as this, such that an applicant for judicial review may insist on the entire tribunal file, because judicial review entails "establishing the grounds for any findings or conclusions" of the Lobbying Commissioner. With respect, I disagree. I am unable to interpret this paragraph in this way because it ignores the closing words of paragraph 10.4(6)(a) – "contained in a report under section 10.5". In my view, one must read this provision "in its entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament", per *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at [Iacobucci J] para 21.

[18] In my view, the statutory exemption in paragraph 10.4(6)(a) permits the Lobbying Commissioner to disclose information "establishing the grounds for any findings or conclusions contained in a report under section 10.5." Without it, the Lobbying Commissioner could not in her report set out the grounds for her findings and conclusions. Therefore in my respectful view, the exemption is intended to allow the Lobbying Commissioner to set out the grounds for her findings and conclusions in her report to Parliament. Without doing so, it is apparent any such report could be less than useful. In addition, interpreting this provision as requested by the Applicant would effectively read out of the statute the closing words of paragraph 10.4(6)(a), begging the question why there are there in the first place.

[19] Democracy Watch submits a confidentiality order should be issued because it would balance out the statutory requirements of confidentiality in the *Act* with the obligations to disclose that normally obtain in any application for judicial review.

[20] I agree, with the important caveat already discussed that disclosure of the entire tribunal file is not in fact provided for in Rules 317 or 318 of the *Federal Courts Rules*. Rather, full disclosure is limited to disclosure of "relevant" material.

C. *Disclosure of what relevant materials?*

[21] The question then becomes what tribunal material is relevant. I have considered and reflected on the submissions of the parties in this respect including *DW 2021*. In my analysis, and to assist in determining the orderly progress of this matter on a going forward basis, the purpose of allowing this judicial review to proceed is to look at questions arising out of the Lobbying Commissioner's Observations in relation to Rules 6 and 9 of the *Code*. I say this because those were the issues actually dealt with by the Lobbying Commissioner. While issues under Rules 7 and 8 were raised by Democracy Watch, in law the review was initiated by the Lobbying Commissioner. As such, I am not satisfied Rules 7 and 8 should be added to this judicial review in the absence of their having been first determined by the Lobbying Commissioner.

[22] Therefore, the issues for this judicial review are the findings of no real or apparent conflict of interest under Rule 6 of the *Code*, and the issue of who is and who is not "staff of the Minister" under Rule 9. In my respectful view, these questions are the determinants in each of the Lobbying Commissioner's Reports to Parliament.

[23] To recall, the relevant provision of the *Code*, Rules 6 and 9 provide:

> **Conflict of interest**
>
> 6. A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.
>
> […]
>
> **Political activities**
>
> 9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).

[24] Despite what I take is Democracy Watch's claim to a wider ranging judicial review, I am not persuaded. In my view, this judicial review is not and should not become a public inquiry or Royal Commission. In my respectful view, the issues now in dispute are those of (1) "real or apparent conflict of interest", and (2) who is and who is not "staff" of the Minister, pursuant to Rules 6 and 9 of the *Code* respectively. Therefore, what must be disclosed is material before the Commissioner that is "relevant" to these two issues.

[25] I note Democracy Watch in its Memorandum limits its request to "relevant" material (see for example, paragraphs 5, 29, 30, 31, 37 and 44). I will therefore so Order.

D. *Other findings*

[26] I note the Lobbying Commissioner does not object to producing in its CTR a number of documents identified in paragraph 17 of her responding Memorandum. These materials are to be included in her CTR and will be set out in the Order issued with these Reasons.

[27] However, the Lobbying Commissioner objects to disclosing the material identified in paragraph 18 of her Responding Memorandum, namely: "… materials from the two investigations that informed the Reports to Parliament include a range of documents over which the Commissioner believes she has a duty to maintain confidentiality due to her statutory obligations, including: transcripts of witness interviews, correspondence with witnesses and documentary evidence obtained from both the subjects and witnesses. In addition, this material contains personal identifying information, including but not limited to, email addresses, phone numbers, addresses, and social security numbers. As well, intermingled with the information from these investigations is information obtained with respect to another unrelated investigation by the Commissioner, which is irrelevant to the two Reports to Parliament under review."

[28] In my view, these objections are valid. For the purposes of this judicial review, these materials need not be included in the Lobbying Commissioner's CTR.

[29] This Court is persuaded that the protections of the agreed proposed alternative confidentiality order should be put in place, which are therefore set out in the confidentiality provision of the Order issued today. With the exception of the addition of the word "relevant"

and the wording of the extension of time, the Order granted is the alternative relief Order requested by the Commissioner.

IV. Extension of time

[30] It is consented to, obviously necessary and meets the relevant requirements, and I therefore grant the extension of time requested, with leave to apply for additional time given the should that be necessary.

[31] The Lobbying Commissioner asks then no costs be awarded to either party. Democracy Watch did not ask for costs. In my discretion therefore no costs are awarded on this motion.

