HOUSE OF COMMONS
CANADA

TRANSPARENCY IN THE INFORMATION AGE: THE LOBBYISTS REGISTRATION ACT IN THE 21st CENTURY

Standing Committee on Industry, Science and Technology

Susan Whelan, M.P.
Chair

June 2001

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has the honour to present its

FOURTH REPORT

Pursuant to Standing Order 108(2), the Standing Committee on Industry, Science and Technology proceeded to the statutory review of the *Lobbyists Registration Act*. After hearing evidence, the Committee has agreed to report to the House as follows:

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CHAIR'S FOREWORD

In March of 2001 the House of Commons Standing Committee on Industry, Science and Technology undertook the four-year review of the administration and operation of the *Lobbyists Registration Act*. The Committee approached the hearings with a broad mandate, allowing the issues to emerge from the discussion itself. While the Minister did request that we look at a few particular issues, the Committee did not limit itself to these but rather heard evidence on a wide range of issues. Our role was to determine if the lobbyists registration system is working well. This was addressed in the context of the four key principles set out in the Act's preamble:

- free and open access to government is an important matter of public interest;
- lobbying public office holders is a legitimate activity;
- it is desirable that public office holders and the public be able to know who is attempting to influence government;
- a system of registration of paid lobbyists should not impede free and open access to government.

The question, then, for the Committee's consideration was this: is the Act working to achieve in practice the right balance of the four principles? The inquiry often took us well beyond the *Lobbyists Registration Act*, into issues of ethics in government and conflict of interest; of election financing and the real nature of influence and, perhaps most importantly, transparency.

But what do we mean when we say "transparency"? The word means many different things in the context of modern government: it means that the process by which government makes decisions must be one that people can understand, a process which they can access, a process which provides them with the opportunity to make their voices heard, and to have their say in the laws that will govern and affect their lives. As well, transparency means that the public should be able to find out exactly who is talking to government, and what they are talking about. For that reason, understanding transparency means broadening the discussion beyond narrow questions of how much information lobbyists should be required to disclose; of course, that discussion must also take place. It is important that the public has enough information to know what is going on in government. But, even more importantly, the discussion must be about how we can ensure that all Canadians — not just those working within a kilometre of Parliament Hill — can have real, meaningful input in the process by which they are governed.

Perhaps one of the most important ideas to emerge from our discussions is how the Internet is changing the way policy is made, and the way people are talking to their government. Members of Parliament, of course, have already begun to experience a

significant increase in E-mail from constituents. The Committee heard that, currently, at least one government department provides on its Web site a “consultations” portal — at the click of a mouse, Canadians can now make their views known and not just to their Member of Parliament. The Internet, though only in the early stages of development, permits for the first time the possibility of seeing clearly into, and getting involved in, the inner workings of the bureaucracy: Web sites may provide detailed listings of departmental personnel, their responsibilities, phone numbers and E-mail addresses; department Web sites provide links to relevant legislation, regulations, guidelines, policy manuals and even discussion papers. These are just a few of the examples of the level of transparency that may be possible. The growth of the Internet will change the way governments make decisions, and its impact will be felt only more strongly in coming years. Both Members of Parliament and departmental policy makers may look forward to far more direct, individual input in the policy-making process.

In a sense it is really impossible to talk about the lobbyists registration system without discussing the role of the Internet. Most obviously, the registry itself is Internet-based. Lobbyists register and update their filings electronically. The registry is fully searchable, allowing anyone to determine with a few mouse clicks who is talking to government and what they are talking about. As well, the Internet allows the timely reporting of lobbyists who fail or neglect to register.

The majority of witnesses expressed the view that the system works well. This is perhaps best understood by looking at the information that the system provides, and what that information reveals about the discussions that are taking place between lobbyists and government; about the views being expressed and about what information is changing hands. The four principles, it might be said, recognize implicitly the critical role of information in the policy-making process. Information is the most valuable input in that process, and getting complete, up-to-date, and accurate information is always a priority for legislators and policy-makers. This information comes from stakeholders, from people or businesses with an interest in the outcome; people who are concerned enough to make the effort to speak out, to make their voices heard and their views known. Thousands of Canadians do this every year, in fact, when they write letters to their MP. In addition, individuals and businesses may join together as public interest groups or trade and industry associations to discuss issues and speak with government — i.e. lobby — with a strong and unified voice.

The process of lobbying is often portrayed as the exclusive reserve of “powerful and influential lobbyists,” using their “connections” to make “secret deals.” This is far too simple a picture. The reality is that the overwhelming preponderance of government decision making — and, therefore, lobbying efforts — are directed not at legislators or legislation, nor even at ministers of the Crown. Rather, most lobbying is “low-level” activity aimed at many levels of the public service.

Another important idea that was discussed is how government decision making and the role of lobbyists has changed since the Act was passed in 1989 and, indeed, since the major amendments of 1995. The Act was conceived as an antidote to the conflict of interest and influence-peddling scandals that beset previous governments. The solution was not to regulate lobbying — which remains a valuable and legitimate activity — but rather to make the system transparent by requiring people or groups to disclose their lobbying activities. The general consensus is that the Act has succeeded in this — it provides precisely the kind of transparency for which it was created: lobbyists do, in fact, register. Today, by examining the registry, we can find out who is lobbying what department and what exactly they are discussing. Why is it important that we know this? Simply put, by knowing who is talking to government, the public (and, of course, other lobbyists) can form a clear picture of the information that is being provided and the policy options that are being considered. Ultimately, the registry makes it possible to achieve a true plurality of views without an unduly onerous compliance mechanism.

Compliance with the Act is an issue the Committee considered at some length — is it being complied with? Can it be improved? In assessing the many recommendations that were brought forward, the Committee remained mindful of the importance of balancing two important objectives: first, ensuring that the Act promotes disclosure of enough information to achieve transparency but, at the same time, that we do not require information merely for its own sake, because it “might” tell us something. More information is not necessarily better information; the key is to have the right information. Requiring more information will raise the cost of the system — for government the cost of collecting, reviewing and confirming the information provided; and for registrants, the administrative cost of compliance. The challenge is to determine the right level of disclosure to ensure a level playing field, a field in which all Canadians can have access to the decision-making process.

INTRODUCTION

1. Scope of the Study

This report details the findings of the House of Commons Standing Committee on Industry, Science and Technology's four-year review of the *Lobbyists Registration Act* (hereinafter the LRA or the Act).

The LRA establishes legal requirements for the registration of lobbyists. It also prescribes penalties and procedures for investigating and prosecuting breaches of those requirements. As well, the Act provides for the appointment of a Registrar of Lobbyists to administer the system, and the appointment of another official to investigate possible breaches of the *Lobbyists Code of Conduct* (hereinafter the Lobbyists Code). The person appointed to this role is the Ethics Counsellor, a function that is distinct from his other role as Ethics Counsellor, wherein he advises on the application of the *Conflict of Interest and Post-Employment Code for Public Office Holders* (hereinafter referred to as the Conflict of Interest Code). The Ethics Counsellor's role under the LRA is properly within the scope of the current study, and the Committee heard considerable evidence and many recommendations on subjects related to that role: the process by which the Ethics Counsellor is appointed, as well as alternatives to it; and the creation of a conflict of interest code for MPs. The Committee remained mindful that some matters we discussed were not, in fact, related to the LRA; for that reason, although the issues were discussed, we have not made them the subject of any recommendations in this report.

2. Evaluating the Recommendations

In evaluating the proposals brought forward by witnesses, the first question the Committee addressed was whether, in fact, the subject matter was one that flowed from the LRA. Issues such as the post-employment "cooling off" period, during which certain public office holders are prohibited from engaging in lobbying activities, is a subject addressed in the Conflict of Interest Code, and so fell outside the scope of the current study. For that same reason, there is no discussion in this report of creating a conflict of interest code for Parliamentarians. This is not to say that such a code may not be desirable, but that discussion is clearly beyond the current study.

Still, the Committee heard valuable evidence about how the current system is operating and several recommendations as to how it might be improved. But according to what principles are the recommendations to be evaluated? Parliament clearly established those principles in the preamble to the LRA, which recognizes that free and open access to government is an important matter of public interest, and that lobbying public office holders is a legitimate activity. Those principles also require that public office holders and

the public be able to know who is attempting to influence government, without impeding free and open access to government.

The Committee attempted to evaluate the recommendations with a view to balancing the four principle objectives of the Act. For this reason, we considered carefully the calls for more disclosure (for example, disclosure of fees or of money spent on lobbying campaigns), with the important question in mind: would increasing the volume of disclosure actually achieve greater transparency? Or would it merely increase the costs of administration and compliance without providing any corresponding benefit?

3. Overview of the System

For the purposes of the Act lobbyists are defined as individuals paid to make representations with the goal of influencing federal public office holders. The Act requires lobbyists to register and disclose certain information. The information disclosed is made public through a computerized registry system. The Act distinguishes among three types of lobbyists:

- An individual who lobbies on behalf of a client must register as a *Consultant Lobbyist*.
- An employee of a corporation whose job involves a significant amount (20%) of lobbying for their employer must register as an *In-House Lobbyist (Corporate)*.
- The senior officer of an organization that pursues non-profit objectives must register as an *In-House Lobbyist (Organization)* when one or more employees lobby and where the total lobbying duties of all employees constitute a significant part (20%) of the duties of one employee.

The Act requires that lobbyists submit certain information in returns and notify the Registrar of any changes to information previously submitted, including termination of lobbying activity. This information is submitted in a form and manner prescribed by regulation; as such, the forms and regulations function as an integral part of the implementation of the Act. Techniques such as checklists and narrative statements are used to facilitate the collection of information.

Not all lobbyists or all lobbying activities are covered by the Act. Only paid lobbyists are required to register; unpaid lobbyists are not. The statute covers only direct attempts to influence certain government decisions. Thus, lobbyists have to register only if there has been some form of direct contact or communication with a person holding public office. The Act aims only at disclosing lobbying efforts; it does not attempt to regulate lobbyists or the manner in which lobbying is conducted.

In addition to the Act, the *Lobbyists Code of Conduct* establishes standards of conduct for all lobbyists communicating with federal public office holders. The Lobbyists

Code forms a counterpart to the obligations that federal officials are required to observe in their interactions with the public and with lobbyists. Canada was the first country to reinforce its lobbyist disclosure rules with a code of conduct. The onus to comply with the Lobbyists Code rests on the Consultant Lobbyist, the In-House (Corporate) lobbyist or the senior officer of the organization doing the lobbying, as the case may be.

The Lobbyists Code begins with a preamble stating its purpose and context. This is followed by a series of principles that, in turn, are followed by specific rules. The principles establish a framework in terms of the goals and objectives to be attained, but they do not establish precise standards. The Lobbyists Code provides detailed requirements for behaviour in certain situations.

The Ethics Counsellor is charged with investigating breaches of the Lobbyists Code. His powers of investigation are triggered where there is an alleged breach of a rule. Where the Ethics Counsellor believes, on reasonable grounds, that a breach of the Lobbyists Code has occurred, he must investigate and prepare a report for Parliament. The Act does not prescribe penalties for breach of the Lobbyists Code; neither does it specify how Parliament is to respond to a reported breach of the Lobbyists Code.

Responsibility for administration of the information disclosure provisions of the Act and maintenance of the public registry is assigned to the Registrar, designated by the Registrar General of Canada (Minister of Industry). The Registrar heads the Lobbyists Registration Branch. The Registrar has no powers to investigate under the Act; matters requiring investigation are turned over to the RCMP. Branch staff examines all forms submitted for completeness and clarity. Inconsistencies or obvious omissions are communicated to the lobbyist for correction or for supplementary information. The Registrar may verify and demand clarification of information submitted by lobbyists. The Act also authorizes the Registrar to issue advisory opinions and interpretation bulletins in order to provide greater certainty regarding the registration provisions. The Act sets out penalties for non-compliance or for submitting false or misleading information. There is a two-year statutory limitation period for enforcement proceedings commenced by way of summary conviction. More serious violations are punishable on indictment, for which there is no limitation period.

To give lobbyists an efficient system for registering and to give the public broad access to the information on lobbyists, both electronic registration, as well as access to data through the Industry Canada server, are free of charge.

4. Issues for Discussion

Committee hearings took place between March and May of 2001. Many issues emerged from the discussion, touching on many aspects of the public policy-making

process. The Committee approached the hearings with an open mind, As well, prior to the hearings, several issues had been suggested to the Committee for its review:

- Whether the current *quantitative* guideline, which requires registration when lobbying is 20% or more of an employee's duties, should also include a qualitative sense; that is, should registration also be required where the lobbying would have an important effect or impact on the attainment by a company of its goals or objectives?
- Confidentiality and conflict of interest: Can a firm provide advisory services to a government department while simultaneously representing a private sector client with interests in that same department?
- The advisability of applying the In-House (Organization) approach to registering In-House (Corporate) lobbyists. Currently, the Act distinguishes between commercial "corporations," and "organizations," which include associations, chambers of commerce, trade unions, charitable societies, coalitions, etc. The filing requirements are substantially different between the two: the triggering element for either In-House (Corporate) or In-House (Organization) lobbyists is the same i.e. a "significant part" of the duties (defined as 20%). In-House (Corporate) lobbyists are individually responsible to register if 20% or more of their time is spent in lobbying activities. As a result, there may be several filings for a particular corporation, or none (i.e. if no employee spends more than 20% of his time lobbying). By contrast, In-House (Organization) lobbyist registration is triggered if the aggregated lobbying activity that the organization undertakes equals 20% of one employee's time. The result is a comprehensive filing setting out overall objectives of the organization along with a listing of all employees engaged in lobbying, no matter how much time is involved. The question for the Committee's consideration is whether it would be advisable to apply the In-House (Organization) approach to In-House (Corporate) lobbyists.
- Another area of inquiry related to Consultant Lobbyists. Currently, the LRA requires that a Consultant Lobbyist advise the registrar within 30 days of any changes to a filing, including the termination of an undertaking. This is sometimes overlooked. The Minister asked the Committee to consider the advisability of amending the Act by adding a provision specifically requiring Consultant Lobbyists reconfirm their filing annually (or every six months) in order to ensure that registry information is timely and accurate.
- Another issue to which the Committee was asked to direct its focus is the enforcement provisions, specifically the adequacy of the two-year limitation for prosecuting violations of the Act. The Minister, in his letter to the Committee, expressed "no reason to believe this period creates a difficulty but it would be timely to take advantage" of the Committee's review to consider the issue, as well as other aspects of enforcement.

The Committee wishes to extend its sincere thanks to the many witnesses who came forward to contribute their thoughts to our study.

CHAPTER 1
THE REGISTRY — COMPLIANCE AND ENFORCEMENT

> We have had very good, excellent compliance with the Act. People do register. [Diane Champagne-Paul 19:09:25]

> There is considerable anecdotal evidence that many lobbyists simply decline to register. [Aaron Freeman 8:15:45].

> We believe that most active Consultant Lobbyists, In-House (Corporate) lobbyists, and In-House (Organization) lobbyists representing business are indeed registered in compliance with the Act. The same cannot be said however of paid lobbyists representing organizations outside the business sector.... [Jayson Myers 7:9:10]

The relationship between compliance and enforcement is clear: simply put, the enforcement mechanisms in the LRA aim at ensuring compliance by lobbyists. The two concepts are, in a sense, inversely related; if compliance is a problem, an argument exists to strengthen enforcement mechanisms. Where compliance rates are good, the suggestion is that enforcement mechanisms are adequate.

