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BY EMAIL (nancy.belanger@lobbycanada.gc.ca)

August 31, 2020

Nancy Bélanger, Commissioner
Office of the Commissioner of Lobbying of Canada
800-410 Laurier Avenue West
Ottawa, ON K1R 1B7

Dear Commissioner Bélanger:

Re: Request for investigation and ruling on the suspected lobbying activities of John McCallum

We act for Rebel News Network Ltd. (“Rebel News”). We are writing on behalf of Rebel News to request an investigation and ruling on whether former Liberal Cabinet Minister and former Canadian Ambassador to China John McCallum’s actions violate the *Lobbying Act*¹ (the “Act”) and/or the *Lobbyists’ Code of Conduct* (the “Code”).

Summary

There are several issues that suggest that Mr. McCallum may be in contravention of the Act and/or the Code. Specifically:

- Mr. McCallum’s communications with the current Minister of Immigration, Refugees and Citizenship and the insight he has gained from those communications have been incorporated into speeches he has given in front of a large Chinese immigration firm. In those speeches he indicated that Canadian government policy is favourable to the position of the Chinese firm. This suggests that Mr. McCallum may have engaged in lobbying during some of these conversations;
- Despite the foregoing Mr. McCallum is not registered as a lobbyist nor has adhered to the reporting requirements of consultant lobbyists as laid out in the Act;
- Mr. McCallum, as a result of being a Minister in Prime Minister Justin Trudeau’s Cabinet is subject to a five-year ban which prohibits him from engaging in lobbying;

¹ RSC 1985, c 44 (4th Supp).

- Mr. McCallum, in his communications with the current Minister of Immigration, Refugees and Citizenship, has admitted that he has not been forthright in regard to his relationship with the large Chinese immigration firm which has been paying him for his insight into Canadian immigration policy and speeches;
- The relationship between Mr. McCallum and the current Minister of Immigration, Refugees and Citizenship could reasonably be seen to create a sense of obligation between the parties which, if Mr. McCallum is found to have been engaged in lobbying, would be a contravention of the Code; and
- Despite the fact that Mr. McCallum has confirmed that he has had conversations with the Minister of Immigration, Refugees and Citizenship, no records regarding these conversations were produced to Rebel News following a request pursuant to the *Access to Information Act*, RSC 1985, c A-1. This suggests that there may have been an effort on the part of the government and/or Mr. McCallum to ensure no records were created related to his potential lobbying.

Request for Your Recusal from Investigation and Ruling

As a preliminary matter, we request that you recuse yourself from making decisions concerning the enforcement of the Act and Code in this case. This matter involves the Trudeau government, including former and present Cabinet Ministers. You were nominated by Prime Minister Trudeau to the position of Lobbying Commissioner² after a process that was controlled by the Prime Minister's Office (PMO) and Cabinet and involved officials from the PMO and the office of Treasury Board Minister who is responsible for the *Lobbying Act*.³

There exists a reasonable apprehension of bias on your part when you play any role in investigating or ruling on situations involving Liberals. We, therefore, request that, pursuant to section 4.4 of the Act you delegate the investigation and ruling on this situation to an independent party such as a provincial ethics/integrity/lobbying commissioner who has no connection to you, the Liberal government Cabinet or any of the federal political parties.

While subsection 4.4(b) prohibits you from delegating the preparation and tabling in Parliament of the report on an investigation as set out in subsection 10.5(1), we request that you accept whatever conclusions are reached by the independent person to whom you delegate the investigation and ruling on the complaint.

Threshold for Investigation of Alleged Violation of Act or Code

Subsection 10.4(1) of the Act states:

² <https://pm.gc.ca/eng/news/2017/11/30/prime-minister-nominates-next-commissioner-lobbying>

³ See: <http://democracywatch.ca/headhunting-firms-confirm-pmo-and-cabinet-staff-on-watchdog-selection-committees/> and <https://ipolitics.ca/2017/12/06/lobbying-commissioner-nominee-applied-watchdog-post-not-one-got/>

Investigation

10.4(1) The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable.

The subsection requires you to investigate if you have reason to believe that an investigation is necessary to ensure compliance with the Code or Act. This wording makes it clear that you do not need evidence of a violation. Investigation is required when a situation simply raises questions concerning compliance with the Code or Act.

In other words, in our submission, you are required to investigate when you have a reasonable belief that an investigation will prevent a violation by ensuring compliance or that your investigation will discover a violation.

