

Yves Côté
Commissioner of Canada Elections
c/o Elections Canada
30 Victoria Street
Gatineau, Quebec
K1A 0M6

RE: Questions about the relationship between Ethical Oil and the Conservative Party of Canada that we believe merit investigation

April 7, 2014

Dear M. Côté,

I am writing with regards to the activities of the Ethical Oil Institute (Ethical Oil) and the Conservative Party of Canada (Conservative Party).

A. Summary of questions we believe merit investigation

Ethical Oil states on its website that it receives donations from businesses, and possibly also donations in excess of \$1,200 annually from individuals. Given the many ties between Ethical Oil and the Conservative Party, I believe that this situation raises questions that merit investigation to determine if Ethical Oil is colluding with the Conservative Party to violate the measures in the *Canada Elections Act* (S.C. 2000, c. 9 -- *CEA*) that prohibit donations to federal political parties from businesses, and possibly also violating the measure in the *CEA* that prohibits donations to parties in excess of \$1,200 annually from individuals.

B. Evidence that Ethical Oil Institute receives donations from businesses

The Ethical Oil Institute does not publicly disclose its funding sources, but its website states that it does “accept donations from Canadian individuals and companies, including those working to produce Ethical Oil.” This indicates clearly that the organization receives corporate contributions.

C. Evidence of ties between Ethical Oil and the Conservative Party

There is compelling evidence of a direct relationship and a coordinated communications strategy between the Ethical Oil Institute and the CPC, including mirrored messaging from the Ethical Oil Institute and Conservative Cabinet Ministers, and crossover between the Ethical Oil Institute staff and Ministerial staff.

The Ethical Oil Institute claims that it is an independent, grassroots organization. It states that its website, EthicalOil.org, “began as a blog created by Alykhan Velshi” in July 2011 to promote ideas espoused by journalist Ezra Levant in his book *Ethical Oil: The Case for Canada’s Oil Sands*.

However, the organization's Articles of Association name prominent pro-oil sands lawyer Thomas Ross, and Ezra Levant himself, as its two officers.

As for Alykhan Velshi, immediately prior to "creating" EthicalOil.org, Mr. Velshi was Director of Communications and Parliamentary Affairs for then-Minister of Citizenship and Immigration, Jason Kenney. Just months after launching EthicalOil.org, he returned to government, accepting a senior position with the Prime Minister's Office.

Kathryn Marshall took over from Mr. Velshi as spokesperson for Ethical Oil in September 2011.¹ Ms. Marshall also has Conservative Party connections and is married to Hamish Marshall, a former manager of strategic planning in Stephen Harper's PMO. Mr. Marshall's company, Go Newclear Productions, both created and hosted websites for both Ethical Oil and Conservative cabinet ministers Joe Oliver, Pierre Poilievre and Jason Kenney.² There are indications that these web-sites were programmed by Travis Freeman, who was simultaneously a member of the Go Newclear team and an employee of the Conservative Caucus Research Bureau.³

Jamie Ellerton, the next Ethical Oil Institute Spokesperson and Executive Director from January 2012 to April 2013, also has a close association with Minister Kenney, having been his Executive Assistant from July 2008 to September 2010. After working for Minister Kenney, Mr. Ellerton was Executive Assistant to Ontario Conservative Party leader Tim Hudak.

The employees of the Ethical Oil Institute are not the only physical link between the organization and the Conservative Party of Canada. As has been pointed out in the media, the Ethical Oil Institute's mailing address was previously used by Treasury Board President and Conservative MP Tony Clement's re-election campaign.⁴

Beyond this apparent coordination of resources, the Ethical Oil Institute and its spokespeople have consistently both anticipated and echoed Conservative Party messaging about the oil sands.

On January 2, 2012, the Ethical Oil Institute launched a television ad campaign and media blitz attacking environmental organizations that oppose the Northern Gateway Pipeline. The ads urged people to go to the website OurDecision.ca (hosted by Go Newclear but publicly associated with Ethical Oil).

