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STATUTORY REVIEW OF THE *LOBBYING ACT*: ITS FIRST FIVE YEARS

Report of the Standing Committee on Access to Information, Privacy and Ethics

Pierre-Luc Dusseault, M.P.
Chair

MAY 2012

41st PARLIAMENT, 1st SESSION

Published under the authority of the Speaker of the House of Commons

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has the honour to present its

3rd REPORT

Pursuant to the Order of Reference of Wednesday, September 28, 2011, section 14.1 (1) of the *Lobbying Act*, and the motion adopted on Tuesday, November 29, 2011, the Committee proceeded to the statutory review of the *Lobbying Act* and has agreed to report the following:

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BACKGROUND: THE FEDERAL *LOBBYING ACT*

A. History of the Act

The term "lobbying" refers generally to any effort to communicate with legislators or other public officials against or in favour of a specific cause when carried out for compensation. Until July 2008, lobbying at the federal level in Canada was governed by the *Lobbyists Registration Act*, which came into force in 1989 and established a registration system intended to foster the public's right to know and to be informed regarding who is trying to influence government policy in this country.

The Act was amended in June 2003[1] following review by the House of Commons Standing Committee on Industry, Science and Technology (discussed below) in 2001.[2] Amendments at that time sought to: improve investigations under the Act and enforcement of the statutory requirements; simplify and harmonize the registration requirements for lobbyists; clarify and improve the language of the Act; and give effect to several technical amendments.[3]

In December 2006, the *Federal Accountability Act*[4] made substantive amendments to the *Lobbyists Registration Act*, including renaming the law the *Lobbying Act*, presumably because it seeks to regulate the activities of lobbyists, rather than simply monitor them by means of a registry system. Some noteworthy changes brought about by the enactment of the *Lobbying Act*[5] on July 2, 2008 included:[6]

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1 An Act to amend the *Lobbyists Registration Act*, S.C. 2003, c. 10 (Bill C-15), http://laws.justice.gc.ca/eng/AnnualStatutes/2003_10/page-1.html. Although Bill C-15 received Royal Assent on June 11, 2003, it did not come into force until June 20, 2005, due to time needed to update related regulations as well as the electronic filing system for online registration. As noted below, the delay in coming into force of Bill C-15 served to delay the next 5-year statutory review of the Act, per section 14.1, until now, 2010.

2 House of Commons, Standing Committee on Industry, Science and Technology, *Transparency in the Information Age: The* Lobbyists Registration Act *in the 21st Century*, June 2001, http://www2.parl.gc.ca/content/hoc/Committee/ 371/INST/Reports/RP1032097/indurp04/indurp04-e.pdf.

3 Kieley, Geoffrey P., *Bill C-15: An Act to amend the* Lobbyists Registration Act, Publication no. LS-443E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised March 19, 2003, http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=3161&Session=11&List=ls.

4 *Federal Accountability Act* (2006, c. 9), http://laws-lois.justice.gc.ca/eng/acts/F-5.5/.

5 *Lobbying Act* (1985, c. 44 [4th Supp.]), http://laws.justice.gc.ca/en/L-12.4/.

6 Holmes, Nancy and Dara Lithwick, *The Federal Lobbying System: The* Lobbying Act *and the* Lobbyists' Code of Conduct, Publication No. 2011-73-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised June 28, 2011, p. 3.

- replacement of the position of Registrar of Lobbyists with that of Commissioner of Lobbying, an independent Officer of Parliament, with expanded investigative powers and an education mandate;

- identification of a new category of public office holder within the federal government, called Designated Public Office Holder (DPOH);

- imposition of a five-year, post-employment prohibition on a Designated Public Office Holder becoming a lobbyist once that individual has left office;

- new filing requirements for lobbyists and an obligation, when requested by the Commissioner of Lobbying, for DPOHs or former DPOHs to confirm information that is provided by lobbyists about communications with DPOHs;

- a ban on making or receiving any payment or other benefit that is contingent on the outcome of any consultant lobbyist's[7] activity; and

- extension from two to ten years of the period during which possible infractions or violations under the *Lobbying Act* and the Lobbyists' Code of Conduct may be investigated and prosecution may be initiated.

On September 20, 2010, new regulations entered into force amending the *Designated Public Office Holder Regulations*.[8] The amendments added MPs, Senators, and staff of the Office of the Leader of the Opposition (OLO) hired under section 128(1) of the *Public Service Employment Act* (PSEA) to the list of "designated public office holders."

B. Scope and Application of the Act[9]

The *Lobbying Act*'s preamble provides that free and open access to government is an important matter of public interest, that lobbying public office holders is a legitimate activity, that it is desirable that public office holders and the public be able to know who is engaged in lobbying activities, and that a system for the registration of paid lobbyists should not impede free and open access to government.

The *Lobbying Act* defines activities that, when carried out for compensation, are considered to be lobbying. These activities are detailed in the *Lobbying Act*. Generally

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7 A consultant lobbyist is an individual (for example, a lawyer, accountant, public relations specialist or other professional) who is paid to lobby on behalf of a client.

8 *Designated Public Office Holder Regulations* (SOR/2008-117) as amended by SOR/2010-192, s. 1, http://laws.justice.gc.ca/eng/SOR-2008-117/FullText.html.

9 Holmes, Nancy and Dara Lithwick, *The Federal Lobbying System:* The Lobbying Act *and the Lobbyists' Code of Conduct*, Publication No. 2011-73-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised June 28, 2011, p. 4.

speaking, they include communicating with public office holders with respect to changing federal laws, regulations, policies or programs, obtaining a financial benefit such as a grant or contribution, in certain cases, obtaining a government contract, and in the case of consultant lobbyists (see below), arranging a meeting between a public office holder and another person.[10]

"Public office holders", as defined under the Act, are virtually all persons occupying an elected or appointed position in the federal government, including staff of members of the House of Commons and the Senate.[11] The *Lobbying Act* also contains the definition "designated public office holder." The term refers to key decision makers within government and includes ministers of the Crown, their exempt staff, senior public servants (e.g., deputy or assistant deputy ministers) and other positions designated by regulation. As noted above, MPs, Senators, and certain OLO staff members were recently added to the list of designated public office holders under the legislation. The Act also treats as a designated public office holder any member of a Prime Minister's transition team.[12] As touched on above, designated public office holders are subject to post-employment limitations on lobbying, and lobbyists have particular disclosure requirements when meeting with designated public office holders.

The *Lobbying Act* applies to paid lobbyists who communicate with federal public office holders on behalf of a third party. Three types of lobbyists are identified by the Act:

1. Individuals who lobby on behalf of clients, who must register as consultant lobbyists.

2. Senior officers of corporations that carry on commercial activities for financial gain, who must register as in-house lobbyists (corporate) when one or more employees lobby and where the total lobbying duties of all employees would constitute a significant part of the duties of one employee (20% or more).

3. Senior officers of organizations that pursue non-profit objectives, who must register as in-house lobbyists (organizations) when one or more employees lobby and where the total lobbying duties of all employees would constitute a significant part of the duties of one employee (20% or more).

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10 Office of the Commissioner of Lobbying of Canada, *The* Lobbying Act — *A Summary of New Requirements*, June 2008, http://publications.gc.ca/collections/collection_2009/orl-bdl/lu80-1-2008E.pdf.

11 The Act defines "public office holder" as any officer or employee of the federal government, including members of the Senate or House of Commons and members of their staff, Governor in Council appointees, ministers, officers, directors or employees of any federal board, commission or tribunal, members of the Canadian Armed Forces and members of the Royal Canadian Mounted Police.

12 Defined as any person identified by the Prime Minister as having had the task of providing support and advice to him or her during the transition period leading up to the swearing in of the Prime Minister and his or her ministry.

The *Lobbying Act* requires lobbyists to register in an initial return, all types of communication with public office holders. As well, the Act contains provisions requiring lobbyists to file monthly returns if they carry out oral and arranged communications with designated public office holders. Oral and arranged communications include telephone calls, meetings and any other communications that are arranged in advance.[13]

C. Mandate of the Commissioner of Lobbying

The Commissioner of Lobbying is an Officer of Parliament responsible for promoting a better understanding of, acceptance of, and compliance with the rights and obligations set out in the Act. Karen Shepherd was appointed to the position on June 30, 2009.

The Act requires lobbyists who are subject to it to register and disclose certain information which is then stored in a public Registry on the Internet. The Registry contains information about the lobbyists themselves as well as their lobbying activities. The Act requires lobbyists to produce monthly reports if they engage in oral and arranged communications with designated public office holders (DPOHs, including ministers, ministers of state and their political staff, associate deputy ministers and assistant deputy ministers, and, since September 2010, Senators and Members of Parliament). The Commissioner is responsible for maintaining this public Registry, and the Act gives the Commissioner the power to verify the veracity of the information provided by lobbyists.

The Commissioner also has the mandate to conduct investigations regarding compliance with the Act and the Lobbyists Code of Conduct (the Code). The investigations are confidential but the Act provides that their findings be presented to Parliament. In addition to investigation reports, the Commissioner must also present an annual report to Parliament. The Commissioner may also present special reports on any matter under her jurisdiction.