Background

Mr. McCallum is a former Liberal Member of Parliament. He was the Minister of Immigration, Refugees and Citizenship in Justin Trudeau's Cabinet from November 4, 2015 to January 10, 2017. He was then appointed Canada's Ambassador to China, a position he held until he was removed in January 2019 after repeatedly speaking in support of the release of Meng Wanzhou, the Huawei executive accused of fraud in the United States and arrested in Canada, where she is in the midst of extradition hearings.⁴ Despite being Canada's Ambassador to China at the time, these comments were consistent with the position of the Chinese Government and inconsistent with the Government of Canada's position.

Reasons for Investigating John McCallum

There are several reasons we believe Mr. McCallum should be investigated for possible violations of both the Act and the Code.

As reported by the Globe and Mail on July 29, 2020, Mr. McCallum's experience and connections have made him a coveted speaker for Wailian Group ("Wailian"), a Shanghai-based company with a 20-year history of smoothing the path for people to immigrate to Canada.⁵

The article goes on to state:

Last fall, Wailian paid to have Mr. McCallum speak to clients in five Chinese cities, according to a person familiar with the arrangement...

⁴ <https://www.theglobeandmail.com/politics/article-critics-call-for-ethics-probe-of-ex-ambassadors-work-at-chinese/>

⁵ <https://www.theglobeandmail.com/world/article-canadas-troubles-with-china-a-bump-in-the-road-will-soon-smooth/>

On Saturday, Mr. McCallum delivered remarks to another event organized by Wailian, this one online, in which he pitched Canada as a worthwhile destination for people from China, and **cited his friends in the current cabinet to offer reassurances...**

“Basically, I think China-Canada relations will be good going forward,” Mr. McCallum said.

Canada’s economy needs Chinese students, tourists and investors, he said, and the Liberal government is eager to reopen Canada’s borders to large numbers of new arrivals. **He based his comments in part on a recent conversation with Marco Mendicino, the Minister of Immigration, Refugees and Citizenship, who “plans to admit large numbers of immigrants to Canada in 2021,” Mr. McCallum said.**

...

Information about the government’s plans, however, is of keen interest to those seeking to immigrate, and to companies such as Wailian, whose business is built around ushering clients through the complexities of the application process.

Mr. McCallum offered reassurances that COVID-19 will create only a temporary pause in Canadian acceptance of new residents. **“The Canadian government remains extremely positive about continuing high levels of immigration,” he said, citing his conversation with Mr. Mendicino.**

...

Less than six months after he was fired as ambassador last year, Mr. McCallum became a senior strategic adviser for McMillan LLP, the law firm.

He first made a public appearance for Wailian last October and November, when he came to China to deliver remarks and pose for photographs. Over two weeks, he appeared at Wailian events in Qingdao, Beijing, Suzhou, Shanghai and Shenzhen. In each city, he spoke to a room with dozens – in some cases more than 100 – prospective clients for Wailian. The company paid for his attendance through an agreement with McMillan, according to the person familiar with the events.

Wailian promotional materials identify Mr. McCallum only as former ambassador and immigration minister, with no reference to McMillan.

Mr. McCallum in turn has called on his federal government connections.

...

Mr. Mendicino spoke with Mr. McCallum in mid-June, Kevin Lemkay, the minister’s spokesman, said in a statement. He “reached out to Mr. McCallum as

a former colleague to discuss immigration and refugee issues,” Mr. Lemkay said, adding: “At no time did Mr. McCallum ever mention this company [Wailian] to the minister.”

Under Canadian law, Mr. McCallum is barred from lobbying the federal government for five years after leaving office. He said his conversation with the minister did not constitute lobbying. Mr. Mendicino “approaches me from time to time for general discussion as a friend and former minister,” Mr. McCallum said in response to questions from The Globe and Mail.

Still, the former ambassador’s comments risk giving a wrong impression, said David Mulroney, who previously served as Canada’s top diplomat to China.

“I would find any public reference in China by Mr. McCallum to a conversation with a current Immigration Minister very troubling,” said Mr. Mulroney. Such a reference could be seen in China as an indication of “continuing *guanxi* or connectedness, the idea that the former office holder retains a continuing degree of influence. Canadians in that position, like Mr. McCallum, should be very careful about business relationships in China for this very reason.”

Wailian describes itself as a major immigration company, with some 500 employees across 12 Chinese cities. Reached by telephone, a representative for the company described Mr. McCallum as a special guest.