1. Compliance and Enforcement

According to the Registrar of Lobbyists, as of March 16, 2001, there were 785 registered Consultant Lobbyists, 301 registered In-House (Corporate) lobbyists and 364 registered senior paid officers for non-profit organizations and interest groups i.e. In-House (Organization) lobbyists. In large measure, the high rates of compliance are attributable to the ease of access to the system:

> One very important development has been our ability to use the Internet to ensure transparency as well as administrative efficiency. Today, 98% of registrations are filed electronically. Internet access using the *Strategis Website*, Industry Canada's gateway to the Internet, not only enables lobbyists to file their registration forms on-line, without charge, it also renders the registry completely available to the Canadian public on a 24-hour, seven-days-a-week basis, thus enabling anyone to conduct searches to retrieve information on lobbyists. [Diane Champagne-Paul 5:16:25]

There is every indication that the registry is a very-frequently used resource:

> …For the period beginning with the 1st of April 2000 to March 11, 2001, there have been 30,033 visits to the Lobbyists' website with about 167,496 pages being accessed by the users during the same period, quite an impressive number for what may be called a small program. [Diane Champagne-Paul 5:16:25]

The accomplishments of the registry are even more impressive when one considers the size of its budget:

> The use of the Internet has also proven to be a very efficient use of limited available resources as it enables the Lobbyists Registration Branch to operate with the use of only two individuals on an annual budget of less than $200,000. [Diane Champagne-Paul 5:16:25]

One witness, Democracy Watch, did not agree that the registry was effective, and told the Committee that "there is considerable anecdotal evidence that many lobbyists simply decline to register." [Aaron Freeman 8:15:45]. However, Democracy Watch provided no evidence to the Committee in support of this contentious assertion, and the fact remains that "anecdote" — even in its plural form — cannot be considered "evidence."

Moreover, it is not clear from the anecdotal "evidence" if it is only certain types of lobbyists who fail to register, or all lobbyists across the board; or, for that matter, whether the failure is the result of ignorance of the law or malfeasance. Of course, if the statement was meant to refer to paid lobbyists for non-governmental organizations (NGOs), it might be said to find some support in a study conducted and reported by the Association of Canadian Manufacturers and Exporters (CME). As Jayson Myers explained:

> We believe that most active Consultant Lobbyists, In-House (Corporate) lobbyists, and In-House (Organization) lobbyists representing business are indeed registered in compliance with the act. The same cannot be said however of paid lobbyists representing organizations outside the business sector.... [Jayson Myers 7:9:10]

In support of his assertion, Mr. Myers referred to the results of a study conducted by his organization, which measured registration compliance rates during discussions of three issues in which the CME had been involved over the previous two years: the World Trade Organization; the development of the Export Development Corporation's disclosure standards and requirements; and climate change and the national negotiations on Canada's participation in the Kyoto Protocol. The CME's study found that, of the 36 Consultant Lobbyists representing business associations, 34 were registered; of 14 In-House (Corporate) lobbyists, all 14 were registered; of 28 non-governmental lobbyists involved in the consultations, only three were "properly registered."

The Committee did not itself review the CME's study and therefore cannot assess its conclusions. The reported conclusions though, even if true, do not necessarily indicate malfeasance. In many cases, it may be that the failure results from honest ignorance or confusion. In at least some cases, the problem may stem from limited resources or expertise, or even as a result of being outside the mainstream, isolated from the urban community of lobbyists:

> Now it sometimes occurs maybe when you're going out of the metropolitan areas that perhaps you have people who may not be as familiar as to the obligations under the act. That's why we follow up with these telephone calls, advise them and then that usually will result in a registration. [Diane Champagne-Paul 19:09:30]

This approach, which relies on industry participants to report possible breaches, did not meet with the approval of all witnesses. John Chenier, Editor of the *Lobby Monitor*:

> I refer you to the testimony of the lobbyist Registrar before this Committee…. According to her testimony, those who choose not to register but whose activities, through the vigilance of public servants, are brought to her attention need only profess their ignorance to the Registrar and belatedly submit a registration to escape sanctions. [John Chenier 14:15:40]

Of course, one cannot infer malfeasance from every failure to register, since ignorance of the law might just as likely be the cause; and, in our system of justice, defendants are entitled to the benefit of reasonable doubt. Still, even breaches of the Act made in good faith will, if left unaddressed, erode its effectiveness; the Committee is of the view, however, that ignorance of the law is not best cured by stronger enforcement, but rather through public education. The point was well-expressed by Brian Grainger, a long-time consultant on business ethics:

> The Americans have proven to us that you can litigate the world and still have a mess. We haven't gained anything from going in that direction but on the other hand…transparency, accountability, are important. I'm suggesting, and many people are suggesting today, that we're going to have to depend and rely on…the word integrity, the professionalism, of individuals called to serve….Where we rely completely on rule based approaches and not value based approaches…we're going to have a difficult time. [Brian Grainger 8:16:15]

In conclusion, although it appears to be the case that the registration requirements of the Act are, for the most part, being complied with, the Committee is of the view that the question of compliance would benefit from further study and, accordingly:

Recommendation 1:

The Committee recommends that the Government undertake a study to determine rates of compliance under the Act and the reasons for non-compliance where it exists.

(a) The Role of the Ethics Counsellor

The Ethics Counsellor is responsible for investigating possible violations of the Lobbyists Code of Conduct. In this capacity, he reports to the Minister of Industry (and accordingly, to the Committee). It was in this capacity that the Ethics Counsellor appeared to talk about his role of enforcing the Lobbyists Code.

The Ethics Counsellor derives his authority under the LRA from a Governor in Council appointment, made under section 10.1 of the LRA. The section permits the Governor in Council to "designate any person as Ethics Counsellor for the purposes of this Act." The exact instrument that gives the Ethics Counsellor his duties under the LRA is Order in Council (P.C. 1996-266, February 26, 1996):

> His Excellency the Governor General in Council, on the recommendation of the Prime Minister, pursuant to section 10.1 of the *Lobbyists Registration Act*, is pleased hereby to designate Mr. Howard R. Wilson, of Ottawa, Ontario, as the Ethics Counsellor.

In addition to being appointed under the LRA for the purposes of the Act, the Ethics Counsellor also derives his powers to investigate breaches of the Lobbyists Code. The 1995 amendments that created the office of the Ethics Counsellor also gave him, appropriately, the mandate to draft a *Lobbyists Code of Conduct*. The Ethics Counsellor introduced the Code in March 1997.

By contrast, the Ethics Counsellor derives his mandate under the Conflict of Interest Code from section 5(1) of the Code:

> Under the general direction of the Clerk of the Privy Council, the Ethics Counsellor is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part.

The Ethics Counsellor's appearance before the Committee to talk about his role under the LRA led to some debate concerning the scope of our study. Some members expressed the view that it was proper, on the occasion of the Ethics Counsellor's attendance, to have him answer questions about the Prime Minister. The majority of members were of the view that the Ethics Counsellor's appearance clearly related to the application of the LRA and Lobbyists Code, not the Conflict of Interest Code. The matter appeared to be resolved when the Committee and the Ethics Counsellor agreed that he would devote the first hour of his appearance to answering questions about the Prime Minister .

While the Committee's mandate in the current study derives from the LRA, we did not view ourselves as being strictly confined to matters directly related to it; in fact, there emerged from the evidence a broad range of issues, some very directly related to the Act, and others bearing only a very tenuous connection to it. For example, discussion frequently returned to such issues as the "cooling off period" for former public office holders, or the reform of campaign financing. While the Committee heard the evidence on these subjects with great interest, we are aware that not all discussions were of direct relevance to our study. More fundamentally, though, this illustrates that the scope of our study was not always clear.

Where this became most evident was in our discussion about the Ethics Counsellor. The Committee is of the view that the investigative powers of the Ethics Counsellor, as well as his appointment for the purposes of the LRA are clearly subjects within the bounds of the study and, indeed, evidence was heard on them. For example, the Committee addressed the question of whether the Ethics Counsellor should be involved in the enforcement of the Lobbyists Code, or whether this task might not be better assigned to another public servant. At the same time, the Committee recognizes that certain aspects of the Ethics Counsellor's relationship fall outside the scope of our study; for example, the Ethics Counsellor's appointment or his conduct of investigations under the Conflict of Interest Code are matters that, while certainly of interest to members of the opposition and to some Canadians, cannot be said to form part of the Committee's mandate.

In retrospect, it appears that the controversy over the scope of the Committee's mandate would not have arisen but for the fact that the Ethics Counsellor holds two jobs, with two very different reporting relationships. In his role as the investigator under the Lobbyists Code he reports to the Minister of Industry (and to the Committee) on violations of it. In his other role as Ethics Counsellor, he advises on possible violations of the Conflict of Interest Code. The confusion is exacerbated by the fact that the Ethics Counsellor's two tasks, while quite different in nature, go under the same title i.e. the Ethics Counsellor. But this is merely a question of title, and that could be easily rectified simply by giving the Ethics Counsellor (or some other public servant) a different title, such as, for example, the Lobbyists Registration Counsellor.

But, while the 1995 amendments gave the Ethics Counsellor a mandate to draft the *Lobbyists Code of Conduct*, does this require his continued involvement as investigator under the Code? There is no clear policy reason for having the Ethics Counsellor do both jobs, and in fact, it appears to contribute to some confusion over his roles and reporting relationships.

At the time the Act was amended, it appears that it was the intention of Parliament that the Ethics Counsellor's powers of investigation, being quite similar to those of a federal court judge, should most appropriately be exercised by a senior civil servant:

> In 1995…the first charge that was given me was to, in effect, develop a code. But it was very much to be a code. I did so after extensive consultation and that is now part of the overall scheme. It was also felt, however, that there should be very strong investigatory powers and those were provided to me… [Howard Wilson 5:17:15]

The Ethics Counsellor, as the person charged with drafting the Lobbyists Code, seemed like the logical person to investigate and report on violations of it. This does not appear to have been done out of administrative necessity, but out of administrative convenience. In retrospect, it is questionable whether giving the power to the Ethics

Counsellor was sound policy. Lobbying is the concern of all Members of Parliament, not merely that of the Prime Minister, his Cabinet and the members of the governing party. Might the Lobbyists' Code not be more appropriately the responsibility of an official who reports to Parliament? Witnesses were virtually unanimous in supporting this idea. The Committee endorses this proposal; however, it is important to emphasize that this recommendation does not foreclose the prerogative of the Prime Minister to appoint an Ethics Counsellor to advise his government. In fact, any party is free to do the same.

Removing the Ethics Counsellor from the enforcement of the LRA would have two benefits: it would eliminate the confusion arising from the dual reporting relationship; and it would free up the Ethics Counsellor to devote his attentions exclusively to his mandate under the Conflict of Interest Code. Of course, the way the system has evolved, there exists considerable administrative interdependence between the Office of the Registrar and the Office of the Ethics Counsellor. But it is not clear that there is any obvious advantage to this arrangement; and, in fact, as the hearings demonstrated, it may lead to considerable misconception about the Ethics Counsellor's role in the LRA system. This ambiguity could be resolved by the creation of a new office for the investigation of breaches of the Lobbyist's Code.

Accordingly, for the reasons set out above:

Recommendation 2:

The Committee recommends that the Act be amended to create a new office, which shall have the exclusive responsibility of investigating and reporting to Parliament on alleged violations of the *Lobbyists Code of Conduct*.

(b) Problems of Interpretation

Currently, the Act applies to every individual who for payment on behalf of a client undertakes to communicate in an attempt to influence public decision making. As the Ethics Counsellor explains, this has led to enforcement difficulties:

> We thought the operative word was "communicate"…that you were getting paid, that you had a client and that you were speaking to a public office holder about changing a bill, making a regulation. The Department of Justice prosecutors have said that the operative words on this are "an attempt to influence" and the test that they believe has to be applied…is not "communicate" but "communicate in an attempt to influence" [Howard Wilson 5:16:30]

The effect of this different interpretation is considerable. Under the test as normally interpreted, if a person, for payment, communicates with a public office holder to discuss government business (i.e. legislation or awarding contracts) that person is required to

register. This was likely the interpretation Parliament intended, given its consistency with the *Criminal Code*. However, the use of the term “in an attempt to influence” gives rise to interpretive problems. As Irving Miller, Senior Counsel, Commercial Law Division, Department of Justice, explained:

> By removing the words “attempt to influence” you would have a much easier time of gathering the evidence to prosecute an offence, that's quite clear, because the communication is something that you could probably establish quite simply. An attempt to influence… requires much more subtle evidence and that's been the problem. [Irving Miller 19:09:15]

Mr. Miller also noted, however, that the solution was not as simple as dropping the troublesome phrase:

> If you… drop those words and just focus on communication then you do throw a very wide net. In the drafting of that provision you may have to make some exceptions that are not already in the Act because not every communication, you know, should be caught. Inquiries after the status of things, for example, may not warrant that and other sorts of examples. So we'd have to look at everything carefully to see what should be excepted from that. [Irving Miller 19:09:15]

The Ethics Counsellor referred to other jurisdictions, such as the United States, where different language is used, such as “communicate with a public office holder with respect to or in regard to” legislation and the awarding of contracts.

Mr. Miller also reported that several options have been, or are being considered by, the department. One option would move the offence to the system of civil regulatory or administrative offences:

> …Those are options that have been considered and are still…being considered. They entail some other difficulties…if you decriminalized it, you would lower the standard of proof…from “beyond a reasonable doubt” to the “balance of probabilities”…. [But] if you left the words “in an attempt to influence”, you still would have some difficulty even then in establishing that even on a balance of probability. So you probably wouldn't remove that problem completely, you would maybe help achieve it, but you wouldn't remove it completely. [Irving Miller 19:09:20]

Another alternative would be to adopt an administrative penalty-type mechanism, which has apparently been done in other federal statutes. However, this approach also has its drawbacks:

> If you adopt that sort of a mechanism, you then have to put in place a tribunal to hear appeals from it, because what will happen then is there will be an administrative penalty that will be imposed and then the person will have to be given the right to appeal that if they choose not to plead guilty. That would mean that they would have to go to a tribunal which you would have to establish under the Act and so on. So it becomes a little more involved. Rather than using the court system that

> we have, you would have an extra requirement to establish a particular tribunal for that purpose. [Irving Miller 19:09:20]

A third option would use the *Contraventions Act*, an existing federal law that provides for an administrative-type penalty and which is administered using existing courts of the provinces, known as contravention courts. Being designated as a "contravention" decriminalizes an offence. The person is given the option of pleading guilty and paying a fine, pleading guilty and making representations or requesting a trial. However, only seven or eight provinces have signed on to the administration of the contraventions courts. Moreover, it is questionable whether the penalty limits under the current Contraventions Act are sufficient to encourage compliance.

Based on the evidence presented, the Committee concurs that the enforcement issue appears to be genuine; however, it does not have sufficient information to be able to assess fully the legislative alternatives available. Accordingly:

Recommendation 3:

The Committee recommends that the Registrar of Lobbyists, the Office of the Ethics Counsellor and the Department of Justice undertake further consultations with a view to determining the most appropriate legislative response to the enforcement issues arising from the use of the phrase "in an attempt to influence" in the Act.

(c) Two-Year Limitation on Summary Conviction Proceedings

Under the current Act, anyone who makes a knowingly false or misleading statement in a return is guilty of an offence. The offence may be prosecuted either by way of summary conviction (subject to a fine of up to $25,000 and imprisonment of up to six months) or by way of indictment (subject to a fine of up to $100,000 and imprisonment of up to two years). The two-year limitation applies only when the crown proceeds by way of summary conviction. There is no limitation if the Crown proceeds by way of indictment. The traditional limitation for summary conviction offences (for example, under the *Criminal Code*) is six months; however, the LRA provides a considerably longer two-year period. The Committee is aware of a growing trend towards lengthening limitation periods and increasing penalties available under summary conviction proceedings, with the aim of increasing prosecutors' flexibility; in some cases, the lapsing of the short six-month limitation period on summary proceedings may force prosecutors to proceed either by way of indictment or not at all. Indictment proceedings, however, are traditionally reserved for more serious offences, since they entitle the accused to a jury trial and preliminary inquiry. As well, because indictable offences carry more serious consequences, it may be more difficult to secure a conviction.