This website urged individuals to "Use the form below to write federal to Natural Resources Minister Joe Oliver and tell him we don't want foreign interests or their local puppet groups manipulating our decision about our pipeline. Ban foreigners and their

¹ Alykhan Velshi, "Welcome Kathryn Marshall". <http://www.ethicaloil.org/news/welcome-kathryn-marshall/>.

² Emma Pullman, "Cozy Ties: Astroturf 'Ethical Oil' and Conservative Alliance to Promote Tar Sands Expansion". <http://www.desmogblog.com/cozy-ties-astroturf-ethical-oil-and-conservative-alliance-promote-tar-sands-expansion>

³ Deep Climate blog, "Ethical Oil political connections, part 1: Conservatives Go Newclear", <http://deepclimate.org/2012/01/13/ethical-oil-political-connections-part-1-conservatives-go-newclear/>

⁴ Uechi, J. "Coincidence: Ethical Oil address the same as Conservative MP Tony Clement's old campaign." Vancouver Observer. Jan 12, 2012. <http://www.vancouverobserver.com/blogs/earthmatters/2012/01/12/coincidence-ethical-oil-address-same-conservative-mp-tony-clements-old>

local puppets [identified on the site as the West Coast Environmental Law Association, Environment Defence Canada, Pembina Environmental Foundation, Ecojustice Canada Society and Corporate Ethics International] from appearing before the pipeline review panel.”

A statement from then-Ethical Oil spokesperson Kathryn Marshall decried “local lobbyists” funded by “foreign special interests”. On January 5, 2012, Ms. Marshall said Canada “must take a stand against foreigners and their lobbying groups interfering in our decision.”

The next day, Prime Minister Stephen Harper referred to concerns that had been brought to his attention about “foreign money” interfering with the public consultations on the Northern Gateway project.⁵

Within a week, then-Minister of Natural Resources, Joe Oliver, issued an extraordinary, inflammatory open letter to Canadians about the urgent need to streamline the approval process for natural resource projects.

Minister Oliver described how “environmental and other radical groups... use funding from foreign special interests.”⁶

Applauding Minister Oliver’s statement, the Ethical Oil Institute’s blog referred to the “fanatical” actions of “extremist anti-oil groups.”

Still in January 2012, the Prime Minister’s Office sent out an Info-Alert describing four Canadian environmental organizations as “foreign radicals” trying to “hijack the process” of the Northern Gateway Joint Review Panel.⁷

Throughout the spring of 2012, the Ethical Oil Institute consistently attacked environmental organizations, painting them as foreign-funded extremists.

This culminated in an April 24, 2012 letter to the Canada Revenue Agency requesting that the David Suzuki Foundation’s charitable status be reviewed.

Environment Minister Peter Kent then made public accusations that environmental charities were engaging in money-laundering. Kent said:

Essentially what our government is doing through the finance committee is investigating allegations that offshore funds have improperly been funnelled through — laundered if you will, that’s a fairly accurate word — through

⁵ Galloway, G. “Foreign money could gum up pipeline approval, Harper warns.” The Globe and Mail. Jan 6, 2012. <http://www.theglobeandmail.com/news/politics/ottawa-notebook/foreign-money-could-gum-up-pipeline-approval-harper-warns/article2294309/>

⁶ The Media Room, National Resources Canada. Press Release. Jan 9, 2012. <http://www.nrcan.gc.ca/media-room/news-release/2012/1/1909>

⁷ O’Malley, Kady. “PMO InfoAlerteBot After Dark: “Foreign radicals threaten further delays”.” CBC News. Jan 27, 2012. <http://www.cbc.ca/newsblogs/politics/inside-politics-blog/2012/01/pmo-infoalerte-bot-after-dark-foreign-radicals-threaten-further-delays.html>

Canadian organizations that have charitable status to be used in ways that would be improper given that charitable status.⁸

When the federal government released the 2012 Budget, they allocated \$8 million in additional funds to the Canada Revenue Agency to investigate the political activities and funding sources of charities.

At each stage of this campaign, the Ethical Oil Institute anticipated, applauded and assisted the government's attacks on environmental organizations with identical messaging.

The links between Ethical Oil and the Conservative Party of Canada are clear. Ethical Oil's spokespeople, themselves Conservative Party insiders and former staff, release specific messages that are repeated by Ministers and even the Prime Minister in a fashion that appears coordinated.