[Emphasis added]

1. Violations of the Act

(a) Requirement to Register/File a Return

Under subsection 5(1) of the Act, consultant lobbyists are required to register in the Registry of Lobbyists if they (a) communicate with public office holders “in respect of” various policy, program, financial or contract matters, or (b) arrange a meeting between a public office holder and any other person.

Subsection 5(1) states:

Requirement to file return

5 (1) An individual shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the “client”), undertakes to

(a) communicate with a public office holder in respect of

- (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,
 - (ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,
 - (iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,
 - (iv) the development or amendment of any policy or program of the Government of Canada,
 - (v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or
 - (vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or
- (b) arrange a meeting between a public office holder and any other person.

The *Lobbyists Registration Regulations*⁶ (the “Regulations”) states at section 6 that only oral, pre-arranged communications with public office holders are required to be disclosed in the monthly communications reports if they are initiated by the lobbyist and are in respect of any of the matters listed under 5(1)(a) of the Act, and if they are initiated by the public office holder and concern any of the matters listed in 5(1)(a)(v) or (vi) of the Act (i.e. financial or contract matters).

The foregoing article suggests that Mr. McCallum and current Minister of Immigration, Refugees and Citizenship, Marco Mendicino have communicated on several occasions while Mr. McCallum has been a paid speaker for Wailian. The content of Mr. McCallum’s remarks at Wailian-hosted events suggests he received assurances from his friends in the current cabinet regarding immigration policy. While there may be questions as to whether Mr. McCallum “undertook” to communicate with Mr. Mendicino with respect to some of the conversations, the fact that communications have happened from “time to time” and the content of those communications was obviously “in respect of” Canadian immigration policy in itself warrants further investigation to determine whether Mr. McCallum was obligated file a return under section 5 of the Act.

According to a search conducted of the Registry of Lobbyists, Mr. McCallum has not registered a monthly communication report pursuant to section 5 of the Act and, therefore, if he initiated any of the communications and they satisfy the requirements of the Regulations, he may be in breach of the requirement to register.

⁶ SOR/2008-116.

(b) Breach of Five-Year Prohibition on Lobbying

Mr. McCallum is also subject to a five-year prohibition on lobbying. This applies to former designated public office holders as defined in subsection 2(1) of the Act. Ministers are listed as designated public office holders.

The prohibition is laid out in section 10.11(1). It states:

10.11 (1) No individual shall, during a period of five years after the day on which the individual ceases to be a designated public office holder,

(a) carry on any of the activities referred to in paragraph 5(1)(a) or (b) in the circumstances referred to in subsection 5(1);

(b) if the individual is employed by an organization, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that organization; and

(c) if the individual is employed by a corporation, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that corporation if carrying on those activities would constitute a significant part of the individual's work on its behalf.

This post-employment restriction excludes designated public office holders like Mr. McCallum from being **paid** to work as consultant lobbyists. This prohibition begins immediately following the last day of employment as a designated public office holder. Within the last five years, Mr. McCallum has held positions both as the Minister of Immigration, Refugees and Citizenship in Justin Trudeau's Cabinet and Canada's Ambassador to China. He is a designated public office holder and, therefore, subject to the five-year prohibition on lobbying.

The Commissioner of Lobbying can exempt an individual from the five-year prohibition, as long as it would not be contrary to the purposes of the *Act*. *However, a review of the list of granted exemptions⁷ shows Mr. McCallum has received no exemption from the five-year prohibition.*

Given that Mr. McCallum has received payments from Wailian, a major Chinese immigration company, and has communicated with the current Minister of Immigration, Refugees and Citizenship in relation to matters that are of direct interest to the company from whom he has received payments it would be prudent to ensure money is not being funneled through Wailian to be used in lobbying activities - especially as Mr. McCallum is not permitted to engage in such activities as a function of section 10.11 of the Act.

In the event that Mr. McCallum acted as a consultant lobbyist pursuant to section 5 of the Act, Mr. McCallum could, (and, we submit, should) be found to be in breach of the registration and

⁷ <https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/exmptnsGrntd?lang=eng>

reporting requirements of the Act as well as in breach of the five-year prohibition on lobbying to which he, as a former Minister and Ambassador, is subject.

2. Violations of the Code

Section 10.3 of the Act states that all consultant lobbyists (who are required to file a return under subsection 5(1)), are required to comply with the Code.

Your website succinctly summarizes the objectives of the Lobbyists' Code of Conduct:⁸

The purpose of the Code is to assure the Canadian public that lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making. In this regard, the Code complements the registration requirements of the *Lobbying Act*, which came into force on July 2, 2008.