No clear consensus emerged as to the appropriateness of the two-year limitation: some witnesses expressed the view that it was adequate; others felt that if increasing the limitation period would improve compliance and enforcement then it would be justified; still others expressed concern that the two-year period could lapse before a violation is discovered:

> If you look at the wording, it says charges may be laid “not later than two years after the time when the subject-matter of the proceedings arose”…. There can be a huge gap between the time something occurs and the time we become aware of it. [Duff Conacher 8:15:50]

The adequacy of the limitation period cannot be evaluated theoretically, but rather must be evaluated having regard to operation of the system in practice. Have there been cases where a prosecution has been abandoned owing to the lapse of the limitation? The Registrar in her evidence did not provide the Committee with any instance of such an occurrence. In practice, then, it is not obviously the case that the two-year limitation period has proven to be inadequate. Theoretically, however, the situation could be different: what would happen if two years passed before the breach came to light? As a first response, of course, the Crown would have the option of proceeding by way of indictment (if the offence was sufficiently serious); but what about minor breaches, for which summary conviction is the only reasonable means of proceeding? How does it come to the Registrar’s attention that a person has failed to register? How long does it take for this information to surface? Since a lobbyist only “shows up on the radar” by registering, how does the Registrar determine whether a lobbyist is actually registered? The Registrar responds:

> …The registry…is completely… in the public domain and it's accessible by all Canadians, or anybody for that matter…. Anybody who gets wind that maybe somebody is lobbying on an issue, they can go to that registry and see if this individual is appropriately registered….[Diane Champagne-Paul 5:17:10]

The Registrar explains that unregistered lobbying rarely occurs, for the simple reason that the practice is usually an open one:

> Whenever there's lobbying happening on one side, be reassured that there's lobbying that'll be counterbalancing on the various sides or facets of the issue. [Diane Champagne-Paul 19:09:25]

The system therefore relies on industry participants to report, a process which is facilitated by the open availability of the registry on the Internet:

> …As Registrar, every now and then I will get calls, be they from bureaucrats or even private sector members, who will ask about a specific case. They will ask, “Well, is this individual registered or not registered?” We do the search, and they will probably give us the facts. On the basis of that information, I'll make a query. I'll pick

> up the phone and I'll call the individual. I'll ascertain what the facts are, and then two outcomes will come out of that. Either the activities in question are not registrable under the Act or they were not aware. Then we make them aware. We provide them with a package and information, and that will result in a registration. [Diane Champagne-Paul 5:17:10]

> …Because of the accessibility of the Registry, if somebody goes to it, there's an issue and they know it's very high profile, they will go to the registry. They see somebody's not registered. They know that this individual has been involved. There will either be a newspaper article, the media will pick up on it. We get a telephone call… [Diane Champagne-Paul 19:09:25]

In some cases, the Registrar reports, her investigation reveals that the activity reported is not a registrable activity; as such, the reported "breach" is not a breach at all:

> First of all, I have to determine whether this is actually within the scope of the act. Now, because a lot of times some people will think that perhaps that an activity really is a lobbying activity when in fact it is not. So I will follow up. I will make a phone call. I will determine and I will try a phone call to the individual in question or other individuals who are relevant to the issue and determine what are the facts. From then, I can determine whether it is within the scope or not. [Diane Champagne-Paul 19:09:25]

Where the reported activities fall within the scope of the Act:

> …The individuals are informed and advised that there is this registration requirement under the act. Now on the whole, in the metropolitan areas, we have experienced…very good, excellent compliance with the Act. People do register. [Diane Champagne-Paul 19:09:25]

The Ethics Counsellor was of the view that the registry system has cleared up much of the mystery which used to surround the system:

> …A couple of years ago when Onex made its bid for Air Canada there was intense interest on exactly who was hiring which lobbyists. Air Canada was hiring lobbyists, Canadian was hiring…. There was no doubt several others.... My office received exactly two telephone calls…because everything was available on the Internet. Now I think that changes the mystery of the debate. There was no mystery about who was being hired to make representations on behalf of which corporate interest. [Howard Wilson 5:16:40]

The Canadian Bar Association, in its written brief to the Committee, expressed its view:

> …Violations sufficient to warrant proceedings by way of indictment are properly subject to prosecution even later than two years after the offence. Violations which do not justify such prosecution, however, are in all likelihood not serious enough to warrant investigation and prosecution after two years have gone by. [CBA Brief].

Owing to the openness created by the registry, it appears that for the most part the likelihood is that the Registrar will learn of possible breaches of the Act in a timely fashion, and it does not appear that the two-year limitation has adversely affected the ability of the Crown to proceed with commencing summary conviction proceedings. Accordingly, for this and other reasons set out above:

Recommendation 4:

The Committee is of the view that the current two-year limitation period for the commencement of summary conviction proceedings under the Act is adequate and therefore does not recommend any change to the Act in this regard.

CHAPTER 2
THE LOBBYISTS REGISTRY — REGISTERING AND UPDATING

The Committee considered several matters in relation to the filing requirements of the LRA.

1. An "Organization" Approach to "Corporate" Lobbyists

The Act distinguishes between "organizations" e.g. chambers of commerce, associations and trade unions, etc., and "corporations." The different entities have different registration requirements. Currently, the senior officer of an organization must register as an In-House (Organization) lobbyist if the sum total of lobbying time for all employees is equal to 20% of one employee (i.e. one day per work week). The senior officer must list all employees engaged in lobby activity, no matter how much time they spend lobbying. The current filing requirement for In-House (Corporate) lobbyists specifies that every individual must register who devotes a "significant part" of their duties (defined as 20% of their time) to lobbying.

The Committee was asked to study the advisability of applying the "organization" standard to "corporation" lobbyists. Jayson Myers of the CME expressed the views of that association:

> Should corporations be required to register in a similar manner as In-House (Organization) lobbyists? Well, some companies may benefit from this, simply being able to list employees engaged in lobbying activities, but for others, particularly large companies that employ a number of individuals who may be engaged in lobbying activities, this requirement would impose tremendous administrative costs without any improvement in transparency. [Jayson Myers 07:09:20]

CME's recommendation was that, if a change was being considered, then the requirement to register in a similar way to In-House (Organization) lobbyists should be optional.

Concerns were also expressed by Ms. Gervais of Bell Canada:

> The possibility that the In-House (Organization) standard might be extended to cover In-House (Corporate) lobbyists does concern us. Simply put, we are concerned that the change will increase the administrative burden on customers with no discernible benefit to the public. [Linda Gervais 15:09:10]

John Chenier, Editor of the *Lobby Monitor*, also opposed the change:

> Establishing the same reporting rules as organizational lobbyists for corporations would be a mistake. Organizations, typically associations, are smaller, more centralized and aware of who is charged with government relations responsibilities. Corporations, on the other hand, are larger, more geographically dispersed, more heterogeneous and do not have reporting relationships and structures in place to ensure that all lobbying activity could, or would be, funnelled through a single channel. [John Chenier 14:15:40]

Notably, not a single witness appearing before the Committee endorsed the idea of applying the In-House (Organization) approach to In-House (Corporate) lobbyists. Accordingly:

Recommendation 5:

Owing to the lack of support for the proposition among witnesses appearing before it, the Committee does not recommend that the Act be amended to apply an In-House (Organization) registration approach to In-House (Corporate) lobbyists.

2. "Qualitative" Registration

Should the registration requirement be changed to encompass employees whose lobbying activity may be less than 20% of time worked, but whose lobbying efforts may have an important impact on the goals and objectives of the corporation? Witnesses raised compelling objections to this suggestion:

> …One of the important safeguards of the rights of individual Canadians to communicate with public officials is the definition of a lobbyist as an individual paid to influence public policy on behalf of an employer, or a client. Changing the definition of a corporate lobbyist along the lines suggested would create significant interpretive problems. First of all, it would make it difficult for individuals to represent their legitimate interests before government, or more difficult and, in the end, probably wouldn't lead to any big improvement in the transparency of the way the Act operates. [Jayson Myers 7:09:15]

The Committee is mindful of the interpretive problems such a change would raise: for example, how would the "importance" of the lobbying campaign be assessed? Who would decide whether the objective of a particular lobbying effort is "important"? Might it not be argued that all lobbying efforts are important, otherwise why would the company undertake them? It is not even clear that guidelines could be drafted to assist in determining what is, and what is not, "important" to the client. How would the standard be enforced? Would the Registrar be required to order production of the client's confidential memoranda or other business documents in order to determine the importance or impact

of a given lobbying effort? Could the registrant be prosecuted for concluding, mistakenly but in good faith, that the effort wasn't sufficiently "important" to declare?

Given the Committee's concerns about the uncertainty inherent in such an approach, we are of the view that it would not be feasible to amend the Act in order to require lobbyists to indicate the relative importance of a given lobbying campaign (a "qualitative" approach) and, accordingly:

Recommendation 6:

Owing to the considerable conceptual difficulties presented by the proposal, the Committee does not recommend that the Act be amended to create a so-called "qualitative" approach to registering lobbying activities.

3. Closing Loopholes

Several witnesses recommended the closure of what they considered a significant "loophole" in the Act. Section 4(2)(*c*) states that the Act does not apply to "any oral or written communication made to a public office holder…in direct response to a written request from a public office holder, for advice or comment…"

It is not clear why this exemption exists from the general requirements of the Act, and the Committee noted with concern the potential exploitation of the section to circumvent the Act. As explained by Democracy Watch:

> If you receive a written request to come and meet with an official, you do not have to register…. Everyone receives a confirmation of any meeting they go to and that's all you need and you don't have to register…. Many people could use it to escape registration very easily just by saying, "oh, yes, I'm calling you and we're going to have a meeting. Send me written confirmation." Written confirmation sent. You don't have to register any more that you're lobbying. [Democracy Watch 8:16:35]

The Committee heard similar views from other witnesses:

> The current system, under which paid lobbyists are required to register their lobbying efforts with federal government departments and agencies, should be improved. For instance, lobbyists should be required to register even if they receive a written request by a public official to lobby. Currently this requirement is waived by subsection 4(2) of the act. [Suzette Montreuil 14:15:45]

The Committee heard no justification for the "loophole" which appears to be created by section 4(2)(*c*), which permits a lobbyist to not register when the lobbying contact is initiated by the public office holder. Accordingly, in the absence of any apparent public policy reason for its continuance:

Recommendation 7:

The Committee recommends that section 4(2)(*c*) of the Act be deleted in order to require lobbyists to register even when the lobbying contact was initiated by the public office holder.

4. Anti-Avoidance

One witness also suggested that enforcement of the Act could be improved by the inclusion of a general anti-avoidance provision. As explained by John Chenier:

> Lobbying and ethics rules should include a general anti-avoidance provision to prevent people from exploiting any loopholes. This would be in keeping with the statement contained in the Lobbyists Code of Conduct that lobbyists should conform to not only the letter but also the spirit of the Code. It would also be in keeping with similar provisions in the *Income Tax Act*. [John Chenier 14:15:50]

The Committee agrees that compliance with the letter of the Act may not fulfill the spirit of the Act. For example, a firm of Consultant Lobbyists or a corporation employing a roster of lobbyists could avoid registering by strategically allocating the "actual" lobbying work (i.e. communicating with public office holders) among several lobbyists to ensure that no individual lobbyist reaches the 20% threshold. An anti-avoidance provision would permit a court to determine whether the allocation of work was done for a *bona fide* business purpose or simply to circumvent the Act. In the latter case, the Court could order registration.

The ultimate aim of the Lobbyists Registration Act is to ensure openness and integrity in relations between the government and private sector lobbyists. Maintaining public confidence in the system requires the utmost good faith from registrants. The Committee heard evidence that the lobbying community, generally speaking, treats the Act with considerable gravity and, in fact, tends to register out of an abundance of caution even where the activity, on a strict interpretation of the Act, may not be registrable.

The Committee is aware that the Lobbyists Code of Conduct requires that "lobbyists should conform fully with not only the letter but the spirit of the Lobbyists Code of Conduct as well as all the relevant laws"; moreover, the evidence supports a conclusion that lobbyists are, to a very high degree, complying in good faith with both the registration requirements and the Lobbyists Code. Still, the Committee is of the view that the Lobbyists Registration Act demands more than mere compliance with the letter of the law. Taken together, the Act and Lobbyists Code demand the highest degree of good faith from those subject to it. For these reasons:

Recommendation 8:

The Committee is of the view that the Lobbyists Registration Act is an act of great public importance, and, as such, it demands of registrants the utmost good faith in complying with the spirit of the law, even where doing so may require more than mere compliance with the letter of the law. The Committee recommends that this fundamental principle be emphasized by the inclusion in the Act of a general anti-avoidance provision.

5. Updating filings

> We sometimes have found that people have neglected through innocence to remove their registrations and we could do this electronically on a six-month basis or on a yearly basis; an area to look at. [Howard Wilson 5:16:30]

> …If you don't sort of tell them to do it, some people seem to get slack about it. [Scott Proudfoot 15:10:40]

Currently, Consultant Lobbyists are obliged to register within 10 days of beginning a piece of registrable work and deregister within 30 days of completing the assignment. The 30-day requirement is set out in section 5(4) of the Act and applies only to Consultant Lobbyists, presumably because they are more likely to represent clients for individual projects of a definite duration. In-House (Organization) and (Corporate) lobbyists are not subject to the 30-day deregistration requirement, although the policy reason for this is not immediately clear. While it may be the case that these latter lobbyists' undertakings are more likely to be indefinite in duration, it cannot be said that this is necessarily the case. Accordingly:

Recommendation 9:

For the purposes of simplifying the current deregistration requirements and promoting greater consistency of application of the Act, the Committee recommends that the same deregistration requirements should apply to all lobbyists.

In spite of the 30-day requirement, it appears that deregistration is not always accomplished in a timely fashion:

> I've noticed when I've gone through the register from time to time, which is something I do, that in the past some people who have been hired a number of years before continue to list Bell as a client, even though that relationship has been terminated for some time. [Linda Gervais 15:09:15]

But why does this happen? A witness explains:

> …We do try and deregister as promptly as we can, but the fact of the matter is in the rush of events sometimes you don't. There are also those odd instances where a client has a rush of activities, we'll drop off for a while and then we'll come back, and frankly administratively it's a lot simpler just to stay on the books. So that's one of the reasons why it happens. [Tony Stikeman 12:10:00]

Witnesses generally agreed that keeping registry information up to date it is difficult to accomplish within the short time span of 30 days and, as a result, is sometimes neglected. There was no suggestion, however, that this was the result of any shortcoming in the legislation, but rather simply an administrative issue. Witnesses agreed that the best way to address this issue was to have the Registrar provide a reminder to registrants to update their information in the registry. The Registrar agreed that this could be done and would likely achieve the desired result. Accordingly:

Recommendation 10:

The Committee recommends that, in order to ensure that registrants update their filings in a timely fashion, the Registrar of Lobbyists provide an E-mail "update reminder" to all registrants at least 30 days in advance of the date upon which their registrations must be updated.

However, this still does not address the question of how often filings should be updated. Currently, In-House (Corporate) lobbyists have to update their registrations once a year; In-House (Organization) lobbyists must update their filings every six months. One witness described this as "an unnecessary administrative task":

> So little changes in the course of six months that the public interest is hardly served by such additional transparency. Our…recommendation would be that all three types of lobbyists be required to update their registrations once a year. [Tony Stikeman 12:09:15]

While this suggestion found wide support among witnesses, one member expressed the Committee's concern that, by moving to an annual filing requirement, lobbyists might, in good faith, remain on the registry for up to a year, thereby creating the misleading impression that they represent a client long after the undertaking has ended. In fact, a lobbyist could be representing a client with totally opposite interests. John Scott responded to this concern:

> I would hope that anyone who would be phoning your office would indicate what the reason is for the meeting and what the issue might be, so that it would make it easier for you rather than checking in on the registry. [John Scott 12:09:55]

While the Committee concurs that a lobbyist approaching a Member of Parliament would be quite likely to identify his client (and, in fact, the lobbyist is required to do so by the Lobbyists Code of Conduct), that is not really the issue: Members are not concerned so much about who the lobbyist is currently representing, but rather about who the lobbyist is no longer representing, and this is not the sort of information that a lobbyist would be likely to reveal in the course of making representations to a Member of Parliament or other public office holder. Confusion could arise when the public office holder, in order to be better informed, consults the registry to learn more about lobbyists and their clients. It would, of course, be very reasonable to assume that the lobbyist represents the clients listed in the registry; in fact, it would suggest that exact conclusion.