LOBBYING AT THE PROVINCIAL AND MUNICIPAL LEVEL

In February 2012, the Commissioner of Lobbying submitted to the Committee an updated version of a document entitled *Survey of Canadian Lobbying Legislation (Federal, Provincial and Municipal)*, originally prepared by her Office in collaboration with her provincial and municipal counterparts. Seven provinces currently have lobbying or lobbyist registration legislation. Three provinces - Saskatchewan, Prince Edward Island, and New Brunswick, as well as the three territories, do not have any lobbying-related legislation. The following information is taken in part from the Commissioner's document.

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13 Office of the Commissioner of Lobbying of Canada, *The* Lobbying Act —– *A Summary of New Requirements*, June 2008, http://publications.gc.ca/collections/collection_2009/orl-bdl/lu80-1-2008E.pdf. See subsections 5(1) and 7(1) of the *Lobbying Act*.

A. Provincial Level

1. Alberta

Alberta's *Lobbyists Act*[14] defines the term "lobbying", sets out two types of lobbyists — consultant and organization lobbyists (akin to in-house lobbyists), and establishes a lobbyist registry. The registration threshold for organizations is 100 hours annually communicating with public office holders, either individually or collectively within the organization. Only time spent communicating counts when determining if a registration is necessary. The Alberta Act provides for administrative penalties and offences. The Registrar has the power to impose an administrative penalty, while an offence can lead to a prosecution under the penal system. The Registrar can impose an administrative penalty when he believes that a person has contravened the Act or its regulations. The maximum amount of this penalty is $25,000 and it can be appealed by an Application to the Court of Queen's Bench of Alberta.

In his testimony before the Committee, Mr. Neil Wilkinson, Ethics Commissioner and Lobbyists Act Registrar of Alberta, stated that "having the ability to impose administrative penalties, particularly for technical breaches, does lead to a greater effort on the part of lobbyists to comply."[15]

The Act also allows the Ethics Commissioner to prohibit a person convicted of an offence from lobbying for up to two years. The Ethics Commissioner may make public the nature of an offence, the name of the offender, the punishment, and any prohibition imposed.

The *Lobbyists Act* of Alberta does not contain a specific provision on gifts.

2. British Columbia

British Columbia's *Lobbyists Registration Act*[16] defines the term "lobbying", distinguishes between consultant and in-house lobbyists, and defines the term "organization". The Act establishes a registration threshold for organizations of 100 hours. Both time spent preparing for a communication and time spent lobbying count when determining if a registration is necessary.

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14 *Lobbyists Act*, Statutes of Alberta, 2007, Chapter L-20.5 (Current as of September 28, 2009), http://www.qp.alberta.ca/documents/Acts/L20P5.pdf.

15 Neil Wilkinson, Ethics Commissioner and Lobbyists Act Registrar of Alberta, *Evidence*, Meeting No. 21, 1st Session, 41st Parliament, February 7, 2012, 1135, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5365014&Language=E&Mode=1&Parl=41&Ses=1.

16 *Lobbyists Registration Act* [SBC 2001] Chapter 42, http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20l%20--/lobbyists%20registration%20act%20sbc%202001%20c.%2042/00_01042_01.xml.

The Act provides for administrative penalties and offences for violations of the Act. The Registrar can impose an administrative penalty of up to $25,000 if she determines that there has been a breach of the Act. The Act also sets out various offences, which can result in a fine of up to $25,000 for a first offence, and up to $100,000 for subsequent offences. The Registrar can also prohibit a convicted offender from registering as a lobbyist for up to two years and make public the nature of the offence, the name of the convicted offender, the punishment, and any prohibition imposed.

In her testimony before the Committee, Ms. Elizabeth Denham, Registrar of Lobbyists for British Columbia, noted that "once lobbyists became aware that we had the authority to issue administrative penalties, they took their registration responsibilities much more seriously. In fact, registrations have increased significantly […]."[17]

The *Lobbyists Registration Act* of British Columbia does not contain a specific provision on gifts.

3. Manitoba

Manitoba's *Lobbyists Registration Act*[18] was enacted in 2008 but is not yet in force. The Act defines the term "lobbying", distinguishes between consultant and in-house lobbyists, and defines the term "organization". The registration threshold is related to lobbying activities, either individually or collectively within an organization, which amount to a significant part of one individual's activities. An interpretation of "significant part" has not yet been made.

The registrar may refuse to accept a return or other document filed under the Act and may remove a return from the registry in certain circumstances. The Act sets out various offences, which can result in a fine not exceeding $25,000.

The *Lobbyists Registration Act* of Manitoba does not contain a specific provision on gifts.

4. Newfoundland and Labrador

Newfoundland and Labrador's *Lobbyist Registration Act*[19] defines the term "lobbying", distinguishes between consultant and in-house lobbyists, and defines the term "organization". The Act provides that the senior officer of an organization must file a registration when lobbying activities, either individually or collectively, amount to 20% of

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17 Elizabeth Denham, Registrar of Lobbyists for British Columbia, Office of the Information and Privacy Commissioner of British Columbia, *Evidence*, Meeting No. 21, 1st Session, 41st Parliament, February 7, 2012, 1205, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5365014&Language=E&Mode=1&Parl=41&Ses=1.

18 *Lobbyists Registration Act,* S.M. 2008, c. 43, http://web2.gov.mb.ca/laws/statutes/2008/c04308e.php#A22.

19 *Lobbyist Registration Act*, SNL2004 Chapter L-24.1, http://assembly.nl.ca/Legislation/sr/statutes/l24-1.htm.

one employee's time over a three-month period. Only time spent lobbying is considered when determining if a registration is necessary. Newfoundland and Labrador also has a Code of Conduct.

The Act provides for offences which can lead to a fine not exceeding $25,000 for a first offence, and not exceeding $100,000 for subsequent offences. Where a person is found guilty of an offence, the court may also confiscate the improperly-obtained proceeds of lobbying and direct that those proceeds be paid into the Consolidated Revenue Fund. In cases where repeated or serious infringements of the Act occur, the Commissioner can prohibit a lobbyist from filing a registration for a period of one year.

Regarding gifts, section 22 of the *Lobbyist Registration Act* of Newfoundland and Labrador provides that:

- (1) A consultant lobbyist or in-house lobbyist shall not, in the course of lobbying activities, give any gift or other benefit to the public office holder being or intended to be lobbied.

- (2) Subsection (1) does not apply to a gift or other benefit that is given as an incident of the protocol or social obligations that normally accompany the duties or responsibilities of office of the public-office holder.

5. Nova Scotia

The *Lobbyists' Registration Act*[20] of Nova Scotia defines the term "lobbying" and distinguishes between consultant and in-house lobbyists, which are either employed by a person or partnership, or by an organization. According to the regulations made under the *Lobbyists' Registration Act*, in-house lobbyists, both persons and partnerships and organizations, are required to register where either 20% of an individual's time is spent lobbying, or where the amount of time spent by all employees of the entity equals 20% of one person's time. For in-house lobbyists (organizations), the filing responsibility rests on the senior officer of the organization.

The Act provides for offences which can lead to a fine not exceeding $25,000 for a first offence, and to a fine not exceeding $100,000 for subsequent offences.

The *Lobbyists' Registration Act* of Nova Scotia does not contain a specific provision on gifts.

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20 *Lobbyists' Registration Act*, Chapter 34 of the Acts of 2001, http://nslegislature.ca/legc/bills/58th_2nd/3rd_read/b007.htm.

6. Ontario

Ontario's *Lobbyists Registration Act, 1998*[21] defines the term "lobbying", distinguishes between consultant and in-house lobbyists, which are either employed by a person or partnership or by an organization, and defines the term "organization". The threshold in the Act for in-house lobbyists (organizations) is either 20% of their time spent lobbying individually, or when time spent lobbying collectively within the organization is equivalent to at least 20% of one person's time during a three-month period. In-house lobbyists (persons and partnerships) must register when they spend individually 20% of their time lobbying. Only the time spent lobbying counts when determining if registration is necessary.

According to the Ontario Act, the Registrar can remove a return from the registry in certain circumstances. The Act also provides for offences, which can lead to a fine not exceeding $25,000.

The *Lobbyists Registration Act* of Ontario does not contain a specific provision on gifts.

7. Quebec

Quebec's *Lobbying Transparency and Ethics Act*[22] is the only lobbying legislation in Canada that uses a qualitative approach for the registration threshold. According to the Quebec Act, the senior officer of the enterprise or group must register as a lobbyist if:

- a board member or executive of the enterprise or organization engages in lobbying activities;
- the activity has a significant impact on the enterprise or organization; or
- during a fiscal year, all lobbying activities carried out on behalf of the organization or enterprise, including preparation and monitoring, exceed 12 working days.

The Act sets out various offences, which can lead to a fine ranging from $500 to $25,000. In cases where repeated or serious infringements of the Act occur, the Commissioner can prohibit a lobbyist from filing a registration for a period of one year, and order the cancellation of any registration in the registry concerning that lobbyist.

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21 *Lobbyists Registration Act*, S.O. 1998, Chapter 27, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98l27_e.htm.

22 *Lobbying Transparency and Ethics Act*, R.S.Q., chapter T-11.011, http://www.commissairelobby.qc.ca/en/commissioner/transparency.