Lobbyists — individuals who are paid to communicate with federal public office holders — are required to comply with the code. The term "public office holder" applies to virtually anyone occupying a position in the federal government.

...

The Commissioner of Lobbying has the authority to administer and enforce the *Lobbyists' Code of Conduct* if there is an alleged breach of either a principle or a rule of the Code.

The Professionalism principle in the Code requires that lobbyists follow the spirit of the registration requirements of the Act, and the Integrity and Honesty principle requires that lobbyists "conduct with integrity and honesty all relations with public office holders." The Openness principle states that "[lobbyists] should be open and frank about their lobbying activities."

Part 1 above suggests that Mr. McCallum may have been lobbying Mr. Mendicino and failing to follow the registration requirements of the Act. This, if found to be true, is a breach of the Professionalism principle of the Code.

Furthermore, as noted in the Globe and Mail article, at no point during his communications with Mr. Mendicino, did Mr. McCallum ever mention to the Minister that he was being paid by a large Chinese immigration company for "speaking engagements" and occasionally referring to the content of their communications in his speeches. This, if true, suggests that Mr. McCallum was not being forthright with Mr. Mendicino and would be a breach of both the Integrity and Honesty principle and the Openness principle.

⁸ <https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/>

It also points to a possible breach of the Transparency rules which require a lobbyist to:

when communicating with a public office holder, disclose the identity of the person, organization or corporation on whose behalf the communication is made and the nature of their relationship with that person, organization or corporation, as well as the reasons for the approach.

Lastly, the relationship between Mr. McCallum and Mr. Mendicino may give rise to a conflict of interest under the Code.

Rule 8 states, under the heading “Preferential access”:

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.

The two men are friends, and according to the Globe and Mail article, Mr. Mendicino has “from time to time” reached out to Mr. McCallum for “general discussions.” The content of the discussions is not clear. However, given Mr. McCallum’s history as a veteran federal politician who began his political career in 2000 and served in the governments of three different Liberal prime ministers and Mr. Mendicino’s relative inexperience on the portfolio (he has only been an MP since 2015 and the Minister of Immigration, Refugees and Citizenship for less than nine months) it would not be unlikely for Mr. Mendicino to seek guidance and advice from his predecessor. This may give rise to a relationship that could reasonably be seen to create a sense of obligation.

In fact, as noted in the Globe and Mail article, the optics and the fact that Mr. McCallum refers to his conversations with Mr. Mendicino in his Waillian talks, have already raised red flags for some individuals - one of them being David Mulroney, who was the Canadian Ambassador to China from 2009 to 2012.

Therefore, if Mr. McCallum is found to have been lobbying Mr. Mendicino, we submit that those activities are not only a breach of the Act, but also a breach of several of the core principles and rules laid out in the Code.

3. Efforts to Keep Potential Lobbying Secret

In addition to the foregoing, on July 31, 2020, Rebel News submitted a request under the *Access to Information Act*, RSC, 1985, c A-1 to the Ministry of Immigration and Citizenship seeking “copies of all documents, including e-mails, text or instant messages, slack messages, WhatsApp messages, memos, media lines, etc., regarding discussions between the Minister and former MP/minister/ambassador John McCallum, as Mr. McCallum discussed in his recent speech: ‘He based his comments in part on a recent conversation with Marco Mendicino, the Minister of Immigration, Refugees and Citizenship’...” The request then provided a link to the Globe and Mail article reproduced above.

On August 28, 2020, Rebel News received a response advising that: “Following a thorough search of our information holdings, I regret to inform you that no records were found that respond to your request.”

Given that Mr. McCallum has expressly confirmed that he has had discussions with Mr. Mendicino, the lack of documentation regarding these conversations is concerning and suggests and effort on the part of the Ministry and/or Mr. McCallum to ensure those discussions were not recorded.

Conclusion

We ask that an investigation into the activities of Mr. McCallum be conducted to determine whether he has violated both the Act and/or the Code by improperly lobbying Mr. Mendicino, the current Minister of Immigration, Refugees and Citizenship. There are reasons to suspect that Mr. McCallum may have been using his connections in the Liberal government to advance the interests of Wailian, a Chinese immigration company. This suggests that Mr. McCallum is in contravention of the Act and Code and should be held accountable for such breaches.

Yours truly,

Jensen Shawa Solomon Duguid Hawkes LLP



Andrea MacLean

AM:jjjs