Still, while tardiness in deregistering could lead to confusion, it is not immediately clear whether any genuine harm would result to the public interest. It might equally be argued that there is considerable advantage for the public office holder in having a list of the clients whom the lobbyist has represented over the preceding year, and the issues that the lobbyist has addressed.

Moreover, there are at least two fairly simple alternatives available to address the possibility of confusion arising from clients' identities being left on the registry after the completion of an undertaking or termination of a client relationship: the first option would be simply to leave it to the public office holder to ask the lobbyist if he is still representing all the clients he has listed on the registry. Greater certainty could also be achieved by having an appropriately-worded disclaimer set out clearly on the registry Web site stating that some client listings may no longer be active and, accordingly, persons are encouraged to ask the individual lobbyists who they are, and who they are no longer, representing.

After the close of Committee hearings, Government Relations Institute of Canada (GRIC) submitted to the Clerk of the Committee a supplementary brief that suggested an alternative method of addressing enforcement of the 30-day deregistration period in section 5(4):

> The current requirement causing Consultant Lobbyists to de-register after 30 days of completing an undertaking could be removed from the Act and inserted into the Lobbyists Code of Conduct as a guideline or best practice.

This change is said to reflect the business practices of Consultant Lobbyists, entering into, withdrawing from, and then re-entering client relationships. Removing the strict 30-day requirement would permit lobbyists a little time to determine with certainty whether the undertaking has, in fact, ended. GRIC emphasized the point that the Lobbyists Code of Conduct requires lobbyists to disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach. "In other words," GRIC concludes: "Parliamentarians and government officials would be no less knowledgeable about the nature of the lobbyists' activities."

Recommendation 11:

In order to ensure that information in the lobbyists registry is kept up to date, the Committee recommends that all lobbyists should be required to update their filings semi-annually; however, the 30-day deregistration requirement currently set out in section 5(4) of the Act should be removed from the Act to the Lobbyists Code in order to remove it from the sanctions prescribed by the Act for failing to deregister within the 30-day time frame currently prescribed.

The Committee is mindful, however, that this will likely result in registrations being left on the registry for up to six months. For that reason:

Recommendation 12:

The Committee also recommends that the Registrar draft a notice, to be displayed clearly on the lobbyists registry Web site, to the effect that because lobbyists are required to update their filings semi-annually, certain client relationships may no longer be active; and accordingly, persons are encouraged to verify with the lobbyist which of the lobbyists' current client listings remain active.

Recommendation 13:

For greater certainty, the Committee recommends that the 30-day period should be removed from the Act *only* insofar as it applies to the obligation to deregister. Because timely updating of client information is important, the Committee recommends that provisions that require the lobbyist to provide notification within 30 days of any changes to existing filings should remain in the Act.

6. Penalties

The Act prescribes two penalties: under section 14(1), a person who breaches any provision of the Act is liable on summary conviction for a fine of up to $25,000. This section could apply even where the failure to comply was the result of honest inadvertence. Section 14(2) deals with a false or misleading statement knowingly made by an individual. Under this section, the Crown may proceed either by way of summary conviction (subject to the two-year limitation) or indictment (in which case no limitation applies). Summary proceedings may lead to terms of imprisonment of up to six months and a fine of up to $25,000. A conviction by indictment may lead to a period of incarceration of up to two years and a fine of up to $100,000.

Some witnesses expressed concern over the fact that the penalties under section 14 apply equally to the failure to register and the failure to deregister:

> We have a practical concern about that, in that the sanction that applies with respect to failure to deregister is the same as failure to register or misrepresenting facts. In reality the failure to deregister is not causing the public interest any harm at all…. [John Scott 12: 09:20]

For reasons set out above, the Committee agrees in principle that the failure to deregister in a timely fashion is unlikely to have consequences as serious as the failure to register. However, it is questionable whether section 14 is really in need of amendment. That section prescribes the maximum penalties that may be levied, not the minimum. Moreover, the failure to comply with the Act does not automatically lead to charges being laid: the Crown may choose not to proceed with charges if circumstances warrant. And, even where the Crown secures a conviction, the Court will have broad discretion to determine the appropriate penalty within the limits prescribed by section 14 having regard to all the circumstances of the case. If, for example, the failure is the result of honest inadvertence, then it may be dealt with quite simply by a phone call or E-mail reminder from the Registrar, without even requiring the involvement of law enforcement authorities or the judiciary. Or if charges are laid, the Crown may seek — or the Court may hand down — a very light penalty, proportionate to the nature of the offence.

The seriousness of a given breach of the Act is not something that can be determined in the abstract; rather, it must be addressed on a case-by-case basis, a task to which Canadian courts are imminently suited. Prescribing different penalties for offences that might be, in practice, quite similar would be more likely to exacerbate rather than mitigate uncertainty in the application of the penalty provisions. It is certainly foreseeable that an attempt to define penalties too rigidly could "tie the hands" of prosecutors and the judiciary. For these reasons:

Recommendation 14:

The Committee is satisfied that the current penalty regime prescribed by the Act is appropriate and does not recommend any changes in this regard.

CHAPTER 3
DISCLOSURE AND TRANSPARENCY

Most witnesses expressed the view that the current disclosure requirements of the Act are sufficient and represent a good balancing of the fundamental principles. A significant number, however, did suggest that the system could benefit from increased disclosure. However, there was little consensus as to exactly what that disclosure should include.

Interestingly, all three types of lobbyists seemed to feel that their own disclosure rules were sufficient, but should be broadened for other groups. In-house (Organization) lobbyists, represented primarily by Democracy Watch, suggested that transparency would be improved with greater disclosure from Consultant and In-House (Corporate) lobbyists. Consultant and In-House (Corporate) lobbyists, for their part, suggested that what was required was greater disclosure from In-House (Organization) lobbyists:

> These people should be registered. You should know where their money comes from. You should know whether they are funded by government and in any way and by how much. The fact that some of them don't register on the pretext that there's no formal salary structure and they don't get a salary, that they're volunteers, I think is very dangerous. It's a loophole which would permit those of independent means to avoid obligations imposed on taxpayers who work for fees or a regular paycheque. [Peter Clark 15:10:00]

The Committee is mindful of the principle that only that information which is material to the objective of the Act, that is to say, information required to maintain effective transparency with respect to activities of paid lobbyists, should be disclosed. Requiring more information because it “might” tell us something runs the risk of overburdening the system by imposing onerous disclosure requirements for information having little real relevance or value in assessing the scope or nature of lobbyists' activities. The Committee is also mindful of the need to protect the confidentiality of commercially sensitive or personal information that is not material to the issue of transparency.

The Ethics Counsellor expressed his view that the information currently required is sufficient:

> …We've struck a pretty good balance in terms of the information. We get very few complaints that the information on the registry is not sufficient to determine who has been hired and what is the purpose of their representations. I find as a practical matter that there's often an attitude that if some information is useful, then more information is better. I do believe the Committee should be very conscious of any proposition that comes to the table about vastly expanding the amount of

> information required, and use the test of the preamble. A case may be made for more information, but my view is that in 1995 the committee did a very good job of restructuring this Act dramatically. That's not to say there's not a case to be made for honing the act, but I don't think we're at the point where we need to contemplate major restructuring. [Howard Wilson 5:16:55]

1. Dual Reporting System

> …An enormous burden on our public service, which is already anorexic. [Sean Moore 14:16:05]

> …In terms of logs, I sift through information all the time, and too much is just the same problem as too little. [John Chenier 14:16:00]

A proposal that received considerable debate was the possibility of creating a dual reporting system that would require, in addition to the existing registration requirement, that persons inside government report their contacts with lobbyists. The idea is not a new one:

> This was debated the last time and it had two aspects to it. One was whether or not public-office holders should be required to say to a lobbyist, are you a lobbyist, have you registered? It was felt that… it was an obligation on the part of the lobbyist to do this rather than having public-office holders act as a point of enforcement. [Howard Wilson 5:17:10]

As an alternative, several witnesses supported the concept of a limited dual-disclosure system, one that would require that only certain more senior civil servants be required to report lobbying contacts:

> The disclosure…should be tied to decision-making power of the civil servant. So you have to draw a line somewhere and we believe that it's possible to draw a line and you don't have to go down right to the frontline person because that frontline person will be reporting to someone who has decision-making powers. [Duff Conacher 8:16:25]

This approach presents practical difficulties, the most obvious being where do we draw the line? In reality, decisions are more often made institutionally than individually:

> If you do target officials who are approached in an effort to influence policies, those in question are rarely senior officials. You need to realize how government works. There are people, often professionals, who put information together and assess the status of the situation. [Pierre Morin 15:09:55]

As well, many witnesses expressed the view that the effect of such a system would be significantly higher compliance costs without necessarily creating any corresponding improvement in transparency:

> We think a requirement such as this would again impose a pretty onerous burden on government officials. It would also be highly impractical, given the nature of Canada's parliamentary system. If the intent of this is to strengthen compliance with the Act, then we believe a requirement on the part of the public servants to ensure that lobbyists are registered in order for a meeting, or any other form of communication, to take place, would be more effective than establishing a dual disclosure system. [Jayson Myers 7:09:15]

While arguments were made both in favour of and against the proposition, the Committee is of the view that creation of a double disclosure system would not be justified. The system would certainly be considerably more costly than at present. Currently, a lobbyist is required to indicate what department he is speaking with and the subject matter of the discussion. Critics assert that this is not enough information, that it does not permit the public to form a true impression of precisely what is going on, of what information is being exchanged, of the policy positions that are being advanced. But this ignores the many other sources from which information is available, including for example Internet Web sites or access to information requests. Hillwatch.com used the example of the GMO food debate to illustrate how the Internet can potentially open the public policy debate:

> The theory behind this is that if you really want to know who's saying what on the issues you're debating, and what issues are being debated inside governments and so on, you really can go to the Internet to find out. If you put them together in an organized fashion and in a meaningful fashion, think of what it gives the public. Think of what it gives you in terms of making your job more meaningful. If you wanted to find out what's going on with GMO foods, you could find all the representations that have been made on GMO foods over the last years, and all the converging and the diverging points of view. [Michael Teeter 15:10:10]

Scott Proudfoot explained how the Internet has forced many organizations to make their policy views public:

> The anti-GMO food activists use the Internet to attack the mainstream corporations. The mainstream corporations, which didn't know what hit them, frankly, all of a sudden found they had to really respond in public and defend their position. If you go to their corporate sites now, or if you go to their association sites, there's a lot of good, reliable information, there's a lot of self-interested information, there's a lot of scientific evidence, and there's a lot of fear-mongering. There's a whole potpourri of information that you can find on the issue. Four or five years ago, you wouldn't have seen any of this information. Now it's all largely publicly accessible. Basically, beyond the Lobbyists Registration Act, we think the Internet is really pushing the whole industry to be a heck of a lot more public and transparent where people can find it. [Scott Proudfoot 15:10:15]

As well, considerable information can often be had from government departments for the asking:

> If I were going to be making a presentation for the Department of Finance, then everyone is aware of that. The media can pick up the phone and contact the department and say, "Mr. Scott is contacting you on a particular issue. May we have some more details?" There are access to information criteria that then kick in, in terms of what should or should not be disclosed depending on what the issue is. The same with Members of Parliament, the same with committees. If…someone from the Department of Finance was appearing here, you could say…: "I understand Mr. Scott contacted your department and can you enlighten us more in terms of what the issues are?" [John Scott 12:09:35]

Another potential source of information, which was alluded to but not explored in detail, is the *Access to Information Act*. For example, a request might be made for all correspondence directed to a department on a particular bill or contract, a list of meetings that were held and with whom, etc. A great deal of information about meetings involving departmental officials might be available by access to information requests, although these requests are generally determined on a case-by-case basis.

The best argument in favour of a dual-registering system is that, theoretically, comparing the information between the two sources would reveal unregistered lobbying contacts. The Committee heard evidence both for and against such a system. The main argument against is that it would increase enormously the amount of information in the registry. This might be justified were it to lead to greater transparency. But determining this question depends on what such a system would reveal: certainly, it would reveal any discrepancies between reports coming from inside and outside the bureaucracy. Some portion of those discrepancies might be deliberate, done with the intent of avoiding detection; however, such discrepancies might just as easily — and perhaps more commonly — result from innocent misinterpretation of the rules.

On balance, the Committee is of the view that the creation of a dual disclosure system would be unlikely to result in real benefit to the public or the industry in terms of increased transparency; at the same time, requiring disclosure of the name of each person (or even only of persons with "decision-making power") contacted would certainly greatly increase the compliance burden and the strain on the registry resources. Moreover, who can say with any certainty where "decision-making power" resides in government? Small procurement contracts, for example, may be awarded without being reviewed "up the ladder" by a senior decision-maker. Determining the "cut-off" would be difficult, perhaps impossible in the complex web of modern government where a single decision may involve many officials or committees working at different levels of the bureaucracy. For all these reasons:

Recommendation 15:

The Committee is of the view that the creation of a dual-disclosure i.e. a system that would require public office holders to report having been contacted by a lobbyist, would result in significantly increased compliance cost with little, if any, improvement in transparency; for that reason, the Committee does not recommend that the Act be amended to create a dual-disclosure system.

2. Identifying Individual Contacts

Another proposal that was discussed would require lobbyists to indicate not only the department, but also the names of the individuals with whom they spoke. The Ethics Counsellor responded:

> This is a proposal that, in all fairness, troubles me…. I'm a strong believer that public servants in this country should be as open as possible to Canadians who want to go and talk to them about their responsibility. Some of these will be lobbyists, who are then required to register, and others will be just average citizens. I think it very important that public servants, in carrying out their responsibilities, be open to consultation, and so on. I think if all senior public servants were required to register just exactly who they were talking to, it would have an unintended consequence, which is that there would be fewer conversations than I think are probably desirable. That's a fear, and I think the committee will want to debate that. [Howard Wilson 5:17:00]

The possible perverse effect of "naming names" was echoed by Linda Gervais:

> I believe that if we had to reveal the names of the people receiving our calls, they might not be so open and might hesitate to call us back because they would have certain concerns. We want an open process. I think the results of such a thing would be the opposite of what we are looking for. I think it would be an incentive for some people to not call us back, to not provide us with information and to not be open…It is human nature. [Linda Gervais 15:09:25]

GRIC made the point that focussing the attention on individuals within the bureaucracy misses the point of what the Act aims at:

> …Let's deal with what the lobbyists are all about, let's not focus on what the individual public servants are doing in terms of various levels of activity on the file. …The issue isn't one of cost but the issue is one of let's deal with the situation and the project and the file that is engaging our clients [Tony Stikeman 12:09:35]

These sentiments were supported by John Scott:

> …Getting into filing every single name of every single person that we might meet with in government, administratively is a problem and I think it is adequately covered under the current situation. [John Scott 12:09:35]

There appears to exist among the public an impression that the goal of lobbying is to aim high and, ultimately, to get that elusive "meeting with the Minister." But this appears to be too simple a picture. What is perhaps more important to a lobbyist is to get the attention of the people who advise the Minister, even down to the individual policy analyst who prepares internal memoranda for purposes of policy discussion. But this raises the concern of what would happen if a trusted policy advisor should be misled by a convincing lobbyist? The Minister (or any other policy or law-maker) might not get all the information needed to make good decisions. But this view certainly fails to give due credit to the judgment and intelligence of departmental policy advisors. The Ethics Counsellor responded to this concern by drawing on his own experience as a public servant:

> I've spent all of my career in the public service. I spent most of it in the foreign service and in trade policy. I was certainly lobbied continuously. I felt that was actually part of my responsibilities. I found it very dangerous to take merely one point of view in terms of trying to put advice forward to my Minister. I tried to keep things as open as possible so that I could speak to as many people as possible in order that the advice I gave to Ministers, which ultimately was the decision, was the best possible advice. So I found it essential to keep those lines open. [Howard Wilson 5:17:00]

Witnesses were mixed in their views. Brian Grainger expressed the debate succinctly:

> I honestly don't know if it's in the public interest to know that sort of thing… Whether or not you need to know the name of some frontline supervisor in…who got lobbied — I don't see the need, personally….What may be at issue here…is do we need the information? The lobbyist is already required, company, corporate, In-House, whatever, to give you some information about what he or she is doing. I think there's enough public policy information there around this issue. …[Brian Grainger 8:16:25]

The Committee is of the view that requiring the disclosure in the lobbyists registry of individual names would not provide any significant improvement in transparency, and could, in fact, impede free communications between public office holders and lobbyists; at the same time, it would considerably increase compliance and enforcement costs. Accordingly:

Recommendation 16:

The Committee does not recommend that the Act be amended in order to create a requirement that the names of individuals who have been lobbied be disclosed in the lobbyists registry.