D. How *Canada Elections Act* measures apply to this situation

1. The key measures in the *Canada Elections Act*

Although the *Canada Elections Act* (S.C. 2000, c. 9 – *CEA*) does not have a preamble or purpose section, the many detailed measures in the *CEA* make it clear that its purpose is to ensure that voters are allowed to vote freely and fairly and accurately in elections and by-elections, and that fundraising by political parties, riding associations and candidates is restricted (with some prohibitions, and with details disclosed) as is their spending, and that all the detailed rules in these areas are administered by Elections Canada, and enforced by the Commissioner of Canada Elections together with the Director of Public Prosecutions.

Several measures in the *CEA* also make it clear that the intent of the *CEA* is to keep political parties and candidates completely separated from third parties (interest groups like Ethical Oil).

Section 405.2 of the *CEA* states:

“No circumvention of limits

405.2 (1) No person or entity shall

(a) circumvent, or attempt to circumvent, the prohibition under subsection 404(1) or a limit set out in subsection 405(1) or section 405.31; or

(b) act in collusion with another person or entity for that purpose.”

Subsection 404(1) states that only “an individual who is a citizen or permanent resident as defined in subsection 2(1) of the [*Immigration and Refugee Protection Act*](#)” is allowed to make donations of money, property or services to federal political parties, riding associations and all type of federal political candidates in Canada.

⁸ CBC News. “Environmental charities 'laundering' foreign funds, Kent says.” May 1, 2012. <http://www.cbc.ca/news/politics/environmental-charities-laundering-foreign-funds-kent-says-1.1165691>

Subsection 405(1) sets out the limits on individual donations. The current annual legal limit is \$1,200 annually to each party, and an additional \$1,200 annually as a combined total to the riding associations of each party, and during an election year an additional \$1,200 as a combined total to the campaigns of the candidates of each party.

Section 405.31 states that no individual is allowed to make a donation in cash of more than \$20.

Section 423 of the *CEA* mentions third parties specifically and clarifies how the word “collusion” should be interpreted. It states:

“Prohibition — election expenses

423. (1) No chief agent of a registered party shall incur election expenses on its behalf the total amount of which is more than the maximum amount calculated under section 422.

Prohibition — collusion

(2) No registered party and no third party, within the meaning of section 349, shall collude with each other for the purpose of circumventing the maximum amount referred to in subsection (1).”

This section does not require a party and a third party to be the same entity, or even for the party to control the third party, or for the spending to come from the same bank account – all that is required is collusion between the party and the third party.

Subsection 443(2) of the *CEA* similarly prohibits election candidates from colluding with third parties to exceed expense limits, and section clause 478(2)(b) similarly prohibits nomination race candidates from colluding with third parties to exceed expense limits.

These sections address spending done separately by the party (or election candidate, or nomination race candidate), and the third party that “colludes” to exceed the spending limits.

There are other sections in the *CEA* that inform the interpretation of the word “collusion.”

Section 351 states:

“No combination to exceed limit

351. A third party shall not circumvent, or attempt to circumvent, a limit set out in section 350 in any manner, including by splitting itself into two or more third parties for the purpose of circumventing the limit or acting in collusion with another third party so that their combined election advertising expenses exceed the limit.”

So, under this section, it is illegal to split into two third parties when you are actually one third party, and then collude to exceed the ad spending limit that applies to third parties, and it is also illegal to collude with another already existing third party.

This rule relates to the relationship between the Conservative Party and Ethical Oil because it establishes the principle that it is illegal to set up an entity that is directly connected to an existing entity in order to try to get around restrictions and limits set out in the *CEA*.

In terms of evidence of collusion, the back and forth of Conservative staff to Ethical Oil is also an issue that sections in the *CEA* address and relate to – all with the purpose of preventing collusion and other violations of the *CEA*.

Clause 354(2)(b) states that the registered agent of a political party is prohibited from being a third party's financial agent. Clauses 355(3)(f) and (g) state that the chief agent and registered agent of a political party are prohibited from being a third party's auditor.