Quebec's Lobbyists' Code of Conduct came into effect in 2004. Any violation of the Lobbyists' Code of Conduct is subject to sanctions and penalties under the *Lobbying Transparency and Ethics Act*, which are administered by the office of the Attorney General under the penal system.

The *Lobbying Transparency and Ethics Act* of Quebec does not contain a provision regarding gifts.

B. Municipal Level

1. Toronto

According to Chapter 140 of the City of Toronto's Municipal Code[23], the "Lobbying By-Law", lobbyists must register before they lobby, and unregistered lobbying is a breach of the by-law. The by-law defines the term "lobbying" and sets out three types of lobbyists: consultant lobbyists, in-house lobbyists and voluntary unpaid lobbyists. The by-law provides for offences, which can lead to a fine not exceeding $25,000 for a first offence, and not exceeding $100,000 for subsequent offences.

Under the *Provincial Offences Act,* the Toronto Lobbyist Registrar can also refuse to accept, suspend, revoke or remove a return. Under the *City of Toronto Act,* the Lobbyist Registrar can impose conditions on registration, continued registration or a renewal of a registration. The Lobbying By-Law also includes a Lobbyists' Code of Conduct.

Regarding gifts, subsection 140-42(A) of the Lobbying By-Law provides that "Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind."

C. Observations

As noted below, The Commissioner of Lobbying, in her testimony before the Committee on December 13, 2011, recommended amending the *Lobbying Act* in order to adopt an administrative monetary penalty mechanism.[24] During her testimony, she referred to two provincial statutes as models for administrative monetary penalty provisions, namely the Alberta and British Columbia legislation. Both enable penalties of up to $25,000 to be administered by the equivalent of the Commissioner of Lobbying.[25]

In a letter addressed to the Committee dated February 22, 2012, Mr. Guy W. Giorno, partner in the law firm Fasken Martineau DuMoulin LLP (who appeared before the Committee on February 14, 2012 on behalf of the Canadian Bar

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23 City of Toronto, Municipal Code, Chapter 140, http://www.toronto.ca/lobbying/imp_docs.htm.

24 Karen Shepherd, Commissioner of Lobbying, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0850, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

25 Ibid., 0900.

Association [CBA]), considers the lobbying statutes in Newfoundland and Labrador and Quebec to be the "toughest" in the country.[26] He notes that in these two jurisdictions:

> [T]he Commissioner may impose a temporary lobbying ban of up to one year where he or she determines that a lobbyist has gravely or repeatedly breached the obligations imposed by the Act or the Code of Conduct. In other words, in Newfoundland and Labrador and Quebec, it is not necessary for the lobbyist to be convicted before the Commissioner imposes a ban.[27]

In the CBA's submission to the Committee entitled *Statutory Review of the* Lobbying Act, one recommendation is to "prohibit an individual or entity from lobbying the government on a subject matter, if they have a contract to provide advice to a public office holder on the same subject matter."[28] The CBA refers to the Alberta, British Columbia, Manitoba and Quebec statutes as examples of how this prohibition could be drafted.[29]

THE STATUTORY REVIEW OF THE *LOBBYING ACT*

Section 14.1 of the *Lobbying Act*[30] states that:

> (1) A comprehensive review of the provisions and operation of this Act must be undertaken, every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.
>
> (2) The committee referred to in subsection (1) must, within a year after the review is undertaken or within any further period that the Senate, the House of Commons, or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to Parliament that includes a statement of any changes to this Act or its operation that the committee recommends.

Section 14.1 came into force on June 20, 2005.[31]

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26 Guy W. Giorno, letter addressed to the House of Commons Standing Committee on Access to Information, Privacy and Ethics, dated February 22, 2012, p. 1. Mr Giorno expressed the same idea in his testimony before the Committee on behalf of the CBA; see: *Evidence*, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1210, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5382825&Language=E&Mode=1&Parl=41&Ses=1.

27 Ibid., p. 3.

28 Canadian Bar Association, *Statutory Review of the* Lobbying Act, February 2012, Recommendation 6, p. 10, http://www.cba.org/cba/submissions/pdf/12-09-eng.pdf.

29 Ibid., p. 8. The CBA used the same examples in its testimony before the Committee; see: *Evidence*, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1135, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5382825&Language=E&Mode=1&Parl=41&Ses=1.

30 *Lobbying Act*, 1985, c. 44 (4th Supp.), http://laws.justice.gc.ca/en/L-12.4/.

On September 28, 2011, the House of Commons adopted a motion designating the Standing Committee on Access to Information, Privacy and Ethics (the Committee) as the committee for the purposes of the parliamentary review of the *Lobbying Act* in the House of Commons.[32] As well, during the 40th Parliament, on December 15, 2010, the House of Commons passed a similar motion designating the Committee to undertake the review of the Act.[33]

In anticipation of the statutory review of the Act, the Office of the Commissioner of Lobbying circulated a report titled *Administering the* Lobbying Act *— Observations and Recommendations Based on the Experience of the Last Five Years*. The report contained the following recommendations:

- Recommendation 1: The provisions regarding the "significant part of duties" should be removed from the *Lobbying Act* and consideration should be given to allowing limited exemptions.

- Recommendation 2: The Act should be amended to require that every in-house lobbyist who actually participated in the communication be listed in monthly communication reports, in addition to the name of the most senior officer.

- Recommendation 3: The prescribed form of communications for the purposes of monthly communication reports should be changed from "oral and arranged" to simply "oral."

- Recommendation 4: The Act should be amended to require lobbyists to disclose all oral communications about prescribed subject-matters with DPOHs, regardless of who initiates them.

- Recommendation 5: The Act should be amended to make explicit the requirement for consultant lobbyists to disclose the ultimate client of the undertaking, as opposed to the firm that is hiring them.

- Recommendation 6: The provision of an explicit outreach and education mandate should be maintained in the *Lobbying Act* to support the

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31 SI/2005-0049.

32 "Order of Reference," Extract from the *Journals of the House of Commons*, September 28, 2011: "By unanimous consent, it was ordered, — That the Standing Committee on Access to Information, Privacy and Ethics be the committee designated for the purposes of Section 14.1 of the *Lobbying Act*," http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=5137738.

33 "Order of Reference," Extract from the *Journals of the House of Commons*, December 15, 2010: "By unanimous consent, it was ordered, — That the Standing Committee on Access to Information, Privacy and Ethics be the committee designated for the purposes of section 14.1 of the *Lobbying Act*," http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=3&DocId=4889396.

Commissioner's efforts to raise awareness of the legislation's rationale and requirements.

- Recommendation 7: The Act should be amended to provide for the establishment of a system of administrative monetary penalties for breaches of the Act and the Code, to be administered by the Commissioner of Lobbying.

- Recommendation 8: The requirement for the Commissioner to conduct investigations in private should remain in the *Lobbying Act*.

- Recommendation 9: An immunity provision, similar to that found in sections 18.1 and 18.2 of the *Auditor General Act*, should be added to the *Lobbying Act*.

OBSERVATIONS AND RECOMMENDATIONS

During her appearance before the Committee on December 13, 2011, Karen Shepherd, the federal Commissioner of Lobbying, reiterated the recommendations presented in the report. Following her appearance, the Committee heard from various witnesses in January and February 2012 and received a number of submissions recommending modifications to the Act. These recommendations were often organized in response to the recommendations presented by the Commissioner of Lobbying.

Although amendments to the Act were proposed, the overall tenor of the testimony suggested that the Act is generally working well in accordance with its objectives.

As highlighted below, the Committee has decided to endorse three of the Commissioner's recommendations (recommendations 1, 2, and 7) as well as eight recommendations brought forward by various witnesses who testified and made submissions during the Committee's statutory review of the Act.

The observations relating to these recommendations, and the recommendations themselves, are included in this section which is organized, insofar as possible, in accordance with the order of the Act itself.

The following section, "Other Possible Areas of Reform", contains witness observations and recommendations that were not ultimately addressed by the Committee at this time.

A. Designated Public Office Holders: Definition (s. 2 of the Act, "Interpretation — Definitions"; *Designated Public Office Holder Regulations*)

A number of witnesses discussed the definition of "designated public office holders" (DPOHs). For example, Joe Jordan suggested reconsidering whether Senators and Members of Parliament should be DPOHs:

> ...[T]he original legislation gave the government the Governor in Council authorities to designate any class of DPOH, and they exercised this authority to extend designation to members of Parliament. I realize the political risks of anybody saying they want to do anything that would be seen to be reducing transparency and accountability, but I think designating individual MPs who aren't parliamentary secretaries or ministers as DPOHs is a bit of a knee-jerk reaction. It could have profound long-term effects on the rights and privileges of MPs and, in a sense, the relationship between the executive and legislative branch.[34]

During his testimony on behalf of the Canadian Bar Association on February 14, 2012, Guy Giorno provided the following personal observation:

> When you're looking at who is a designated public office holder, what counts is not what you know, it's who you know, because the restriction is on making contacts. It's not important that someone had secret information, or didn't, in his or her head; it's important that he or she knows that.
>
> My personal view is that senators and members of the House of Commons absolutely fall into the category of people who have contacts they can utilize for profit when they leave and should be covered by the ban.[35]

> **Committee Recommendation 1: All public servants serving in a Director General's position, or serving in a more senior position than Director General, should now be considered Designated Public Office Holders and held subject to all applicable laws governing this designation.**

B. The Commissioner of Lobbying (s. 4.1 and s. 4.2 of the Act)

The Commissioner's sixth recommendation was with regard to her outreach and education mandate (at par. 4.2.(2) of the Act): The provision of an explicit outreach and education mandate should be maintained in the *Lobbying Act* to support the Commissioner's efforts to raise awareness of the legislation's rationale and requirements.