3. Organizational Disclosure

As indicated above, a number of witnesses expressed the view that the accountability of In-House (Organization) lobbyists would be enhanced by the disclosure of more information pertaining to their governance structure and sources of funding. The Canadian Manufacturers and Exporters (CME), for example, recommended that organizations be required to disclose the legal status of the organization, its ownership and or governance structure, the purpose of any federal funding, and the source and purpose of any foreign funding, and that they be required to ensure that the names of all employees engaged in lobbying activities be registered under the Act, and that the lobbyists registration database allow for a search of organizations based on the names of employees.

For the same reasons that the Committee is satisfied that that current disclosure requirements are sufficient to ensure the purpose of the Act is achieved, it is also of the view that greater disclosure on the part of In-House (Organization) lobbyists is not warranted. As such,

Recommendation 17:

The Committee is satisfied that the current disclosure requirements for In-House (Organization) lobbyists is sufficient and, for that reason, does not recommend any changes to the current disclosure requirements in this respect.

4. Spending Disclosure

It is a widely-held misconception that lobbyists achieve results simply by spending money; and the more they spend, the better their results. For that reason, some witnesses suggested that lobbyists should be required to disclose how much they and their clients are spending on a particular lobbying campaign.

However, most witnesses agreed that the characterization of lobbyists “spreading money around the Hill” is far too simple a characterization of what lobbyists really do. One need only recall the thwarted merger plans of the major banks to understand that spending a lot of money on lobbying activities is no guarantee of achieving results. At the same time, it is quite possible to mount a successful lobbying campaign on a shoestring budget, particularly in the age of the Internet.

Several questions must be addressed when discussing spending disclosure: First, would it genuinely increase transparency in the system? And second, what would it cost to comply? What would it cost to administer? And how would it impact on business confidentiality?

All witnesses agreed that lobbyists spend money in different ways depending on the nature of the assignment:

> …In Canada the services of lawyers, lobbyists and consultants vary from firm to firm and from individual to individual. Some chiefly provide representational services; others place emphasis on providing their clients with information only. Still others offer a full-service continuum, in terms of monitoring, analysis and a number of other things that ranges from a complete continuum of activity, only a small portion of which is lobbying: actually making contact with public officials. [John Scott 12:09:20]

Representatives of Democracy Watch explained how organizations such as Democracy Watch spend their funds:

> … It would include the staff time, preparing materials, research reports, things like that. [Duff Conacher 8:16:35]

While most witnesses did not support the concept of spending disclosure, the Committee is of the view that a mere "show of hands" should not determine its response to this important issue. More fundamentally, the Committee foresees difficulty with the concept of disclosing spending for the simple reason that the very act of attempting to quantify lobbying expenditures is a process fraught with uncertainty, as likely to mislead as to inform. How would that figure be arrived at? Would it include, for example, a pro rata portion of the administrative costs of the firm, such as secretarial assistance or even photocopying? Sean Moore discussed the U.S. experience with spending disclosure:

> …It got very silly very quickly because you had industry associations that had to calculate what percentage of their light and heat and parking was attributable to lobbying activity. The numbers very quickly became meaningless. [Sean Moore 14:17:00]

Simply disclosing a monetary figure without providing any details of how that figure was arrived at would be unlikely to provide meaningful disclosure. Moreover, the costs of administering and complying with the system would certainly increase.

Still, this is not to say that the proposal is without some merit. For example, guidelines could be developed to indicate what lobbying expenses must be disclosed. As such:

Recommendation 18:

Although the evidence presented to the Committee was mixed, it is possible that requiring lobbyists to disclose the amounts that they spend on lobbying campaigns could lead to greater transparency. For that reason, the Committee recommends that the proposal be made the subject of further study by the Department in consultation with stakeholders.

5. Fee Disclosure

In addition to disclosing the money spent on lobbying campaigns, some witnesses suggested that lobbyists should be required to disclose their fees. Consultant and In-House (Corporate) lobbyists expressed concern about this proposal:

> GPC sees no public benefit associated with the disclosure of fees and is strongly opposed to any suggestions that consultants and lobbyists should be obliged to disclose fees. Those who would promote the merits of this suggestion sometimes refer to disclosure requirements in the United States as a meaningful precedent. However, based on discussions with our American colleagues and a review of how disclosure works in practice in the United States, we believe that fee disclosure does not add transparency to their system. [John Scott 12:09:20]

Some members of the Committee felt that it might be useful to have fee disclosure. What was lacking in the debate, however, was a definitive statement of how, exactly, that information would be useful. The Committee is of the view that, before making such a major departure from the Act as originally passed by Parliament, the case for fee disclosure would have to be made more convincingly than was the case in these hearings.

Moreover, requiring fee disclosure could have rather serious implications for the billing practices of some lobby firms. Sean Moore explains:

> My own experience — and I know I'm ridiculed by my colleagues in the government relations business when I say — that the main objection to fee disclosure in the government relations business is that a lot of them don't want to know how little they charge certain clients. That to get clients in the door they may only charge $2,000 or $3,000 a month, but they're charging someone else $9,000 a month for essentially the same thing. That's a powerful incentive not to have a financial disclosure, but for the exact opposite reasons than you'd think. [Sean Moore 14:17:00]

The Committee is aware that the public policy and government relations consulting industry operates in a very competitive market, much like any other service industry in Canada today. Lobbying remains a legitimate activity and is an important instrument to ensure the efficient flow of information in the process of public decision making. The

Committee is of the view that fee disclosure is not a desirable option for a number of reasons:

- Fee disclosure targeted at only one industry would constitute discrimination. Such discrimination might be justifiable were it to promote the attainment of an important policy objective. However, the evidence is by no means clear that greater transparency would result;
- Increased compliance and administrative costs;
- Requiring fee disclosure may be contrary to s. 20 of the *Access to Information Act*, a provision that prohibits government from disclosing information that could reasonably be expected to result in a material financial loss to, or gain to, or prejudice to, the competitive position of, or interference with, the contractual or other negotiations of a third party. Accordingly;

Recommendation 19:

The Committee is satisfied that the current disclosure requirements are satisfactory and, for that reason, does not recommend that the Act be amended in order to require that lobbyists disclose their fees.

6. Contingency Fees

Currently, contingency fee arrangements are not prohibited under the LRA. Lobbyists are permitted to operate on the basis of contingency fees except where the matter relates to procurement or grant of funds from the Government of Canada i.e. where a client will derive some benefit from the government with respect to procurement, or a grant of funds. Section 5(2)(*g*) of the LRA requires that lobbyists declare at the time of filing whether they are receiving contingency fees.

For similar reasons expressed above with respect to fee disclosure:

Recommendation 20:

The Committee is of the view that the current disclosure requirements are appropriate and adequate and, for that reason, does not recommend that the Act be amended with respect to contingency fees.

7. Tax Deductibility of Lobbying Fees

The issue of tax deductibility of lobbying fees was also discussed. The Committee is of the view that taxation policy is an issue properly within the purview of the Minister of Finance. Some witnesses proposed that the deduction for lobbying expenses be eliminated since, looked at one way, it is “a public subsidy for wealthy special interests to

influence the democratic process" [Democracy Watch 8:15:45]. Consultant Lobbyists disagreed:

> …This is an indirect way to suggest that lobbying fees are not a legitimate business expense like legal, accounting or management consulting services. If we all truly endorsed the four guiding principles of the Act, especially the principle that lobbying public office holders is a legitimate activity, then this initiative is patently not an appropriate suggestion.…And in addition, if deductibility were removed, it would make the costs of having professional public policy counsel involved giving reasoned representation to government on the many complex issues...it would all be compromised and that, I suggest, would not be in the best interests of Parliamentarians or of the public service and it would be an undeniable step backward in a process that has evolved positively in the last 15 years. [John Scott 12:09:30]

The Committee is of the view that federal taxation policy with respect to business expenses is a question that is dealt with in the Income Tax Act, and is properly within the mandate of the Minister of Finance. While the issue will certainly have an impact on lobbying, it is clear that the Committee's review of the Lobbyists Registration Act does not extend to the Income Tax Act. For these reasons:

Recommendation 21:

The Committee does not view the issue of the tax deductibility of lobbying expenses to be within its current mandate and, for that reason, makes no recommendation on the issue.

8. Solicitor-Client Confidentiality

The last witness appearing before the Committee was the Canadian Bar Association. The CBA recommended certain measures be taken to avoid any potential conflict between the disclosure requirements under the Act and a lawyer's duty of confidentiality to clients. The CBA emphasized that it was not seeking an exemption for lawyers from the duty to disclose, except in the case where disclosure would compromise the professional obligation of confidentiality. The CBA recommended that section 4(2) of the Act be amended to read as follows:

> 4.(2) The Act does not apply in respect of…
>
> (*c*) any oral or written submission made to a public office holder by an individual on behalf of any person or organization where confidentiality is required by law.

The CBA suggested that "there can be no serious objection to the proposed amendment. Any objection could easily be overcome by a requirement that lawyers not

disclosing information on ethical grounds would instead indicate their non-disclosure on those grounds in their filing with the Registrar."

Mr. Simon Potter (Second Vice-President, Canadian Bar Association) acknowledged that the conflict was unlikely to arise often:

> I expect this conflict to arise very infrequently but it is rapidly imaginable and plausible that there are situations in which the dilemma occurs to lawyers and when it does, lawyers, I think, must know from the statute that their paramount obligation is to protect the privilege which is their oath to protect. [Simon V. Potter 21:15:40]

To understand how conflict might arise, it is first important to understand the nature of solicitor-client privilege:

> …It is not all communication with the client, but it is all communication meant to lead to, or obtain legal advice from, a lawyer or legal representation by the lawyer… What I learn from my client, I must disclose only as my client instructs. Even if a law tells me to disclose it, I must not disclose it. [Simon V. Potter 21:15:50]

This is an important point: only the client can instruct the lawyer to disclose the privileged information. If the client instructs the lawyer not to disclose, the lawyer must respect the client's instructions and keep the information confidential.

So how does conflict arise between the duty to disclose a client's identity for the purpose of the registry and the duty not to disclose confidential information? Mr. Potter gives an example:

> I can imagine that I might be in court arguing that a particular statute — let's say a taxing statute — means x rather than y and that is the debate in court. And I'm representing someone who has a very large liability at stake, depending on whether it is x or y that that statute means, and the statute is ambiguous. And at the same time I am lobbying in order to get legislative clarification to that statute. It might be very harmful to my client in that litigation for it to come out that that client is actually looking for the legislative change on an ongoing basis… It may be interpreted as an admission that the law really does mean y rather than x. I can imagine that really hurting my client. [Simon V. Potter 21:16:00]

Mr. Potter provided a second illustration:

> …you can imagine a family law situation in which there's a fight, for example, over custody. Someone might want to lobby for a legislative change, or a policy change, or a change to a regulation in how elementary pension is calculated, and that person is actually in court at the same time. It deprives that person from the right to go and lobby if it is going to expose that person to the information coming out that he really does think that the law is ambiguous enough that it does not favour him in his ongoing position in court. [Simon V. Potter 21:16:00]

The Committee does not share the CBA's views for several reasons: first, the lobbyists registry does not require that the lobbyist disclose in the registry the substance of the client's submissions; as such, there is no danger that those submissions will be used as evidence in court against the client. Moreover, even if the substance of the client's position were to be available, the Committee is of the view that the Canadian judiciary is sufficiently intelligent to recognize that a party may rely on different arguments in different venues. In fact, parties to a lawsuit frequently — in fact, usually — advance "alternative" arguments in their pleadings. Alternative arguments are clearly identified by the phrase "in the alternative, it is submitted that…." Courts deal with these arguments in exactly the manner they are offered — as alternatives — not as mutually exclusive or contradictory positions.

Secondly, although the CBA did not bring it to our attention, the Committee is mindful that the rules governing confidentiality are not absolute. Certain exceptions are set out, for example, in the Ontario Rules of Professional Conduct:

> The lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.
>
> When disclosure is required by law or by order of a court of competent jurisdiction, the lawyer should always be careful not to divulge more information than is required.

As is clear from these rules, a lawyer is permitted to disclose information when required by law to do so. There are other examples in federal law where lawyers are required to disclose information, for example, in the recently enacted amendments to the Proceeds of Crime (Money Laundering) Act. In cases like this, a lawyer facing disciplinary action for disclosing confidential information would be able to rely for his defence on the fact that the law required the disclosure.

The CBA proposed that, instead of registering the client, the lawyer/lobbyist might merely register their non-disclosure on the grounds of confidentiality in their filing with the Registrar. The Committee does not view this as a satisfactory solution. Permitting lawyers to merely state that "I object to disclosing my client's identity for reasons of privilege" instead of actually registering would have at least two detrimental effects. Most obvious is the fact that it would thwart the purpose of the registry, which aims at identifying clients to the public; the second point is the potential for abuse of the privilege. Privilege belongs to the client; the lawyer may assert the privilege on behalf of the client, either of the lawyer's own initiative, or if the client instructs the lawyer to do so. The lawyer is required to do so in either case. If the lawyer cannot in good conscience follow those instructions, the lawyer must no longer represent the client and refer the file elsewhere.

> There is no doubt that if the client does not give you the lawyer the right to disclose the name, then the lawyer under the current statute should not be doing the lobbying….[Simon V. Potter 21:16:10]

The Committee is concerned that, in the amendment proposed by the CBA, there is nothing to prevent any client, or indeed every client, from shielding his identity merely by advancing a claim of privilege.

The Committee is mindful of the concern expressed by the CBA that the duty to disclose a client's identify may place the lawyer in a conflict of interest and that in rare instances this may result in the client being required to engage different counsel:

> When it would be harmful for the client to have the client's identity disclosed or other piece of information…and the client cannot bring himself or herself to waive that obligation of privilege…. Should it be that the lawyer must absolutely refuse to represent that client? ….a lawyer has an ethical obligation not to just drop a client. [Simon V. Potter 21:16:05]

The conflict situation described by Mr. Potter is a very rare occurrence. He noted that he himself has never encountered the issue in representing over 10,000 clients throughout his career. The Committee's response to the recommendation must balance the urgency of the problem against the risks posed by the solution. On balance, the Committee is of the view that the disclosure required by the LRA is unlikely to materially prejudice litigants in court proceedings. At the same time, the amendment proposed could be used in an improper fashion to defeat the purpose of the registry. In some rare cases, then, litigant/clients might be put to the additional expense of retaining separate counsel to represent their interests in one of the two proceedings. Accordingly:

Recommendation 22:

The Committee is of the view that, while the requirement to disclose a client's identity could, in rare cases, cause can see some hardship to a litigant in a court proceeding, maintaining the integrity of the lobbyists registry is a more pressing policy objective and, on that basis, the Committee does not propose to amend the Act to create an exception based on solicitor-client privilege to the general registration requirements.

In conclusion, with respect to current disclosure requirements, the Committee is satisfied that the current disclosure regime represents the correct balance in view of the fundamental principles set out in the Act and, for that reason does not recommend any changes to the current disclosure requirements for lobbyists.