Similarly, clause 377(2)(i) states that the financial agent of a third party is prohibited from being a political party's auditor – for the same reason, to prevent collusion.

These measures show that the intent of the *CEA* is to keep third parties and registered parties separated, as connections in staffing facilitate collusion and other violations of the *CEA*.

Similar provisions in the *CEA* include: clause 435.1(2)(g) which states that the financial agent of a third party is prohibited from being the auditor for a party leadership race contestant, and; clause 85(2)(i) which states that the financial agent of a third party cannot be the auditor for an election candidate.

2. How these measures apply to the relationship between Ethical Oil and the Conservative Party

Section 423 of the *CEA* essentially says that even if a party and a third party are separate entities, and even if the party does not control the third party, and even if their election spending does not come from funds in the same bank account – it is simply illegal for them to collude in their election spending in order to violate the election spending limits.

Section 405.2 similarly prohibits anyone or any entity acting in collusion with any other person or entity to violate the donation restrictions and limits in the *CEA*.

How should “collusion” be defined? As noted above, the *CEA* prohibits setting up a new entity in order to collude with an existing entity in ways that violate the election spending measures in the *CEA*, and the *CEA* also prohibits specific officials of parties from being officials for third parties, and vice versa.

It is clear from these measures that the intent of the *CEA* is not only to prevent entities from colluding but also to prevent entities from structuring themselves in ways that facilitate collusion, including by having people from an existing entity set up a new entity.

Given these measures, while Ethical Oil and the Conservative Party are legally separate entities, and while they are raising funds separately and placing those funds into separate bank accounts, the ties between the two organizations, and the coordination of their actions, raises questions that merit investigation about whether Ethical Oil and the Conservative Party are colluding in ways and for purposes that the *CEA* prohibits.

Specifically, given that Ethical Oil receives donations from businesses, and likely also donations from individuals in amounts greater than the \$1,200 annual limit for individual donations, it raises questions that merit investigation whether Ethical Oil is colluding with

the Conservative Party in ways that violate section 405.2 of the *CEA* which prohibits collusion for the purpose of violating the restrictions and limits on donations to political parties.

If the election spending limit rule against collusion in section 423 (and the other spending collusion sections set out above) applies to spending by a party and third party that is done separately, it makes sense that the donation collusion prohibition rule in section 405.2 should be interpreted to cover situations in which the fundraising by a party and a third party is done separately.

Therefore, as Commissioner, I believe that you should conclude that collusion to violate the donation restrictions and limits in the *CEA* does not require that a third party transfer the donations it gathers to a political party.

In other words, the interpretation of measures in the *CEA* that I believe you should use as Commissioner, and therefore the enforcement approach I believe you should take, is as follows:

- when a third party receives donations and raises funds in ways that a political party is prohibited from doing;
- and when that third party then spends the funds it raises on activities that supporting the political party's agenda;
- and when that third party is started up by a person who is involved in the political party and the third party has many staff who are actively involved in the political party;

then you should conclude that the activities and relationship between the third party and the political party amounts to collusion that violates the donation restrictions and limits in the *CEA*, and therefore is collusion that violates clause 405.2(1)(b) of the *CEA*.

E. Conclusion and request for investigation

The evidence set out above in sections B and C shows that money raised by Ethical Oil from companies is being used for activities that have been developed and are being implemented by people directly involved in the Conservative Party of Canada.

The measures from the *Canada Elections Act (CEA)*, and legal arguments, set out above in section D point to a enforcement standard that means if a third party raises funds in ways and from sources that a political party is prohibited from doing, and if the third party uses those funds to support the agenda of a political party, and if the third party was started by a member of the political party and is has staff people who are active in the political party, then collusion has occurred that violates the prohibition in clause 405.2(1)(b) against collusion to violate the donation restrictions and limits that apply to political parties.

I believe the above evidence and legal measures raise questions that merit investigation by you to determine whether the Ethical Oil Institute and the Conservative Party of Canada have violated clause 405.2(1)(b) of the *CEA* by colluding to violate the donation restrictions and limits that apply to political parties.

I look forward to hearing back from you promptly about this matter.

Regards,

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