As explained by the Commissioner during her appearance before the Committee on December 13, 2011, "[c]ommunicating the rationale and requirements of the Act and the Lobbyists' Code of Conduct leads to greater compliance."[36]

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34 Joe Jordan, *Evidence*, Meeting No. 19, 1st Session, 41st Parliament, January 31, 2012, 1150, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5344506&Language=E&Mode=1&Parl=41&Ses=1.

35 Guy W. Giorno, *Evidence*, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1230, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5382825&Language=E&Mode=1&Parl=41&Ses=1.

36 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0845, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

A number of witnesses voiced their support for the education role played by the Commissioner, and even advocated an expanded education mandate. For example, the Public Affairs Association of Canada recommended expanding the commissioner's duty to educate public office holders in section 4.2 of the Act to say "developing and implementing educational programs to foster awareness among public office holders of the legitimacy and public policy benefits of lobbying." [37] They added that, in their opinion, "the educational mandate of the Commissioner should ensure that public office holders understand the value added contributions lobbying and lobbyists make to the policy development process."[38] The Government Relations Institute of Canada also called for an expanded education mandate to comprehensively brief public office holders "to ensure that all public office holders are fully aware of and respect both the spirit and letter of the *Lobbying Act* and its various provisions."[39]

C. Ultimate Client of Consultant Lobbyists (s. 5 of the Act)

The fifth recommendation of the Commissioner of Lobbying provides as follows: The Act should be amended to make explicit the requirement for consultant lobbyists to disclose the ultimate client of the undertaking, as opposed to the firm that is hiring them.

During her testimony before the Committee, the Commissioner of Lobbying explained the rationale for this recommendation:

> In terms of recommendation 5, the ultimate undertaking, what we have started to find is that lobbying firms are hiring a consultant lobbyist who is doing work on behalf of a company. So the Act requires them to list their client, the person benefiting. Some were initially putting the lobbying firm, but the lobbying firm is not the ultimate beneficiary; it's the gas company or something behind them that hired the lobbying firm. What we have done with those now registering, when we see that, is to put who the ultimate beneficiary is, the firm. So that is showing now on the registration.
>
> To make it clearer in the legislation, my suggestion is that the requirement be there, so that it's the ultimate beneficiary. It avoids the situation whereby somebody may be hiring a middleman and the middleman is using the lobbying firm as their client.[40]

Other witnesses also spoke about external funding sources. For example, Professor Stephanie Yates recommended that "to increase transparency regarding the background of certain pressure groups, we recommend that the external funding sources

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37 Public Affairs Association of Canada, *Evidence*, Meeting No. 20, 1st Session, 41st Parliament, February 2, 2012, 1115, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5356420&Language=E&Mode=1&Parl=41&Ses=1.

38 Ibid.

39 Government Relations Institute of Canada, submission February 2, 2012, page 1.

40 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0845, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

of any organization employing a registered lobbyist be included in the information declared in the Registry of Lobbyists when this funding meets a certain threshold."[41]

D. "Significant Part of Duties" (par. 7(1)(*b*), In-house Lobbyists/Requirement to File a Return)

The Commissioner of Lobbying's first recommendation provides as follows: The provisions regarding the "significant part of duties" should be removed from the *Lobbying Act* and consideration should be given to allowing limited exemptions.

The Commissioner explained the rationale for this recommendation during her appearance before the Committee on December 13, 2011:

> The Registry of Lobbyists provides a wealth of information on who is engaged in the lobbying activities for payment but does not capture the lobbying activities of organizations and corporations who do not meet the "significant part of duties" threshold. That threshold is difficult to calculate and even more difficult to enforce. That is why I am recommending that the "significant part of duties" provisions be removed from the act. In doing so, I would also recommend that Parliament give consideration as to whom the legislation should capture and whether a limited set of exemptions might be necessary. I would be pleased to explore this issue with Parliament during its deliberations.[42]

Numerous witnesses commented on this recommendation. For example, general agreement was expressed by the Canadian Bar Association, the Ontario Integrity Commissioner, the Quebec Commissioner, Democracy Watch, Mr. John Chenier (Editor and Publisher, ARC Communications), the Dairy Farmers of Canada, Hill+Knowlton Strategies, and the Public Affairs Association of Canada.

Some, such as Mr. Chenier, noted that regulations or other mechanisms should be crafted to prevent a deluge of registrations.[43] Imagine Canada submitted that an exemption for charities should be considered if the "significant part of duties" test would be eliminated, as posited by the Commissioner of Lobbying. At the minimum, Imagine Canada requested that Committee members maintain the status quo (the 20% rule) for charities.[44]

Other witnesses expressed concern with eliminating the "significant part of duties" test or "20% rule." For example, Joe Jordan noted that eliminating this provision would

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41 Stephanie Yates, Professor, *Evidence*, Meeting No. 22, 1st Session, 41st Parliament, February 9, 2012, 1105, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5373559&Language=E&Mode=1&Parl=41&Ses=1.

42 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0845, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

43 John Chenier, *Evidence*, Meeting No. 22, 1st Session, 41st Parliament, February 9, 2012, 1110, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5373559&Language=E&Mode=1&Parl=41&Ses=1.

44 Imagine Canada submission March 5, 2012 at page 1.

bring a number of people into this framework who historically were not covered or did not see themselves as being covered.[45] Professor Stephanie Yates expressed that "eliminating the 'significant part' principle and introducing a system of exemptions risks opening a Pandora's Box and having detrimental effects on how lobbying is perceived." She proposed maintaining the 20% rule, including preparatory work in that number, so that mere citizens are not unintentionally included.[46]

Committee recommendation 2: Remove the 'significant part of duties' threshold for in-house lobbyists.

E. Contents of Return — In-house Lobbyists (par. 7(3)(*f*) of the Act): Harmonizing Rules for Corporations and Associations, and Closing Potential Loopholes

In its submission, the Canadian Bar Association explained a distinction that currently exists between in-house lobbyists at organizations versus corporations:

> Clause 7(3)(*f*) of the Act currently provides that organizations must list in their return the names of every employee any part of whose duties involves lobbying public office holders. We believe that this same standard should be applied to corporations.
>
> Under the existing statutory framework, the rules governing which employees should be listed in a corporation's in-house return are different from those for organizations. A corporation must maintain two lists: the first contains the names of each senior officer or employee "a significant part of whose duties" involve lobbying public office holders; and the second contains the names of each other senior officer "any part of whose duties" involves lobbying.
>
> This distinction is both arbitrary and creates unnecessary confusion. The interpretation, application and enforcement of the Act would be greatly facilitated if the returns filed by organizations and corporations were the same. The CBA supports an amendment of subsection 7(3) requiring corporations to list the name of every employee any part of whose duties involves lobbying.[47]

Committee recommendation 3: Eliminate the distinction between in-house lobbyists (corporations) and in-house lobbyists (organizations).

As well, in a letter to the Committee following his testimony, Guy Giorno highlighted a potential loophole in existing lobbying legislation:

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45 Joe Jordan, *Evidence,* Meeting No. 19, 1st Session, 41st Parliament, January 31, 2012, 1220, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5344506&Language=E&Mode=1&Parl=41&Ses=1.

46 Stephanie Yates, *Evidence*, Meeting No. 22, 1st Session, 41st Parliament, February 9, 2012, 1215, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5373559&Language=E&Mode=1&Parl=41&Ses=1.

47 Canadian Bar Association submission February 14, 2012, page 3.

> As the committee is aware, in the case of in-house lobbying, the senior officer of the company or organization, not the individual lobbyists, must file the registration. A senior officer who fails to file a registration is subject to prosecution. However, under federal law, an individual employee who lobbies, knowing that he or she has not been duly registered, is not subject to prosecution.
>
> This is a loophole that invites exploitation. There are sound reasons to make the senior officer responsible for filing the registration. However, an employee should not be permitted to lobby if the employee knows that his or her senior officer has failed to file a registration.[48]

He then referred to four provincial and municipal jurisdictions that currently make it an offence to lobby without being registered: Alberta, Newfoundland and Labrador, Quebec, and Toronto (see the section above titled "Lobbying at the Provincial and Municipal Levels" for more information).