CHAPTER 4
CONFLICT OF INTEREST AND ACCESS TO GOVERNMENT

> The important aspect is to ensure that your policy process is as open and transparent as possible. In this way people know who is involved, know who is giving the information and the advice, and know it is possible to challenge something on the basis of what they know. [John Chenier 14:17:00]

The Committee discussed several aspects of conflict of interest. Conflict of interest and access to government are related issues. The essential problem in conflict of interest is that it distorts the public decision-making process and, as a result, erodes public confidence in institutions of government. It does so because parties to the conflict are able to gain some "advantage," or to circumvent the normal "rules." Those rules, to which everyone else is subject, are designed to ensure that government makes its decisions in accordance with sound management principles and in accordance with principles of public trust. For this reason, conflict — and the appearance of conflict — if left unchecked, undermines public confidence in the integrity of the process by which public decisions are made.

There is a second, related aspect of conflict and it involves the idea of "information." Information is, perhaps, the most critical "input" in the decision-making process. Whether the decision is one of simple contract, e.g. assessing bids on a public tender, or designing a complicated regulatory scheme that will affect an entire industry, it is of the utmost importance to decision makers that they have information that is reliable, up-to-date and complete. For this reason, the integrity of the public decision-making process relies on the open exchange of information between government and stakeholder. Public policy must necessarily balance competing interests; that cannot occur if all, or at least many, interests are not represented. Where conflict of interest exists, it impedes the free exchange of information by allowing one person — with one view, one proposal, one bid, etc. — to advance their position to the exclusion of others. Over time, this also contributes to the erosion of public confidence in government.

Restoring public policy in the policy-making process requires three things be done: first, we must continue to ensure that conflict of interest is not allowed to occur. That issue has been addressed in the current Act and the Lobbyists Code of Conduct. The second issue, certainly of equal importance, is that we must further open up the policy-making process; we must take steps to remove all impediments to the free exchange of information between the public and government; and finally, we must actively encourage everyone concerned to participate in the exchange of ideas; in brief, a truly public debate over public policy.

The first issue for the Committee's consideration, as summed up by one witness:

> …The ability of the profession to represent different interests in a transparent manner without compromising the advice which may be given to, and the action for, clients with opposing interests.… [John Scott 12:09:30]

1. "Chinese Walls"

The community of lobbyists is not a large one. Conflicts of interest may occur, for example, when two lobbyists in the same firm work on different sides of the same issue, either concurrently or sequentially, or in cases where a firm may be retained to advise the government on an issue and subsequently be retained by the private sector to make representations on the same or related issues. In such cases, precautions are usually taken to ensure that confidential information is not exchanged.

Officially, the Registrar has expressed the view that the Canadian Bar Association's guidelines for "chinese walls" are adequate to pre-empt possible conflict. However, as the Ethics Counsellor noted:

> Chinese walls are very hard to maintain. I'm not arguing that the Conflict of Interest Code here in fact does use Chinese walls. There are occasions where you have to put them in place in order to protect the integrity of certain information. This is a major problem with law firms and accounting firms, and will increasingly be the case as you get larger and larger firms being formed. [Howard Wilson 5:16:50]

While some industry participants view the guidelines as "appropriate where litigation and court related issues of evidence are involved," some concern was expressed that the guidelines are flawed in that they "focus on excluding the conflicted person from any contact with colleagues who may be working on a conflicted issue." However,

> In the lobbying profession it is not a matter of isolating the person, but of isolating the work that is being done. The Canadian Bar Association guidelines are not practical or relevant in that context. [John Scott 12:09:30]

As a result, some lobbying firms have established their own conflict protocol. Government Policy Consultants, for example, has such a code, which in its view:

> …fully meets the lobbyist code but which applies more workable restraints within a lobbying type of profession. More important, the GPC protocol has been endorsed by our clients, who have the most at stake, as protecting their interests. They say that it protects their interests entirely while retaining the excellence and integrity of the service provided to them. [John Scott 12:09:30]

Two important points flow from this statement. The first is that conflict of interest, while undeniably having implications for the public policy debate, remains primarily a concern of the clients whose interests are being represented. In the legal profession, when a lawyer represents or advises clients with competing interests, the lawyer must declare the conflict and may continue only if the consent of the clients is obtained. Lobbying, like law, involves advocating on behalf of a client; lobbying differs primarily in the nature of the services rendered and in the fact that one of the parties is the Canadian government, and ultimately the Canadian taxpayer. Does that mean that every taxpayer should be informed of every potential conflict and asked for their informed consent? Some would say that this should be our aim. It is a weighty question, fundamentally related to the concept of representative government.

Canadians elect MPs to make laws for them and to spend their tax dollars wisely, in a way that is consistent with the public trust. But the scope and complexity of modern government requires that Parliament delegate some of its authority; and so it empowers the executive branch, i.e. “the department,” with the authority to make regulations, to formulate policy, and to procure goods and services in order to ensure the continued effective functioning of government in the service of Canadians. These tasks are carried out through countless individual transactions involving thousands of public and private sector employees. In that process conflicts, real and apparent, may arise. How far do we go to ensure that the process is carried out with integrity? Do we install video cameras or tape recorders in every public office? Should public servants and elected representatives be kept under constant scrutiny? Should we require that all public servants and elected representatives disclose the most minute details of their workday, every phone call, every conversation? If so, why stop there? Why not have them disclose a list of their friends and relatives? Some would say this should be our goal. The Committee does not endorse that view. And neither does it accept the premise upon which it rests — that public servants are inherently corrupt or corruptible and, for the public good, must be kept under constant scrutiny.

The Committee believes strongly that, for the thousands of men and women employed in it, the “public service” is more than just the name of their employer — it is an idea; an idea that, when you work for the government, you work for all Canadians. You serve the public. The Committee believes that, with very few exceptions, the men and women of the Canadian public service understand and honour the notion of the public trust and carry out their duties honestly and in good faith. This is the most fundamental axiom of representative government: that we are justified in placing our faith in our public servants.

The Lobbyists Code of Conduct is clear and unequivocal in prohibiting lobbyists from representing conflicting or competing interests without the informed consent of those whose interests are involved. But whose interests are involved? In the broadest sense, the Canadian taxpayer; but, speaking practically, the consent of every taxpayer cannot be sought in every decision. Instead, we trust our public servants to do the right thing, to act

faithfully and diligently in discharging the public trust. This is the person, in practice, to whom the conflict must be declared and the person whom we trust to ensure that the interests of the ultimate client, the Canadian taxpayer, are protected.

In addition, Consultant Lobbyists are required to advise public office holders that they have informed their clients of any "actual, potential or apparent" conflict of interest and obtained their informed consent to continue. As well, the Lobbyists Code states that lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would "constitute an improper influence." The Committee is satisfied that the principles set out in the Lobbyists Code of Conduct are sufficient to ensure that, where potential conflict arises, it is addressed in a manner consistent with the public trust.

2. Pre-empting conflict

Democracy Watch made a number of recommendations aimed at ensuring conflict, or the potential for conflict, does not arise. The Committee is concerned that the response may not be proportional to the actual problem. Among the many recommendations made by Democracy Watch, three were addressed directly to avoiding conflict or the appearance of conflict:

> …Lobbyists should be required to disclose past or current work with governments, political parties, or candidates for federal public office. [Aaron Freeman 8:15:45]

What is not immediately clear is how disclosing such information would prevent conflicts. It seems to flow from the presumption that a person, by getting involved with party politics or government, becomes privy to valuable confidential information by virtue of which the person may gain unfair advantage. But does every involvement by an individual with "government" or "political parties" result in the exchange of confidential information or the promise of "payback for services rendered"? How far back in time would the requirement extend? How long does "valuable" information keep its value? How long before "contacts" go cold? The Committee heard that, in politics, contacts and information go stale very quickly:

> In the real world anything you know when you leave a job is known on the street within six months. So whether it's procurement, whether it's something else, everyone knows it after six months — cabinet secrets, whatever. It's all in the public domain. So realistically, that knowledge edge has dissipated. In some cases it's gone in two weeks. I think I can assure you that in most cases you don't know anything that most people who really want to find out and are working the system in any sort of assiduous fashion haven't figured out after six months. [Scott Proudfoot 15:10:50]

In any case, information of this sort — if it reveals anything of value — is largely available through other sources. For all of these reasons, the Committee does not adopt this recommendation. Another recommendation from Democracy Watch would prohibit lobbyists

> … from serving in senior positions on campaigns of political parties or candidates.…[Aaron Freeman 8:16:15]

Mr. Freeman noted that "this is prohibited in two U.S. States." Presumably then, it is tolerated in the other 48. The recommendation presents certain conceptual difficulties, not the least of which is the impact on the individual's freedom of association, a right guaranteed by the Canadian Charter of Rights and Freedoms. The suggestion here appears to be that "political" lobbyists will be able to call in favours among their friends that they helped to elect. The Committee finds little to agree with in this characterization of Canada's elected representatives.

A third recommendation from Democracy Watch:

> Lobbyists should be prohibited from doing work for the government departments that they are lobbying. [Aaron Freeman 8:15:45]

This recommendation aims at preventing conflict of interest resulting from the unauthorized disclosure of confidential information between associates in the same firm that might be working on opposite sides of an issue. Modern departments of government are vast operations, involving hundreds or thousands of employees. Lobbyists may be consulted for many purposes, not the least of which may be for their considerable expertise on policy issues. The Committee is of the view that it would be counterproductive to issue a blanket prohibition of the sort suggested. Departmental policy advisors routinely deal with highly specialized and technical issues. In many cases, only a handful of individuals in the country might have the necessary expertise to be able to assist the department by providing informed analysis. The suggested prohibition would be very likely to lead to all the available experts being "conflicted out," and precluded from providing advice to the department.

Still, it may be that potential for conflict exists in some situations. Two witnesses, who otherwise found little to agree on, expressed the issue:

> …There may be an issue here, to the extent that governments or public officials are contracting out consultations to private consultants. Then those consultants themselves are providing some input in the consultation themselves. That may be a conflict of interest that you may want to consider. [Jayson Myers 7:09:20]

The point was seconded with an illustration by Mr. Freeman:

> …When the Treasury Board decided to develop guidelines for the high-tech sector, and they opted to hire a high-tech lobbyist — a lobbyist that represents high-tech firms — to facilitate the development of those guidelines, was the end process a pro-industry result? Some would say yes, some would say no. [Aaron Freeman 8:16:00]

The Committee took particular note of what appears to be an increasing trend toward "contracting out" policy studies and consultation to private sector consulting firms. While the identity of the consulting firm itself would be reflected in the public record, what would not be clear is who, precisely, is advising the consultants? As Sean Moore explains the issue, the trend is perhaps most evident in the development of science policy:

> The science war.... The most complicated, difficult, and frustrating type of lobbying these days is anything that has to do with science and health….You can go out and buy almost any science you want these days, and how much transparency is there in that? Should we be requiring people who are providing what is supposed to be scientific evidence on something...should there be much more information about who paid them to do this? [Sean Moore 14:17:00]

The issue does not suggest an easy solution:

> …It's an awfully long food chain you follow after a while as to what sort of information is used and is provided to government. Do you have to catalogue how the human labour that went into producing that research was paid for at every point along the way? I don't know. [Sean Moore 14:17:00]

John Chenier agreed that the "process would be very laborious and perhaps not airtight."

> I think the important aspect is to ensure that your policy process is as open and transparent as possible. In this way people know who is involved, know who is giving the information and the advice, and know it is possible to challenge something on the basis of what they know. However, at the current time it may be that the people who are consulted, the people who are involved, are not generally known to anyone else because the consultative process is closed. Therein you would have your problem. [John Chenier 14:17:00]

However, having identified the problem, no clear solution was suggested. It is questionable whether expanding the disclosure obligations under the lobbyists registry would resolve the issue. Again, the question becomes: how much disclosure should we require?

> I don't think you should ask people whether they have ever worked for R.J. Reynolds Tobacco or whatever in order to make them say what they did

> 15 years ago, something that will taint all their evidence. I don't think you would necessarily want a process like that. [John Chenier 14:17:10]

The Committee is mindful of the potential for conflicts when private sector consultants provide advice on the development of government policy. The subject is of special concern for the reason that its real effect on the direction of public policy is not necessarily apparent and, more importantly, not easily discoverable by the public. A complete examination of this important emerging issue is beyond the scope of the current study, however, and for that reason the Committee is unable to offer definitive recommendations. However:

Recommendation 23:

The Committee recommends that the role of private sector consultants in developing government policy is a subject that Parliament should study further, with a view to promoting transparency and ensuring that conflicts of interest do not arise.

3. The Cooling Off Period

Another aspect of conflict of interest relates to the post-employment "cooling off period" to which some public office holders are subject after leaving office. The "cooling off" period refers to those provisions in the Post-Employment Conflict of Interest Code that impose restrictions on a former public office holder's post-employment lobbying activities. The Committee is aware that issues arising under the Conflict of Interest and Post-Employment Code are beyond the scope of the current study; again, however, the Ethics Counsellor's dual role leads to blurring of the boundaries and, for this reason, many witnesses spoke to issues related to the Conflict of Interest Code.

The Committee heard that, as important as it is to ensure real fairness exists in the system, it is important that the system appear to be fair as well. One member discussed the great concern Canadians have with the "easy access and congenial familiarity that some lobbyists have with key decision-makers" and the relationship that may exist between decision-makers and those lobbyists who were once involved in the decision-making process. The Ethics Counsellor addressed the purpose underlying the "cooling off period":

> The post-employment provisions are in the Conflict of Interest Code for precisely the concerns that you have raised, that there might be a perception that someone will be able to take advantage in their first year after leaving office to make representations on behalf of others with some sense that they have a preferred status. That's why we have a cooling off period of one year, both with respect to who you can take a job with and that is if you have direct and significant official dealings with some company, you are not able to take a job with that company and you cannot make representations back to those departments that you had direct and significant dealings with again for a period of one year. [Howard Wilson 5:16:45]

The Ethics Counsellor also emphasized the importance, and the difficulty of, striking the right balance:

> This is essentially a balance. It's a balance between people not being in a position to take undue advantage of their last year in office, but also to remember that if you don't afford people the opportunity to build on their experiences and get on with a future life, it's going to be very, very hard to attract people into this life at all. [Howard Wilson 5:16:45]

The Ethics Counsellor discussed his practical experience with the conflict of interest rules:

> My experience in the past several years is that they have been working quite well. We meet with, for example, political staffers frequently who, if they're going to be having continuing dealings with government, certainly with Ministers and other senior officials. It can be quite restrictive… This is particularly the case if there is a fairly major electoral change. I think the Lobbyists Code has worked well in that we communicate with each one of these individuals who is subject to the Lobbyists Code annually. We talk to them in advance of their departure as to what limitations are going to be placed on them about what they can and cannot do and I can tell you that these prohibited activities that you're raising, and that is who you can take a job with and who you can lobby back, can be very limiting. [Howard Wilson 5:16:50]

Democracy Watch did not agree:

> Two years is too short, there's usually not an election within that two-year period, there isn't a change of government, let alone a change in bureaucracy and the Minister's relationships are still too strong with departments. [Duff Conacher 8:16:25]

However, as John Chenier expressed the point:

> It's a very, very difficult thing to deny a person their living. They're going to leave one career and go into another. How can you say, "I'm sorry, you can't earn a living for 12 months or 18 months or two years. [John Chenier 14:16:35]

Scott Proudfoot also addressed the issue:

> So I really think you have to sit there and ask, what are you really trying to do — just really punish people? Do you really want to sit there and say to people, look, if you've been a successful lawyer, and you've had a practice in a certain area, we're going to make it as hard as hell for you to go back to that area and practice after you leave public life to make a living? Why would I run for office? You have to sit there and ask, in how many ways do we discourage people from coming into public life? We're really coming up with new ones all the time [Scott Proudfoot 15:10:55]

The Committee concurs in this view. While the adequacy of the “cooling off period” prescribed by the Conflict of Interest and Post-Employment Code for Public Office Holders is really outside the scope of the present study, the Committee considers that the issue must be understood in light of the realities of life after politics. In many cases, employment prospects of former Parliamentarians may be limited. However, one thing that Members of Parliament take away from their tenure on the Hill is a good understanding of the process by which policy becomes law. It is, perhaps, not unreasonable to expect that a former Parliamentarian might wish to make a living from that knowledge, legitimately acquired in the service of Canadians. Still, it is important to ensure that Parliamentarians returning to the Hill as lobbyists should be mindful of conducting themselves in a way that upholds the integrity of the institutions of Parliament and government.