ORDER in T-915-20 and T-916-20

THIS COURT'S ORDER is that:

1. A confidentiality order is made governing the use, disclosure and release of relevant documents and other materials, as set out in these Reasons, following a Rule 317 request in relation to this judicial review of two Reports to Parliament.

2. The following information shall be designated "Confidential Information" in the Certified Tribunal Record:
    a. Material gathered during the investigations, including transcripts of witness interviews, correspondence with witnesses, and documentary evidence obtained from both the subjects of the investigation and witnesses;
    b. Information in the investigation files regarding another investigation that is unrelated and therefore not relevant to the two Reports to Parliament under review; and
    c. Personal identifying information, such as email addresses, phone numbers, addresses, and social security numbers.

3. The Lobbying Commissioner shall provide two versions of the Certified Tribunal Record to the Court and for the parties as follows:
    a. A redacted version for filing in the public record of the Court; and
    b. A confidential version for Court and the parties.

4. The Lobbying Commissioner shall file with the Court Registry a copy of the Public Version of the Certified Tribunal Record, in which the confidential

information listed in paragraph 2 above is redacted. For greater certainty, this Public Version will include the following documents:

a. *Parliament of Canada Act*, RSC 1985, c P-1, ss 46-47;
b. *Members' Conflict of Interest Act*, RSBC 1996, c 287, ss 2-3;
c. *Conflict of Interest Act*, S.C. 2006, c. 9, s.2, ss. 62.1(1) and s. 62.2(2);
d. Volumes 1, 2, and 3 of the Parker Commission Report;
e. Volumes of 1 and 2 of the Oliphant Commission Report;
f. The Open and Accountable Government Guidance Document (2015);
g. The Guide for Parliamentary Secretaries (2016);
h. The Values and Ethics Code for the Public Sector (2011);
i. The Guidance to mitigate conflicts of interest resulting from political activities by the Officer of the Commissioner of Lobbying of Canada;
j. *Stevens v Canada (A.G.)*, 2004 FC 1746, [2005] 2 F.C.R. 629;
k. The Office of the Conflict of Interest and Ethics Commissioner, Trudeau II Report (August 2019);
l. British Columbia, Office of the Conflict of Interest Commissioner:
    i. Kahlon Opinion (2019);
    ii. Campbell Opinion (2009);
    iii. Campbell Opinion (1995);
    iv. Blencoe Opinion (1993);
m. Council of Canadian Innovators Website;
n. Strategis Canada, Entry for Council of Canadian Innovators;

o. Council of Canadian Innovators Registration (Version 3 of 30 from September 15 to November 15, 2016), Office of the Commissioner of Lobbying Registry of Lobbyists;

p. Council of Canadian Innovators Registration (Version 4 of 30 from November 15, 2016 to January 15, 2017), Office of the Commissioner of Lobbying Registry of Lobbyists;

q. Screen capture of the University-Rosedale Federal Liberal Association (FLA) website on July 31, 2017 listing the Members of the FLA Executive;

r. Screen capture of the University-Rosedale Federal Liberal Association (FLA) website on October 11, 2017 listing the Members of the FLA Executive; and

s. Bill Curry, "Lobby group asked to stop offering access to Ottawa in exchange for $10,000", The Globe and Mail (July 11, 2017);

5. The Lobbying Commissioner shall file with the Court Registry three copies of the confidential Version for the Court and for the Parties, placed in a sealed envelope identifying this proceeding and bearing the following markings (the "legend"):

CONFIDENTIAL INFORMATION PURSUANT TO THE ORDER IN FEDERAL COURT FILE NUMBERS T-915-20 AND T-916-20

In accordance with the Court order, this envelope shall remain sealed in the Court's records and shall be opened only in accordance with the terms of said order or by order of the Court and all such sealed envelopes may be opened only by the Court and its staff

6. In a confidential version of the Certified Tribunal Record, the Lobbying Commissioner may redact:

a. information in the investigation files regarding another investigation that is unrelated and relevant to the two Reports to Parliament under review; and

b. personal identifying information, such as email addresses, phone numbers, addresses, and social security numbers;

All other relevant information from the investigation files (transcripts of witness interviews, correspondence with witnesses documentary evidence obtained from both the subjects and witnesses) is to be unredacted.

7. The timeline for the Office of the Commissioner of Lobbying of Canada to serve and file its Certified Tribunal Record pursuant to Rule 318 is extended a further twenty-five (25) days following the production of the Certified Tribunal Record pursuant to Rule 318 of the *Federal Courts Rules* as ordered by this Honourable Court, following its decision on the Respondent's motion for a confidentiality order, with leave to apply for additional time if necessary.

8. The whole without costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-915-20 T-916-20
STYLE OF CAUSE:	DEMOCRACY WATCH v ATTORNEY GENERAL OF CANADA v OFFICE OF THE COMMISSIONER OF LOBBYING OF CANADA

MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	BROWN J.
DATED:	DECEMBER 14, 2021

WRITTEN REPRESENTATIONS BY:

Andrew Montague-Reinholdt	FOR THE APPLICANT
Alexander Gay	FOR THE RESPONDENT
Peter Engelmann Colleen Bauman	FOR THE MOVING PARTY

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