> **Committee recommendation 4: Require in-house lobbyists to file a registration, along with the senior officer of the company or organization.**

F. "Officer Responsible for Filing Returns" (par. 7(6) of the Act): Adding Names of In-House Lobbyists who Actually Participated in the Communication Reports

The Commissioner of Lobbying's second recommendation provides as follows: The Act should be amended to require that every in-house lobbyist who actually participated in the communication be listed in monthly communication reports, in addition to the name of the most senior officer.[49]

The Commissioner explained the rationale for this recommendation during her appearance before the Committee on December 13, 2011:

> The senior officer in a corporation or organization is currently responsible for reporting on its lobbying activities. I believe this accountability is important and should not be changed. That said, I believe it would be more transparent if the names of those actually engaging in lobbying activities at meetings with designated public office holders were

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48 Guy W. Giorno, "Letter to the Standing Committee on Access to Information, Privacy and Ethics of the House of Commons regarding the *Lobbying Act,*" February 22, 2012, http://www.fasken.com/en/letter-to-the-standing-committee-02-22-2012/.

49 Monthly communication reports currently list the name of the DPOH and the name of the senior officer of a corporation or organization who is responsible for filing the registration. The names of the in-house lobbyists who actually participated in the oral and arranged communication with the DPOH are not listed in the monthly communication report. (Source: *Administering the* Lobbying Act)

> also listed in the monthly communication report. Currently, only the senior officer is listed, even though he or she may not have attended the meeting.[50]

A number of witnesses expressed support for this recommendation,[51] and offered further suggestions regarding responsibility for filing returns. For example, the Canadian Society of Association Executives (CSAE) noted in their submission:

> CSAE agrees that an organization's/corporation's most senior officer should continue to be responsible for the registration. That individual should only be listed on the registration, however, in those instances where he or she has been personally involved in lobbying activities. To ensure greater transparency, the name of the individual directly responsible for the lobbying activity should be listed in the registration, and the monthly reports should indicate which lobbyists actually participated in any reportable communications.[52]

As well, the Government Relations Institute of Canada recommended that:

> The definition of "officer responsible for filing returns" in section 7(6) should be revised … GRIC recommends that the name of each lobbyist who actually attends a reportable meeting should appear on related monthly returns (with a possible set of limited exemptions where such disclosure would not be in the public interest).[53]

Finally, in its submission, the Canadian Bar Association noted that it endorsed the positions advanced here, including by the Commissioner, that monthly reports should include the names of the in-house lobbyists who attended the meetings.[54]

> **Committee recommendation 5: Ensure that monthly communications reports contain the names of all in-house lobbyists who attended oral pre-arranged meetings [in addition to the senior reporting officer].**

G. Oral and Arranged Communications (s. 6 and s. 9 of the *Lobbyists Registration Regulations*; and s. 5 and s. 7 of the Act [Returns])

The Commissioner of Lobbying's third and fourth recommendations address the requirement for registrable communications to be "oral" and "arranged" on the part of the lobbyist.

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50 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0845, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

51 Dairy Farmers of Canada, submission February 14, 2012, page 2.

52 Canadian Society of Association Executives, submission undated, page 3.

53 Government Relations Institute of Canada, submission February 2, 2012, page 1.

54 Canadian Bar Association, submission February 14, 2012, page 5.

Recommendation 3 posits that: “The prescribed form of communications for the purposes of monthly communication reports should be changed from ’oral and arranged’ to simply ’oral’.”

Recommendation 4 suggests that: The Act should be amended to require lobbyists to disclose all oral communications about prescribed subject-matters with DPOHs, regardless of who initiates them.

The Commissioner explained her recommendations in her testimony before the Committee on December 13, 2011:

> I also recommend that all oral communications, regardless of who initiated them and whether or not they were planned, should be reported. Currently, only oral and arranged communications are reported monthly. Deleting “and arranged” would increase transparency by disclosing any chance meetings or other communications between lobbyists and designated public office holders where a registerable lobbying activity takes place.[55]

In response to a question regarding the Commissioner’s fourth recommendation, Guy Giorno, appearing on behalf of the Canadian Bar Association, noted the following:

> The CBA working group did not take a position on this particular issue, although the group is aware of other recommendations. My personal view is that the commissioner is right that this needs to be expanded. But Madam Chair, I should clarify this.
>
> Under federal law there are two regimes. There's general registration and then there's specific monthly reporting. Everything the member has referred to — dinner at Hy's, cocktails, walking the dog and trying to lobby — all of that activity is registrable right now under current law if you do it. The only gap is that not all of those chance encounters are covered under monthly reporting.
>
> My personal view is that monthly reporting should be expanded to cover that. In fact, if members wish to refer to the Senate committee in 2006, that was my position back then. It's my personal position today.[56]

On a different tack, both the Government Relations Institute of Canada and the Canadian Society of Association Executives recommended that the Commissioner clarify the definitions of “oral and arranged” communications as set out in the Regulations to remove uncertainties and assist both lobbyists and public office holders in meeting the expectations of the Act and Regulations.[57]

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55 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0845, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

56 Guy W. Giorno, CBA, *Evidence*, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1220, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5382825&Language=E&Mode=1&Parl=41&Ses=1.

57 Government Relations Institute of Canada, submission February 2, 2012, page 2, Canadian Society of Association Executives, submission undated, page 3.

H. Inclusion of Board Members as In-House Lobbyists [instead of consultant lobbyists] (s. 7 of the Act)

In their submission, the Canadian Bar Association explained their following recommendation to enable inclusion of board members as in-house lobbyists (instead of consultant lobbyists):

> The CBA believes that the Act should be amended to allow Board members, partners and sole proprietors to be treated and listed as in-house lobbyists for their respective organizations or corporations. Where their lobbying activities are restricted to communications made on behalf of those organizations or corporations, this change would more accurately reflect the nature of their work and increase transparency and accountability. It would better allow the public to know who is lobbying on behalf of whom.
>
> Finally, this change would shift the administrative burden of registration and reporting from individual directors to the corporations and organizations on whose behalf the directors are lobbying, where the burden more appropriately belongs.[58]

The Dairy Farmers of Canada, in their submission, offered a similar recommendation:

> The Lobbying Commissioner is recommending that every in-house lobbyist who participated in the communication be listed in the monthly communications reports [her Recommendation 2]. With this change it would still be differentiated if the communication was undertaken by a staff person or a board of director. We would recommend that Board of Directors of non-governmental organizations be brought back under the organizations' registration.[59]

Committee recommendation 6: Allow board members (corporation and association directors), partners and sole proprietors to be included in an in-house lobbyist's returns.

I. Lobbying — Proposed Prohibition (Gifts) (s. 10.1 and following of the Act)

In a letter to the Committee following his testimony on February 14, 2011, Guy Giorno raised the prospect of including an explicit prohibition on the receipt of gifts from lobbyists:

> Some laws expressly prohibit lobbyists from giving gifts to the public office holders whom they lobby. While a ban on gift-giving may be implicit in general restrictions (such as the federal Rule 8), two jurisdictions have seen fit to include an explicit rule against gift-giving.

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58 Canadian Bar Association, submission February 14, 2012, page 4.

59 Dairy Farmers of Canada, submission February 14, 2012, page 2.

In Newfoundland and Labrador, a lobbyist commits an offence if he or she, in the course of lobbying activities, gives any gift or other benefit to the public office holder being or intended to be lobbied. An exception is made for a gift or other benefit given as an incident of protocol or social obligation.[60]

The Toronto by-law is more stringent.[61] It states that, "Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind.[62]

Committee recommendation 7: Impose an explicit ban on the receipt of gifts from lobbyists.

J. Restriction on Lobbying — Proposed Elimination Conflicts of Interest (s. 10.11 et seq of the Act)

The Canadian Bar Association, in its submission as well as during its testimony before the Committee on February 14, 2011, recommended including an explicit conflict of interest prohibition on lobbyists in the Act:

> [W]e believe that Parliament should follow the lead of those provincial legislatures that prohibit people from lobbying government at the same time as they have a contract to advise government on the same subject matter. Alberta, British Columbia, Manitoba, and Quebec have decided to prohibit this blatant conflict of interest. So should Canada.[63]

The CBA's submission further explains:

> Unlike a number of provincial regimes, the federal Act does not restrict an individual or entity from lobbying a public office holder on a subject matter on which that individual or entity also has a contract to provide advice or legal representation to the federal government.
>
> The CBA believes this prohibition should be added to the Act to prevent potential conflicts of interest. While some may argue that conflicts of interest are adequately addressed in the context of the Lobbyists' Code of Conduct, the CBA believes that this prohibition should be clearly stated in the Act. This would provide greater clarity and specificity, and aid in the administration and enforcement of the Act. ...

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60 Newfoundland and Labrador, *Lobbyist Registration Act*, s. 22.

61 Toronto, Municipal Code, Chapter 140, § 140-42.

62 Guy W. Giorno, "Letter to the Standing Committee on Access to Information, Privacy and Ethics of the House of Commons regarding the *Lobbying Act,*" February 22, 2012, http://www.fasken.com/en/letter-to-the-standing-committee-02-22-2012/.

63 Jack Hughes, Canadian Bar Association, *Evidence*, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1135, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5382825&Language=E&Mode=1&Parl=41&Ses=1.

> To be clear, the proposed provision would not prohibit individuals from lobbying and advising the government at the same time on different subject matters.[64]

Committee recommendation 8: Prohibit an individual or entity from lobbying the government on a subject matter, if they have a contract to provide advice to a public office holder on the same subject matter.