The Committee is aware that the issue of the post-employment “cooling off period’ is not a subject that falls within the current study, and for that reason makes no recommendation on that subject. Moreover, the Committee is aware that this and other related subjects have been studied in the past by committees of both chambers, and will likely be the subject of further study in future. In any case, the Committee is of the view that such a discussion is perhaps best reserved for the appropriate committee.

4. Integrity and Access to Government

At the heart of any discussion about lobbying lies the larger issue of integrity in government. Where conflict of interest is permitted to exist it undermines integrity by permitting one interest or one point of view to be advanced to the exclusion of others. The lobbyists registry does a great deal to open the process and expose potential conflicts to public scrutiny. People can easily find out who is talking to government, who is providing information and influencing — or trying to influence — the opinions of decision-makers. That information is readily available to anyone with Internet access. Access to this information promotes integrity in government by providing a clear window onto the policy-making process: the lobbyists registry reveals, among other things, the issues that are being considered, exactly where “inside government” they are being considered and the identity of the private sector interests and NGOs that are involved in trying to influence that process. In effect, the lobbyists registry shows precisely where “inside government” the debate is taking place, and thereby opens that debate to public participation. The possibility of one strategically placed lobbyist “hijacking” the public policy debate, shutting out opposing views and other sources of information, appears to no longer exist in practical terms. This was the purpose for which the system was created, and it has largely succeeded. Pierre Morin made the point:

> …Initially the Act came about because of so-called scandals….That brought the revision of the 1988 act into its current version. But you're still trying to resolve the 1988 issue. Maybe you should look at it this way: what are the issues in 2001? What issues — such as the e-community — are before you here? That's really the issue. Don't try to resolve the scandals in 1988. They're long gone. [Pierre Morin 15:10:30]

The point was expanded upon by Peter Clark. As he described it, the Act was a statute:

> …that was essentially designed to guard against influence-peddling and the selling of contacts…. That's why we have to report every meeting we arrange….What we're dealing with now is a government that's based far more on transparency. Because of the Internet, we have to deal in information; we can't deal in influence. Governments have to base policies on information. But what we need to know is, where is the information coming from, and who do the people represent? [Peter Clark 15:10:35]

However, even though the Act has brought a measure of transparency to the decision-making process, this is only part of the picture. The lobbyists registry forms part of a larger legislative framework, which aims at ensuring integrity in the process of public decision making by, first, making the process transparent and, second, by opening the process to wide public participation. But, the Committee heard, the process by which policy is made still cannot be described as inclusive:

> DAD: decide, announce, defend. That is the approach of Parliamentary government, decide, announce, defend, rather than when big issues are coming up being much more open and saying "this is the issue, these are the options, these are some of the pros and cons to each of these options. [Sean Moore 14:16:40]

Democracy Watch makes the same point:

> Most Canadians do not understand the legislative process. They believe, when a bill has been introduced, that this is the first decision that's been made and that things are now open to be changed, and they can send in their letter and the Minister will consider it. No, all the decisions have already been made. [Duff Conacher 8:15:55]

What emerges from this is the point that integrity in government really has two aspects: one is the desire Canadians have to see that the decisions being made by their government are being made fairly and intelligently, in accordance with principles of sound business management and the public trust. At the same time, though, Canadians also want to be involved in the process by which those decisions are made. Canadians quite rightly want to know who is driving the public policy debate, what factors are shaping the discussions and the decisions that are being made. But, equally important, ordinary Canadians need assurance that their government is listening to their concerns as well. It is not enough that we simply open the door; we must encourage all Canadians to join the discussion.

Despite their best efforts, governments and "politicians" are today sometimes viewed with suspicion :

> A lot of times, when you look at attitudes vis-à-vis the way people approach lobbying and the issues, it's almost like they want to…say to public servants, "We don't trust you", and to elected officials, "We don't trust you; we're going to stamp a big sign on your forehead that says we don't trust you." Frankly, you can trust just about everyone there, with very few exceptions, and to have everyone operate under suspicion is really not healthy and is actually terribly expensive and costly when you look at where it leads to. [Scott Proudfoot 15:10:55]

While the reasons for modern scepticism about government are many, one is certainly the feeling, on the part of many Canadians, that they cannot make a difference, that their government is not interested in hearing what they have to say. Reversing this trend, and restoring faith in institutions of government, will require a significant change in thinking about the way governments make policy. We must begin to engage Canadians earlier in the policy development process, and that engagement must be active; governments must encourage it and seek it out.

The Committee is also of the view that there is a vital role for Members of Parliament in the policy-making process. Sean Moore, recalling his years as a Washington, D.C. lobbyist, talked about the difference between Canadian MPs and their "American brothers and sisters…":

> The relative role of legislators in this country is very modest. That's not to say that when legislative matters come up you ignore MPs, but frankly, they are usually much farther down the list of people you need to deal with, because the genus of legislation in this country usually is two or three years prior to the date it hits the floor of the House of Commons. [Sean Moore 14:16:20]

Notably, many members of the Committee expressed exception to Mr. Moore's characterization of the role of MPs in the legislative process.

Some have reasoned that modern skepticism towards government and institutions of state is the result of the relentless and penetrating (and, some would say, cynical) eye of the media in the post-Watergate era. Today, that same media may yet provide the means of restoring public confidence in government. Today, communications technology — most obviously the Internet — allows the exchange of news, information and ideas, with a breadth of audience and a speed of delivery unimaginable 20 years ago. The Committee heard considerable discussion about the Internet, how it has begun to change the way we "do government," and how that impact will be increasingly felt. "Meaningful consultations" may become more than something we merely aim at. It may be within our grasp.

CHAPTER 5
POLICY MAKING IN THE INFORMATION AGE — LOBBYING, ACCESS AND THE INTERNET

> Lobbying is really about taking private interests and making them merge with the public interest, while being totally transparent… The Internet is a key factor in making that happen today….We think there's a critical role for government and for this institution to make sure it happens in a meaningful way. [Michael Teeter 15:10:10]

> The Lobbyists Registration Act is really about transparency and making public advocacy more transparent. While the Act is, in our experience, well run and meeting a real need, to some extent I think there really are bigger things going on. In fact, there are things government can do to really open up the process a heck of a lot more, beyond the Lobbyists Registration Act — and what we're really talking about is the public consultation process and how it works. [Scott Proudfoot 15:10:20]

1. The Power of the Internet

One of the most interesting topics of discussion in which the Committee engaged was on the subject of the Internet, and its impact on lobbying and the public consultation process. The discussion was led by Scott Proudfoot and Michael Teeter, co-creators of www.Hillwatch.com, a Web portal designed as a politics and public policy on-line resource centre for people working in politics and government or for people who want to influence government. The site categorizes and provides links to over 2,300 sites to help people find useful resources. For example, the site lists 450 Canadian groups and organizations in different issue areas, as well as several hundred international groups. The site is intended to showcase the public policy positions of the private sector associations, NGOs and coalitions corporations. Since its creation six months ago, the site has attracted some 40,000 visitors, attesting to the power of the Internet:

> The power of the Internet to really shape a lot of public policy discussion really arrives from the fact of where people go first for information. Increasingly, with over 50% of the Canadian population connected, with the people involved in the press, with people involved in public policy discussion, with association executives, I think you'll find the rate of connection is probably around 80% to 90% in many instances.[Scott Proudfoot 15:10:10]

What is the nature of the link between the Internet and lobbying? The most obvious connection is the fact that the lobbyists registry is online and some 98% of registrations are done electronically. The ready availability of the registry on the Internet

has, in the opinion of most observers, contributed to a significant improvement in transparency in the public policy-making process:

> The theory behind this is that if you really want to know who's saying what on the issues you're debating, and what issues are being debated inside governments and so on, you really can go to the Internet to find out. If you put them together in an organized fashion and in a meaningful fashion, think of what it gives the public. [Michael Teeter 15:10:10]

Interestingly, it appears to be the case that the groups making most effective use of the new medium as a lobbying tool are often those with the fewest resources:

> The groups that have understood the value of the Internet as a campaign tool, as a tool to promote their points of view, have been the civil society groups. It's not that they're smarter than anyone else. In fact, they have less resources. They therefore figured out that the Internet is sort of a tool that allows them to do stuff online better, more cheaply, and quicker, and they've gravitated to this. [Scott Proudfoot 15:10:15]

The effective use of the Internet by civil society groups has prompted other organizations to make their own policies clear. An example was offered of the GMO food debate:

> The anti-GMO food activists use the Internet to attack the mainstream corporations. The mainstream corporations, which didn't know what hit them, frankly, all of a sudden found they had to really respond in public and defend their position. If you go to their corporate sites now, or if you go to their association sites, there's a lot of good, reliable information, there's a lot of self-interested information, there's a lot of scientific evidence, and there's a lot of fear-mongering. There's a whole potpourri of information that you can find on the issue. Four or five years ago, you wouldn't have seen any of this information. Now it's all largely publicly accessible. Basically, beyond the Lobbyists Registration Act, we think the Internet is really pushing the whole industry to be a heck of a lot more public and transparent where people can find it. [Scott Proudfoot 15:10:15]

But many public interest groups are doing more than just looking for information:

> They're organizing to put pressure on governments….They are lobbyists, but they're not just one person representing somebody behind the scenes and having to register. You're talking about millions using the Internet to organize themselves. [Michael Teeter 15:10:20]

2. A Challenge for Governments

The emergence of the Internet poses a number of questions for legislators and other policy-makers. Members of Parliament are already familiar with at least one issue: What to do with all the E-mail?

> Some of this comes with some downside. One of the downside effects is that you, as members of Parliament, are going to be subjected to a heck of a lot more of what I call political spam. We just saw a recent report that senators in the U.S. are getting 55,000 E-mails a month. House representatives are getting 8,000. [Scott Proudfoot 15:10:15]

The growth of Internet lobbying also raises the difficult question of determining who is behind a Web site:

> Associations have structures, they have laws that regulate their incorporation, and so on. But these don't. They don't have leadership, they don't have mandates, and they don't have rules that govern their behaviour. A key challenge for governments will therefore be what to do with these things. What do you do with these communities that are putting pressure on you? [Michael Teeter 15:10:20]

Scott Proudfoot suggested that the solution to the problem lies with the development of voluntary codes:

> So if there is a concern about disclosure and the lack of disclosure with these groups, they all have websites. If we could get them to agree on a good code of practice voluntarily, I'm sure most of them would voluntarily submit to it and would be part of it. I think that would solve a lot of the problems. [Scott Proudfoot 15:10:40]

3. Raising Public Awareness

In spite of these concerns, it is clear that the Internet can be a powerful tool for raising public awareness by “getting the message out”:

> A lot of people want more direct democracy. They don't just want to replace representatives; I think they want to replace the media, too, if not more so. What you're going to get is the “Animal Rights Supper Hour” or the “Anti-Globalization Evening Show”. That's really where it's going. It's going to be a very different world that's going to force all of us to adjust in a fairly major way [Scott Proudfoot 15:10:15]

In addition to contributing to greater public awareness about important issues, the Internet will, at the same time, permit policy-makers to expand the process of public consultations in a meaningful way. The Committee is aware that this process is already underway to some degree in the Canadian government and governments around the world:

> The very officials we're talking about now who are being lobbied by lobbyists form e-communities of their own. E-communities are being formed inside government as we speak, and these communities are taking policy positions… [Michael Teeter 15:10:20]

The Committee listened with great interest to the U.K. experience with online consultations. The U.K government has created a “citizen portal” called UK Online. In the portal called “Citizen Space” they have a button labelled “Consultations” that takes the visitor to a central registry, where information is available about all consultations going on in the government. The site also permits the visitor to link to background information provided by officials, and provides the coordinates for who to contact and where to send submissions. The central registry links the various departmental registries. In addition, some departmental registries link to departmental sites, which provide a “Consultations” button. In the normal course, the sites provide information about which consultations are live and which have just closed. For those that have closed and for which the government has rendered a decision, a summary is provided of who appeared, what was said, and what the government's decision was.

Hillwatch’s co-founders suggested that, by creating a similar site, the Canadian government could create the means and the incentives for Canadians to participate in a more meaningful way in the public policy debate:

> We think it's a heck of a good idea. People would have more incentive to get involved, to be included, to find out what's going on, and we'd recommend that you just go over there and steal the idea, holus-bolus, and apply it in Canada. [Scott Proudfoot 15:10:20]

However, Hillwatch was of the view that the U.K. system could be improved upon. One way would be to provide E-mail notification of pending consulations to anyone who had expressed an interest:

> …all you have to do is create, as part of a consultation registry, a list of thirty or forty key topics. Are you interested in these topics? Put in your check and put in your E-mail. We'll then send you an E-mail to tell you when a consultation comes up. You can then go to the consultation site, get more information, get the background, and get involved if you want. It's very simple, cheap, and easy technology. [Scott Proudfoot 15:10:20]

Hillwatch offered a second constructive suggestion for improvement:

> If you have a consultation registry, why not have a submission button? Have a list of people who have made submissions. They could provide the links to the material on their sites. They could provide the links to the material on the site where people can view it, or the government could provide some sort of central registry with a searchable database. [Scott Proudfoot 15:10:20]

The Committee is mindful, of course, that the confidentiality of sensitive business information should still be protected. For that reason, parties making submissions would have to be given the choice of disclosing the substance of their brief:

> Now there is one important caveat here: I think it has to be voluntary. There are times when we're involved with clients and the information is confidential — we shouldn't be giving away information we wouldn't want their competitors to know. I think people have to have the right not to volunteer information. But I think most people would participate. [Scott Proudfoot 15:10:25]

The Committee found much to support in the recommendations of Hillwatch. We are aware that the Government of Canada has already set up a Web portal to access government institutions (www.canada.gc.ca), into which these recommended innovations could easily be incorporated.

4. The Role of Parliamentarians

> Where is the elected member of Parliament in all this? To some extent, you can be left out of the process. As we talk about consultative mechanisms and e-communities, I think we have to think about how to build elected representatives and democratic accountability into the process. [Scott Proudfoot 15:10:25]

Members of the Committee are aware of what some observers have referred to as the steady diminution of the role of ordinary MP in the policy-making process. Many members come to Parliament with great experience and expertise in different areas; the traditional view is that MPs are involved in the policy debate only at the point when a bill comes before us. Members of Parliament do, in fact, get involved earlier in the process. In fact, effective representation of our constituents often makes our early involvement necessary. But Members of Parliament are often kept no better informed than members of the public about what goes on inside the various departments of government. Hillwatch suggested a simple means by which the Internet could be used to bring Members “into the loop” earlier in the process.

> …there should be a button that says: Contact your MP. If something is important to you, send your representation to your MP. You have to build that in. As e-government evolves, you have to look for other ways to build MPs into the process. I'd be very concerned if we didn't make that a major priority. [Scott Proudfoot 15:10:25]

But will this mean even more work for Members, in addition to their already busy schedules? Perhaps. But the Committee looks upon it as an opportunity to represent our constituents more effectively and efficiently, by entering into an ongoing “e-dialogue” with them. In addition to increasing our effectiveness as elected representatives, Hillwatch reminded the Committee that there are other advantages to actively engaging with constituents in this way:

> …when people communicate with you as MPs via the Internet, from your constituency or otherwise, you should look on that as an opportunity to capture data. Once you learn something about a person, that person essentially becomes a volunteer. American politicians have perfected this, and it's coming to Canada. [Michael Teeter 15:10:30]

The Committee is of the view that the Internet offers a unique and exciting opportunity for the Government of Canada and Members of Parliament to engage Canadians in the public policy debate to an unprecedented degree. By making it easy for Canadians to have their views heard, public policy-making can reflect the views and interests of all Canadians, and not just of those who can afford access to government. By engaging Canadians in a meaningful way in the debate, public policy can become truly reflective of the wishes of all Canadians.