K. Restriction on Lobbying — Five-year prohibition for Designated Public Office Holders (s. 10.11 of the Act)

The Committee received a number of recommendations regarding the five-year prohibition on lobbying for Designated Public Office Holders. Some witnesses, such as the Government Relations Institute of Canada[65] and the Canadian Society of Association Executives,[66] requested that the five-year prohibition be revised to ensure that it applies equally to all categories of lobbyists (in-house and consultant). The Canadian Society of Association Executives, the Public Affairs Association of Canada,[67] Professor Stephanie Yates,[68] Democracy Watch,[69] and Elizabeth Denham (the Registrar of Lobbyists for British Columbia) all advocated considering shorter bans, more consistent with provincial legislation, at least for certain types of DPOHs and organizations (such as lesser bans for staff with less influence working in ministerial offices, or for former DPOHs who want to work in the non-profit sector).

For example, in her testimony, Ms. Denham explained as follows:

> While the ban does help to limit undue influence, I respectfully suggest that there are other considerations at play that deserve our attention.
>
> One of the goals of lobbyist regulation is to promote fair and effective lobbying. There are many businesses and not-for-profit organizations that have legitimate concerns and interests to communicate with public office holders. There is no question that former public office holders can be effective lobbyists. Access to talented lobbying professionals helps organizations obtain fair access. A five-year ban limits the size of this talent pool. Moreover, the length of the ban might also reinforce unfair stereotyping of lobbyists and public office holders.
>
> The key for a healthy lobbying community and regulation system is to achieve the right balance. It's my recommendation that if the *Lobbying Act* is amended to incorporate appropriate administrative penalties, and the current code is maintained and

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64 Canadian Bar Association, submission February 14, 2012, page 8.

65 Government Relations Institute of Canada, submission February 2, 2012, page 2.

66 Canadian Society of Association Executives, submission undated, page 2.

67 Public Affairs Association of Canada, submission February 2, 2012, page 3.

68 Stephanie Yates, submission February 9, 2012, pages 5 and 8.

69 Democracy Watch, submission February 9, 2012, page 6.

> strengthened, the committee might consider recommending a shorter ban or prohibition. I believe this would strike the right balance between promoting fair and effective lobbying while protecting against undue influence.[70]

Finally, the Canadian Bar Association advocated that post-employment restrictions on public office holders be administered by a single authority (either the Commissioner of Lobbying or the Conflict of Interest and Ethics Commissioner) to ensure consistent application and enforcement:

> The CBA believes that post-employment restrictions on public office holders should be consistently applied and enforced. To this end, the CBA believes that to the greatest extent possible post-employment restrictions on public office holders should be interpreted and administered by a single authority [i.e. the Commissioner of Lobbying or the Conflict of Interest and Ethics Commissioner].[71]

Committee Recommendation 9: The five-year ban should be retained, and post-employment restrictions on public office holders should be interpreted and administered by a single authority.

L. Investigations — General (s. 10.4 of the Act)

The Committee received a number of recommendations regarding the conduct of investigations and the powers of the Commissioner with respect to investigations.

Generally, Democracy Watch made a number of recommendations to require the Commissioner of Lobbying to conduct regular, random audits and inspections of the activities of people and government institutions covered by the rules, to investigate and rule publicly on all situations raising an issue of a violation of the Act or Code, and requiring rulings within a reasonable time period.[72]

As well, the Committee heard testimony regarding specific aspects of the investigation process, as detailed below.

1. Keep Conduct of Investigations Private: Commissioner of Lobbying Recommendation 8

The Commissioner's eighth recommendation provides that: The requirement for the Commissioner to conduct investigations in private should remain in the *Lobbying Act*.

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70 Elizabeth Denham, *Evidence*, Meeting No. 21, 1st Session, 41st Parliament, February 7, 2012, 1205, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5365014&Language=E&Mode=1&Parl=41&Ses=1.

71 Canadian Bar Association, submission February 14, 2012, page 9.

72 Democracy Watch, submission February 9, 2012, pages 8 and 9.

Some witnesses expressed concern about not knowing whether an investigation about them was ongoing or not. For example, Elizabeth Denham, the Registrar of Lobbyists for British Columbia, noted in her testimony on February 7, 2012, that in British Columbia the lobbyist must be notified and have a chance to respond before any penalty or any finding is made.[73]

2. Enshrine the Administrative Review Process in the Act

The Canadian Bar Association explains in its submission:

> Section 10.4 of the Act provides that the Commissioner shall conduct an investigation if she has reason to believe it is necessary to ensure compliance with either the Act or Code. It further provides that when conducting an investigation the Commissioner has the power to compel a person to give oral or written evidence under oath, as well as to compel a person to produce any documents that she considers relevant to the investigation.
>
> In practice, however, the Commissioner does not initiate a formal investigation until she has completed an "administrative review" of a given matter. As the Commissioner has frequently explained, an administrative review is a "fact gathering" or "fact finding" process. To that end, it is during this process that her officials generally interview witnesses and seek the production of relevant documents. The CBA's concern is that this process is not contemplated by the Act.
>
> Recognizing that it may not be necessary or appropriate for the Commissioner to initiate a formal investigation in response to every allegation, it is nevertheless important that she and her officials have a solid statutory basis on which to interview witnesses and seek production of documents. Consequently, the CBA recommends that the Commissioner's administrative review process be enshrined in the Act.
>
> Not only would this provide the Commissioner with the statutory authority to undertake administrative reviews, it would also provide lobbyists and the public with greater certainty and clarity about the process that the Commissioner will follow in every case. In addition, enshrining the administrative review process in the Act would better safeguard the legal rights of those who may be subject to an investigation in respect of their lobbying activities.[74]

Committee recommendation 10: Enshrine the administrative review process in the Act.

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73 Elizabeth Denham, *Evidence*, Meeting No. 21, 1st Session, 41st Parliament, February 7, 2012, 1255, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5365014&Language=E&Mode=1&Parl=41&Ses=1.

74 Canadian Bar Association, submission February 14, 2012, pages 7-8.

3. Include an Immunity Provision: Commissioner of Lobbying Recommendation 9

The Commissioner's ninth recommendation provides that: An immunity provision, similar to that found in sections 18.1 and 18.2 of the *Auditor General Act*, should be added to the *Lobbying Act*.

As noted by the Commissioner during her testimony, "I think it is important that the Act be amended to include provisions that would offer the commissioner or any person acting on my behalf some degree of immunity against criminal or civil proceedings, libel, or slander."[75]

Annex B of the Commissioner of Lobbying's report titled *Administering the* Lobbying Act *— Observations and Recommendations Based on the Experience of the Last Five Years* contains examples of immunity provisions found in comparable federal and provincial legislation. Notably, the Conflict of Interest and Ethics Commissioner, the Privacy Commissioner and the Information Commissioner of Canada all have immunity provisions in their enabling statutes, in addition to the Auditor General. Annex B of the Commissioner's report is reproduced in the appendix to this report (Appendix A).

The recommendation to include an immunity provision received support from a number of witnesses, including the provincial commissioners who appeared before the Committee on February 7, 2012. As well, during their testimony on February 14, 2012, the representatives from the Canadian Bar Association indicated that they had no issue with this recommendation.

M. Investigations and Enforcement: Administrative Monetary Penalties (s. 10.4 and s. 14 of the Act)

The Commissioner's seventh recommendation provides that: The Act should be amended to provide for the establishment of a system of administrative monetary penalties for breaches of the Act and the Code, to be administered by the Commissioner of Lobbying.

During her testimony before the Committee on December 13, 2011, the Commissioner of Lobbying explained the rationale for her recommendation:

> In a previous appearance, I indicated that lobbyists have voluntarily come forward to disclose that they were late in registering or submitting monthly communication reports. I see this as an encouraging sign that lobbyists want to comply with the Act. I do not believe the public interest would be well served if I were to refer such files to the RCMP for criminal investigation.

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75 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0850, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

> For these and other lesser transgressions, I have decided to educate and monitor the lobbyists. I do not see this as letting them off the hook. Employing such alternative measures encourages others to come forward. In addition, as I indicated, individuals subject to education and/or correction continue to be monitored to ensure they remain in compliance.
>
> For that reason, I am recommending an administrative monetary penalty mechanism be adopted. This would provide a continuum between my current practice of relying on educational measures and the more severe and lengthy processes of referrals to a peace officer or reports to Parliament.
>
> Despite the available penalties under the current Act, no one has ever been charged, or convicted, of an offence under the *Lobbying Act*. I am of the view that, unless there are amendments to include a range of enforcement measures, probabilities of consequences other than reports to Parliament remain low.[76]

A number of witnesses signalled their support for this recommendation, including Mr. Neil Wilkinson (Ethics Commissioner, Lobbyists Act Registrar, Office of the Ethics Commissioner of Alberta), Ms. Lynn Morrison (Integrity Commissioner, Office of the Integrity Commissioner of Ontario), Mr. François Casgrain (Lobbyists Commissioner, Quebec Lobbyists Commissioner), and Ms. Elizabeth Denham (Registrar of Lobbyists for British Columbia, Office of the Information and Privacy Commissioner of British Columbia), who all appeared on February 7, 2012. Hill+Knowlton Strategies recommended that the Commissioner be granted increased enforcement powers as long as there are sufficient due process mechanisms.[77] As well, the Canadian Bar Association and Democracy Watch supported the establishment of a system for administrative monetary penalties for both contraventions of the Act and the Code.[78]

> **Committee recommendation 11: Empower the Commissioner of Lobbying to impose administrative monetary penalties. Perhaps consider temporary bans for breaches of the law (as in the Newfoundland and Labrador and Quebec provincial legislation).**

N. The Lobbyists' Code of Conduct (General and Rule 8)

The Lobbyists' Code of Conduct establishes standards of conduct for all lobbyists who communicate with federal public office holders and forms a counterpart to the obligations that federal officials are required to observe in their interactions with the public and with lobbyists. The specific obligations or requirements under the Code can be broken down into three categories: transparency, confidentiality and conflict of interest.

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76 Karen Shepherd, *Evidence*, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0850, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5329318&Language=E&Mode=1&Parl=41&Ses=1.

77 Hill+Knowlton Strategies, submission February 16, 2012, page 7.

78 Canadian Bar Association, submission February 14, 2012, pages 5-7.

Rule 8 of the Code specifies that "[l]obbyists 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."

In 2009, the Federal Court of Appeal explained that Rule 8 is principally a rule that prohibits lobbyists from placing public office holders in a conflict of interest. As a result, the words "improper influence" must be understood as an elaboration of, and not a limitation on, the notion of "conflict of interest." The Federal Court of Appeal summarized the concept of improper influence in paragraph 52 of the decision:

> Improper influence has to be assessed in the context of conflict of interest, where the issue is divided loyalties. Since a public office holder has, by definition, a public duty, one can only place a public office holder in a conflict of interest by creating a competing private interest. That private interest, which claims or could claim the public office holder's loyalty, is the improper influence to which the Rule refers.

Following the Federal Court of Appeal's decision, Commissioner of Lobbying Karen Shepherd issued a general guidance (a guideline) for lobbyists on the application of Rule 8 of the Lobbyists' Code of Conduct, replacing the 2002 guidelines that had been the subject of the court decision.[79] Following requests from lobbyists for additional clarification about political activities as a result of the 2009 guidance, the Commissioner released a document in August 2010 clarifying what types of political activities could put a lobbyist in violation of Rule 8 of the Lobbyists' Code of Conduct.[80]

During the statutory review of the Act, the Committee received a number of recommendations regarding the Lobbyists' Code of Conduct in general, and Rule 8 of the Code, in particular.

For example, Democracy Watch recommended including the Code in the Act to make it clearly enforceable.[81] With respect to Rule 8, Democracy Watch recommended that lobbyists be clearly prohibited from working with political parties, riding associations and candidates, and from becoming Cabinet ministers for a few years after they enter office.[82]

Others such as the Government Relations Institute of Canada[83] and Hill+Knowlton Strategies,[84] recommended that Rule 8 be harmonized with language from other legislation governing political activities and conflicts of interest.

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79 Office of the Commissioner of Lobbying of Canada, "Commissioner's Guidance on Conflict of Interest — Rule 8" (Lobbyists' Code of Conduct), November 2009, http://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00013.html.

80 Office of the Commissioner of Lobbying of Canada, "Clarifications about political activities in the context of Rule 8," August 2010.

81 Democracy Watch, submission February 9, 2012, page 10.

82 Ibid., page 7.

83 Government Relations Institute of Canada, submission February 2, 2012, pages 2 and 3.

Elizabeth Denham (Registrar of Lobbyists for British Columbia, Office of the Information and Privacy Commissioner of British Columbia) offered a modest proposal to provide further transparency regarding the political activities undertaken by lobbyists:

> I want to focus for a moment on Rule 8 of the federal code, which forbids a lobbyist from placing public office holders in a conflict of interest. There were concerns expressed about restrictions on lobbyists who have assisted public office holders on election campaigns, for example.
>
> One modest improvement is to require all lobbyists to declare on their registration whether or not they have engaged in political activity on behalf of the person they are lobbying, and in what capacity. This would, at minimum, provide some transparency to the public about the nature of the relationship between the lobbyist and the elected official.[85]

In 2010, the CBA provided the Commissioner of Lobbying with an opinion on Rule 8. In this opinion:

> The CBA expressed concerns with the imprecise and vague wording of Rule 8 which could result in a finding that the rule violated section 2(b) of the Charter and might not be saved by the Charter's section 1. The opinion noted that the wording had caused confusion for lobbyists who felt compelled in some cases to withdraw from any form of political activity or expression. [Canadian Bar Association, Opinion Respecting the Constitutionality of Rule 8 of the Lobbyists' Code of Conduct, June 2010 (see: http://www.cba.org/CBA/submissions/pdf/10-40-eng.pdf).][86]

In a letter to the Committee dated February 22, 2012, Guy Giorno indicated that much of the dissatisfaction regarding the interpretation of Rule 8 stems from the 2009 Federal Court of Appeal decision, and not from the Commissioner's guidelines:

> First, often lost in the discussion is the fact that Rule 8 has been interpreted by the Federal Court of Appeal.[87] Some who claim to be criticising the Commissioner's interpretation are actually attacking a Federal Court of Appeal interpretation by which the Commissioner is bound.
>
> [...]
>
> I suggest to the Committee that many of the criticisms of the Commissioner and her office come from lobbyists who are unhappy with the Federal Court of Appeal reasoning or unhappy with the implications of that reasoning.

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84 Hill+Knowlton Strategies, submission February 16, 2012, page 2.

85 Elizabeth Denham, *Evidence*, Meeting No. 21, 1st Session, 41st Parliament, February 7, 2012, 1205, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5365014&Language=E&Mode=1&Parl=41&Ses=1.

86 Canadian Bar Association, submission February 14, 2012, page 1, and footnote 3.

87 *Democracy Watch v. Campbell*, 2009 FCA 79, [2010] 2 F.C.R. 139.

> If they want to challenge the Federal Court of Appeal interpretation, then they should say so directly, instead of pretending that the issue has been created by the Commissioner.[88]

OTHER POSSIBLE AREAS OF REFORM

Witnesses made a number of additional observations and recommendations that were not ultimately addressed by the Committee at this time:

- **Defining "Lobbying" (s. 2 of the Act, "Interpretation – Definitions"):** The term "lobbying" is currently not defined in the Act. Rather, registrable activities are set out in sections 5 and 7 of the Act. Some witnesses advocated including a definition of "lobbying" in the Act. For example, Joe Jordan (testimony January 31, 2012 at 1145) suggested that "lobbying" be defined as "communication with decision-makers to affect outcomes." Professor Stephanie Yates (submission February 9, 2012 at page 7) suggested that a definition of lobbying be expanded to include "consulting, research and strategizing in preparation for actual lobbying activities."

- **Designated Public Office Holders: Identification (s. 2 of the Act):** Some witnesses advocated making it easier to identify DPOHs by including DPOH status on the Government Electronic Directory (GEDS) (Joe Jordan, *Evidence*, January 31, 2012, 1145, 1150), or by having a regularly updated list of officials that fall into the DPOH category be posted by department on the Lobbying Commissioner website (Dairy Farmers of Canada, submission, February 14, 2012).

- **Mandate of the Commissioner of Lobbying (s. 4.1 and s. 4.2 of the Act):** Democracy Watch recommended that the appointment of the Commissioner of Lobbying be open, fair and merit-based, and that it be for a non-renewable term.[89]

- **Definition/Scope of Lobbyist — *paid or more?* (Preamble and s. 5 of the Act re: consultant lobbyists):** Some witnesses advocated expanding the definition of "lobbyist", for example by eliminating the word "paid" or expanding the definition to include indirect benefits,[90] or by eliminating

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88 Guy W. Giorno, Letter to the Standing Committee on Access to Information, Privacy and Ethics of the House of Commons regarding the *Lobbying Act,* February 22, 2012, http://www.fasken.com/en/publications/Detail.aspx?publication=df85f816-254e-4932-87f1-8fbd58d03d1a.

89 Democracy Watch submission February 9, 2012, page 9.

90 Joe Jordan, *Evidence*, Meeting No. 19, 1st Session, 41st Parliament, January 31, 2012, 1145, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5344506&Language=E&Mode=1&Parl=41&Ses=1.

other existing exclusions (such as lobbying about the enforcement or administration of laws or regulations).[91]

- **Obligations re: reports and returns (s. 5 and s. 7 of the Act)** A couple of witnesses suggested considering whether DPOHs, in addition to lobbyists, should have a duty to report under the Act.[92] As well, Democracy Watch recommended that lobbyists be required to disclose their past work with any government, political party, riding association or candidate, as well as how much they spend on lobbying campaigns (at page 7 of their submission).

- On the other hand, in their submission, the Canadian Society of Association Executives asked that the Act's frequent reporting requirements be revisited, as the need for increased compliance was adversely affecting many of their members and is an issue of ongoing concern for them.[93] Hill+Knowlton Strategies proposed deleting the requirement for monthly communications reports as set out in the Act, alternatively recommending that registered lobbyists be required to update their primary returns quarterly, all in the interests of transparency and efficiency.[94]

- **The Registry of Lobbyists (s. 9 of the Act) – Search Capacity:** In their submission, Democracy Watch recommends making the search page of the online Registry of Lobbyists searchable by any data field in the registry (currently, the database can only be searched by the name and client(s) or organization of the lobbyist, the department being lobbied and the subject matter, and the lobbying time period [at page 10 of their submission]).

- **Advisory Opinions and Interpretation Bulletins (s. 10 of the Act):** The Public Affairs Association of Canada recommends that, while not strictly speaking an amendment to the Act, the Commissioner have sufficient resources to issue advance rulings to lobbyists asking for clarification on various aspects of the Act and Lobbyists' Code of Conduct (at page 3 of their submission, February 2, 2012). They posit that while the Commissioner has the legal authority to issue advisory and interpretation bulletins, she currently does not have sufficient resources to issue advance rulings or advisory bulletins in a timely manner.

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91 Democracy Watch, submission February 9, 2012.

92 Joe Jordan, *Evidence*, Meeting No. 19, 1st Session, 41st Parliament, January 31, 2012, 1150, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5344506&Language=E&Mode=1&Parl=41&Ses=1; Democracy Watch submission February 9, 2012, page 6.

93 Canadian Society of Association Executives, submission undated, page 3.

94 Hill+Knowlton Strategies, submission February 16, 2012, page 7.

LIST OF RECOMMENDATIONS

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Office of the Commissioner of Lobbying	2011/12/13	18
Bruce Bergen, Senior Counsel		
René Leblanc, Deputy Commissioner		
Karen E. Shepherd, Commissioner of Lobbying		
The Capital Hill Group	2012/01/31	19
Joe Jordan, Senior Consultant		
Government Relations Institute of Canada	2012/02/02	20
Charles King, President		
Jim Patrick, Treasurer		
Public Affairs Association of Canada		
Stephen Andrews, Vice-President		
John Capobianco, President		
Office of the Ethics Commissioner of Alberta	2012/02/07	21
Bradley Odsen, General Counsel Lobbyists Act Registar		
Neil Wilkinson, Ethics Commissioner Lobbyists Act Registrar		
Office of the Information and Privacy Commissioner of British Columbia		
Elizabeth Denham, Registrar of Lobbyists for British Columbia		
Jay Fedorak, Acting Deputy Registrar		
Office of the Integrity Commissioner of Ontario		
Lynn Morrison, Integrity Commissioner		
Quebec Lobbyists Commissioner		
François Casgrain, Lobbyists Commissioner		
ARC Publications	2012/02/09	22
John Chenier, Editor and Publisher		
Democracy Watch Duff Conacher, Board Member Chairperson, Government Ethics Coalition		

Organizations and Individuals	Date	Meeting
Université du Québec à Montréal	2012/02/09	22
Stéphanie Yates, Professor Department of Social and Public Communication		
Canadian Bar Association	2012/02/14	23
Guy Giorno, Member		
Jack Hughes, Member		
Judy Hunter, Staff Lawyer Legislation and Law Reform		
Université Laval		
Raymond Hudon, Professor Department of Political Science		
Hill + Knowlton Strategies	2012/02/16	24
Michael Coates, President and Chief Executive Officer		
Elizabeth Roscoe, Senior Vice-President and National Practice Leader Public Affairs		
Office of the Commissioner of Lobbying		
Bruce Bergen, Senior Counsel		
René Leblanc, Deputy Commissioner		
Karen E. Shepherd, Commissioner of Lobbying		
House of Commons	2012/03/01	26
Andrew Saxton, Parliamentary Secretary to the President of the Treasury Board and for Western Economic Diversification		
Treasury Board Secretariat		
David Dollar, Director, Strategic Initiatives Strategic Policy		
Roger Scott-Douglas, Assistant Secretary Priorities and Planning		
Janice Young, Senior Advisor Strategic Policy		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

Canadian Bar Association

Canadian Society of Association Executives

Dairy Farmers of Canada

Democracy Watch

Government Relations Institute of Canada

Hill + Knowlton Strategies

Office of the Commissioner of Lobbying

Office of the Registrar of Lobbyists for British Columbia

Public Affairs Association of Canada

Quebec Lobbyists Commissioner

Université Laval

Université du Québec à Montréal

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos 18 to 27, 30, 32 and 35) is tabled.

Respectfully submitted,

Pierre-Luc Dusseault, M.P.
Chair

New Democratic Party Supplementary Report on the Statutory Review of the Lobbying Act by the Standing Committee on Access to Information, Privacy and Ethics.

While we support the overall recommendations of the Committee report, the New Democratic Party believes the government has failed to address some key aspects of lobbying reform. It should be noted that during this Study, the witness list was restricted such that Guy Giorno, former Chief of Staff to the Prime Minister, called it "larded with consultant lobbyists who have a biased point of view"[1]. Most importantly, attempts to bring the RCMP before the Committee were thwarted by the government members.

This has left a serious black hole in terms of understanding and addressing the adequacy of enforcement measures under the present version of the Lobbying Act. We believe that a robust review with public consultations must still be undertaken to adequately strengthen the Act.

New Democrats support Canadians' right to free and open access to their elected officials. However, we have seen too many examples of well-connected insiders using loopholes in the Lobbying Act to gain special access to the halls of power.

The New Democratic Party makes the following additional recommendations:

The Lobbying Commissioner must be empowered to continue investigations that have been handed over to the RCMP.

Under the present Act, the Lobbying Commissioner must turn serious breaches over to the RCMP and then is unable to follow through on the investigation while it is under the domain of the RCMP. And yet, the RCMP has never followed through with charges in any of the cases that have been referred to them.

1 Mr. Guy Giorno, Canadian Bar Association, Evidence, Meeting No. 23, 1st Session, 41st Parliament, February 14, 2012, 1240.

We believe that the lack of action on the part of the RCMP creates a false impression that no breaches of the Act have occurred.

We remain deeply concerned that the Conservative members on the Committee obstructed attempts to hear testimony from the RCMP regarding their interpretation of the Lobbying Act and their failure to follow through with charges in any of the cases that have been forward to them.

Consultant lobbyists must report the ultimate client of their lobbying in their monthly communications reports, not the firm for which they work.

We support the Lobbying Commissioner's recommendation to improve the transparency regarding who is paying the lobbyist. The commissioner explained before the Committee that *"… the Act requires them to list their client, the person benefiting. Some were initially putting the lobbying firm, but the lobbying firm is not the ultimate beneficiary; it's the gas company or something behind them that hired the lobbying firm...my suggestion is that the requirement be there."*[2]

Enshrine immunity provisions for the Commissioner of Lobbying and her delegates as found in Sections 18.1 and 2 of the Auditor-General Act and other Acts.

Freedom to conduct an impartial investigation without fear of litigious reprisals is essential to protect the Commissioner of Lobbying and staff. Commissioners with investigative powers in other federal and provincial jurisdictions enjoy such protection. For example, the Lobbying Commissioner in Quebec is protected by the Act respecting public inquiry commissions (chapter C-37).

2 Karen Shepherd, Commissioner of Lobbying, Evidence, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0945.

The Commissioner testified that she *believes that "it is important that the Act be amended to include provisions that would offer the Commissioner or any person acting on my behalf some degree of immunity against criminal or civil proceedings, libel, or slander."*[3]

Bruce Bergen, Senior Counsel, Office of the Commissioner of Lobbying, stated:
"We noted that in essentially each and every one—the Auditor General Act, the Conflict of Interest Act, the Privacy Act, the Access to Information Act, and so on — there was an immunity provision, and that was lacking in the Lobbying Act."[4]

The Commissioner of Lobbying must retain a formal mandate to educate lobbyists, public office holders, and the public about the Canada's lobbying rules and regulations.

New Democrats support the Commissioner's recommendation to retain an explicit mandate to educate in the legislation.
In her recent report, the Commissioner noted education efforts have increased awareness, resulting in improved registration and voluntary disclosure of possible breaches to the Act.

The Commissioner testified that *"… education, to me, is key in ensuring compliance. The only way to comply is if you actually know what the rules and responsibilities are."*[5]
These concerns were echoed by Jim Patrick of the Government Relations Institute of Canada (GRIC), who told the Committee that *"…the Commissioner's duty to educate public office holders should be more comprehensive."*[6]

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3 Karen Shepherd, Commissioner of Lobbying, Evidence, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 0850.

4 Mr. Bruce Bergen, Senior Counsel, Office of the Commissioner of Lobbying, Evidence, Meeting No. 18, 1st Session, 41st Parliament, December 13, 2011, 1000.

5 Karen Shepherd, Commissioner of Lobbying, Evidence, Meeting No. 35, 1st Session, 41st Parliament, May 1, 2012, 1205.

6 Mr. Jim Patrick, Treasurer, Government Relations Institute of Canada, Evidence, Meeting No. 20, 1st Session, 41st Parliament, February 2, 2012, 1105.

A list of all DPOHs must be maintained online by the Office of the Commissioner of Lobbying so as to avoid any confusion.

The Dairy Farmers of Ontario recommended that a list of Designated Public Office Holders should be maintained on the website of the Office of the Commissioner of Lobbying. A public list would provide clarity and enhance compliance with the Act by assisting organizations identify which contacts they must report.

This would help with compliance and with ensuring that lobbyists were given greater tools to follow the Act.