In order to promote transparency in the process by which public decision making is made, and in order to ensure that all Canadians are able to contribute effectively to the policymaking process:

Recommendation 24:

The Committee recommends that the Department of Industry, in consultation with other departments of government, devote the necessary resources and proceed with all deliberateness to design and implement an Internet architecture, to be incorporated into the Government of Canada website (http://www.canada.gc.ca), and to include the following features:

- **An easy-to-find "Consultations" portal to take visitors to a central registry containing information about all consultations currently going on in the government, with links to the departments undertaking the consultations;**
- **Additional links to background information prepared or received by government in relation to a consultation;**
- **Links to persons or departments to contact and where to send submissions;**
- **Information about which consultations are open and which have just closed; and, for those that have closed and for which the government has rendered a decision, a summary of who appeared, what was said, what the government's decision was and the reasons for it;**
- **An E-mail notice subscription list to permit Canadians to be informed of upcoming consultations on subjects of concern to them;**
- **A "contact your MP" button to permit Canadians to copy their MPs with their submissions to government.**

Recommendation 25:

As well, once the consultations portal is available, the Committee recommends that the government undertake to advertise and publicize the site in order to make Canadians aware of its existence and of the opportunity to become involved in the public policy-making process.

CONCLUSION

Based on the evidence presented for our consideration, the Committee is of the view that the lobbyists registration system is, on balance, working well to achieve the objectives for which it was designed. The recommendations we have put forward cannot really be said to be fundamental; however, we believe they will result in a more efficient, more effective, and more enforceable system.

We heard many suggestions as to how the system might work even better, and we listened to all those suggestions with interest and open minds. The issues were often complex, involving questions ranging far beyond a study of the Act itself. In this report, we have tried to clarify how we approached those suggestions, how we "thought them through" and why we have made the recommendations we have.

While many important ideas emerged from our discussion, perhaps the most significant is that the lobbyists registration system is really best understood as "a work in progress." Just as our thinking must continue to evolve on subjects of transparency and access to government, so must our legislative framework remain flexible and ready to evolve; in this way, we will be able to respond to significant changes in the environment in which public policy decisions are made. The emergence of the Internet is the most obvious of these significant changes.

The pace of technological change makes predicting the future an uncertain enterprise. The Act mandates only a single four-year review. Should the Act be reviewed again in four years time? Our current review is complete; yet we are reluctant to close the book, and to say that the Lobbyists Registration Act is sufficient, now and for all time, to ensure that the goals it reflects will continue to be achieved. This much is certain, though: We must continue to use all the means at our disposal to open the public policy debate to all Canadians equally, regardless of who they are or where in this country they live, and regardless of the means at their disposal. The age of the Internet — the Information Age — presents us with both unprecedented opportunities and unprecedented challenges. The Committee is confident that together we will continue to meet those challenges.

LIST OF RECOMMENDATIONS

Recommendation 1:

The Committee recommends that the Government undertake a study to determine rates of compliance under the Act and the reasons for non-compliance where it exists.

Recommendation 2:

The Committee recommends that the Act be amended to create a new office, which shall have the exclusive responsibility of investigating and reporting to Parliament on alleged violations of the *Lobbyists Code of Conduct.*

Recommendation 3:

The Committee recommends that the Registrar of Lobbyists, the Office of the Ethics Counsellor and the Department of Justice undertake further consultations with a view to determining the most appropriate legislative response to the enforcement issues arising from the use of the phrase "in an attempt to influence" in the Act.

Recommendation 4:

The Committee is of the view that the current two-year limitation period for the commencement of summary conviction proceedings under the Act is adequate and therefore does not recommend any change to the Act in this regard.

Recommendation 5:

Owing to the lack of support for the proposition among witnesses appearing before it, the Committee does not recommend that the Act be amended to apply an In-House (Organization) registration approach to In-House (Corporate) lobbyists.

Recommendation 6:

Owing to the considerable conceptual difficulties presented by the proposal, the Committee does not recommend that the Act be amended to create a so-called "qualitative" approach to registering lobbying activities.

Recommendation 7:

The Committee recommends that section 4(2)(*c*) of the Act be deleted in order to require lobbyists to register even when the lobbying contact was initiated by the public office holder.

Recommendation 8:

The Committee is of the view that the Lobbyists Registration Act is an act of great public importance, and, as such, it demands of registrants the utmost good faith in complying with the spirit of the law, even where doing so may require more than mere compliance with the letter of the law. The Committee recommends that this fundamental principle be emphasized by the inclusion in the Act of a general anti-avoidance provision.

Recommendation 9:

For the purposes of simplifying the current deregistration requirements and promoting greater consistency of application of the Act, the Committee recommends that the same deregistration requirements should apply to all lobbyists.

Recommendation 10:

The Committee recommends that, in order to ensure that registrants update their filings in a timely fashion, the Registrar of Lobbyists provide an E-mail "update reminder" to all registrants at least 30 days in advance of the date upon which their registrations must be updated.

Recommendation 11:

In order to ensure that information in the lobbyists registry is kept up to date, the Committee recommends that all lobbyists should be required to update their filings semi-annually; however, the 30-day deregistration requirement currently set out in section 5(4) of the Act should be removed from the Act to the Lobbyists Code in order to remove it from the sanctions prescribed by the Act for failing to deregister within the 30-day time frame currently prescribed.

Recommendation 12:

The Committee also recommends that the Registrar draft a notice, to be displayed clearly on the lobbyists registry Web site, to the effect that because lobbyists are required to update their filings semi-annually, certain client relationships may no longer be active; and accordingly,

persons are encouraged to verify with the lobbyist which of the lobbyists' current client listings remain active.

Recommendation 13:

For greater certainty, the Committee recommends that the 30-day period should be removed from the Act *only* insofar as it applies to the obligation to deregister. Because timely updating of client information is important, the Committee recommends that provisions that require the lobbyist to provide notification within 30 days of any changes to existing filings should remain in the Act.

Recommendation 14:

The Committee is satisfied that the current penalty regime prescribed by the Act is appropriate and does not recommend any changes in this regard.

Recommendation 15:

The Committee is of the view that the creation of a dual-disclosure i.e. a system that would require public office holders to report having been contacted by a lobbyist, would result in significantly increased compliance cost with little, if any, improvement in transparency; for that reason, the Committee does not recommend that the Act be amended to create a dual-disclosure system.

Recommendation 16:

The Committee does not recommend that the Act be amended in order to create a requirement that the names of individuals who have been lobbied be disclosed in the lobbyists registry.

Recommendation 17:

The Committee is satisfied that the current disclosure requirements for In-House (Organization) lobbyists is sufficient and, for that reason, does not recommend any changes to the current disclosure requirements in this respect.

Recommendation 18:

Although the evidence presented to the Committee was mixed, it is possible that requiring lobbyists to disclose the amounts that they spend on lobbying campaigns could lead to greater transparency. For that

reason, the Committee recommends that the proposal be made the subject of further study by the Department in consultation with stakeholders.

Recommendation 19:

The Committee is satisfied that the current disclosure requirements are satisfactory and, for that reason, does not recommend that the Act be amended in order to require that lobbyists disclose their fees.

Recommendation 20:

The Committee is of the view that the current disclosure requirements are appropriate and adequate and, for that reason, does not recommend that the Act be amended with respect to contingency fees.

Recommendation 21:

The Committee does not view the issue of the tax deductibility of lobbying expenses to be within its current mandate and, for that reason, makes no recommendation on the issue.

Recommendation 22:

The Committee is of the view that, while the requirement to disclose a client's identity could, in rare, cause can see some hardship to a litigant in a court proceeding, maintaining the integrity of the lobbyists registry is a more pressing policy objective and, on that basis, the Committee does not propose to amend the Act to create an exception based on solicitor-client privilege to the general registration requirements.

Recommendation 23:

The Committee recommends that the role of private sector consultants in developing government policy is a subject that Parliament should study further, with a view to promoting transparency and ensuring that conflicts of interest do not arise.

Recommendation 24:

The Committee recommends that the Department of Industry, in consultation with other departments of government, devote the necessary resources and proceed with all deliberateness to design and implement an Internet architecture, to be incorporated into the Government of Canada website (http://www.canada.gc.ca), and to include the following features:

- **An easy-to-find “Consultations” portal to take visitors to a central registry containing information about all consultations currently going on in the government, with links to the departments undertaking the consultations;**
- **Additional links to background information prepared or received by government in relation to a consultation;**
- **Links to persons or departments to contact and where to send submissions;**
- **Information about which consultations are open and which have just closed; and, for those that have closed and for which the government has rendered a decision, a summary of who appeared, what was said, what the government's decision was and the reasons for it;**
- **An E-mail notice subscription list to permit Canadians to be informed of upcoming consultations on subjects of concern to them;**
- **A “contact your MP” button to permit Canadians to copy their MPs with their submissions to government.**

Recommendation 25:

As well, once the consultations portal is available, the Committee recommends that the government undertake to advertise and publicize the site in order to make Canadians aware of its existence and of the opportunity to become involved in the public policy-making process.

APPENDIX A
LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Industry	2001/03/20	5
Howard Wilson, Ethics Counsellor		
Diane Champagne-Paul, Registrar, Lobbyists Registration Branch		
Canadian Manufacturers and Exporters	2001/03/27	7
Jayson Myers, Senior Vice-President and Chief Economist		
Democracy Watch	2001/03/27	8
Duff Conacher, Coordinator		
Aaron Freeman, Board Member		
Grainger and Associates		
Brian Grainger		
Government Relations Institute of Canada	2001/04/05	12
Tony Stikeman, President		
Ian Faris, Director, Government Affairs, AT&T Canada		
GPC International		
John Scott, Vice-President and General Council		
Carole Presseault, Health Policy Manager, Canadian Nurses Association		
Alternatives North	2001/04/24	14
Suzette Montreuil, Coordinator		
ARC Publications	2001/04/24	14
John Chenier, Editor and Publisher		
Sean Moore, Public Policy and Public Affairs Advisor, Gowling Lafleur Henderson		

Associations and Individuals	Date	Meeting
Bell Canada Linda Gervais, Vice-President	2001/04/26	15
Grey, Clark, Shih and Associates Limited Peter Clark, President		
Hillwatch Inc. Scott Proudfoot, Co-Chair Michael Teeter, Co-Chair		
“Pierre Morin Conseils Limitée” Pierre Morin, President		
Canadian Society of Association Executives Michael Anderson, President and Chief Executive Officer Bob Hamp, Manager, Communications	2001/05/01	18
Department of Industry Diane Champagne-Paul, Registrar, Lobbyists Registration Branch	2001/05/03	19
Department of Justice Irving Miller, Senior Counsel, Commercial Law Division	2001/05/03	19
Canadian Bar Association Simon Potter, Second Vice-President Tamra Thomson, Director	2001/05/08	21

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report within one hundred and fifty (150) days.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Industry, Science and Technology (*Meetings Nos. 5, 7, 8, 12, 14, 15, 18, 19 and 21 which includes this report*) is tabled.

Respectfully submitted,

Susan Whelan, M.P.
Essex

Chair

BLOC QUÉBÉCOIS DISSENTING OPINION

The *Lobbyists Registration Act* is one component of the measures used to make the public policy process more transparent. The Bloc Québécois has studied every aspect of lobbyists' work and each section of the Act from this perspective; it has listened to all the witnesses, always bearing in mind the importance of transparency for reassuring the citizenry that public policy decisions and the awarding of contracts reflect their interests as a whole and not those of powerful lobbies.

Despite some promising recommendations[1], the Bloc Québécois had no option but to voice its dissent to the Liberal majority's report, because it is much too timid when it comes to regulating lobbyists' activities. In addition, it says nothing about certain important aspects of the Ethics Counsellor's work.

1. Role of the Ethics Counsellor

The Committee refused to make recommendations about the process of appointing the Ethics Counsellor or about the different roles the Counsellor plays within the government. In the eyes of the Bloc Québécois, this is fundamental.

The recent Grand-Mère Golf Course affair — in which the Prime Minister may have been in conflict of interest when he approached the President of the BDBC about a loan for the Auberge Grand-Mère, next door to the golf course — made the spotlight on the Ethics Counsellor's role brighter than ever.

The affair effectively demonstrated to the public at large that the Ethics Counsellor (responsible for application of the Code for Public Office Holders as well as the *Lobbyists Code of Conduct*) is not independent and does not have the teeth that the public was entitled to expect. The majority report goes so far as to say that nothing prevents the Prime Minister from "appoint[ing] an Ethics Counsellor to advise his government. In fact, any party is free to do the same."

That second sentence is clear proof of the Liberals are confusing two concepts as separate and distinct as the internal management of a political party and the administration of public funds. They refer to the Ethics Counsellor as though he were a POLITICAL adviser to the Prime Minister and the government.

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[1] In particular the repeal of paragraph 4(2)(*c*) and the addition of a loophole-closing provision.

And yet it is logical that an ethics counsellor would have a mandate to carry out public inquires into conflicts of interest and ethical shortcomings on the part of holders of public office, with a view to informing the citizenry about them. Unlike the Liberals, the Bloc Québécois does not regard ethics, transparency, and public confidence in democratic institutions and the management of public affairs, as the private concerns of a political party, a government or a Prime Minister. Rather, they are the responsibility of democratic institutions — the House of Commons — and the elected representatives of the people.

According to Sean Moore, a public policy and public affairs adviser who was a witness to the Committee's hearings:

> I don't think it's credible any more to have an ethics counsellor with the terms of reference such as exist at the federal level in Ottawa right now. I don't think off Parliament Hill, and certainly for at least half of Parliament Hill, that's a credible option any more. (…) Well, I think the political cost to pay for not having some office to look independently at things is probably much greater than any government should have to bear in the future.

In an effort to restore the credibility of the Ethics Counsellor's position, **the Bloc Québécois recommends that the Ethics Counsellor be appointed by Parliament for a five-year term, that the Governor in Council not be empowered to repeal this appointment except on an address by the House of Commons, and that the term be renewable for no more than one further five-year period**.

Obviously, a perfectly independent ethics counsellor who **must report to Parliament must necessarily hold public inquiries and report on both his investigations, his conclusions and the reasons underlying those conclusions, to the House of Commons**.

In this perspective, the Bloc Québécois scarcely finds reassuring the recommendation in the majority report calling for the creation of a "new office" responsible for investigating alleged violations of the Lobbyists Code, which would report to Parliament. As the report notes, "The Act does not prescribe penalties for breach of the Lobbyists Code; neither does it specify how Parliament is to respond to a reported breach of the Code."

In short, this "new office" would not be able to impose any penalties. It is as though, having concluded his investigation, Columbo could not arrest the suspect! That is why **the Bloc Québécois recommends that the Lobbyists Code be made a statutory instrument, so that breaches of it could be pursued before the courts, as is the case for multitude of other professions.**

2. Still plenty of work to do

In this report, the Bloc Québécois suggests a number of approaches that would make it possible to improve the *Lobbyists Registration Act* and would be likely to increase public confidence in the public policy process. Unfortunately, the Liberal majority did not see fit to adopt any of these recommendations. In other cases, the Committee preferred to procrastinate by calling for more in-depth consideration of certain issues role, rather than taking action now.

(a) The Bloc Québécois recommends that lobbyists be required to disclose their meetings with a minister or senior public servants, in addition to disclosing the name of the department concerned.

(b) The Bloc Québécois recommends that lobbyists be required to disclose the amounts spent on lobbying campaigns.

(c) The Bloc Québécois recommends that both consultant and paid lobbyists be required to disclose their fees.

(d) The Bloc Québécois recommends that a provision be included explicitly banning any form of contingency fee for any activity whatsoever.

(e) The Bloc Québécois recommends that consultant and paid lobbyists both be required to disclose all positions occupied and all corresponding periods of employment with any federal body or any political party; all unpaid executive positions with any political party; the number of hours of volunteer work (in excess of 40 per annum) done on behalf of any political party, any would-be candidate or any riding association; any terms of office as an elected representative at the federal level, as well as any unsuccessful election campaigns fought; and all contributions to any political party or candidate.

(f) The Bloc Québécois recommends that the *Code for Public Office Holders* be made a statutory instrument, and that the Code be revised by a committee of the House of Commons to safeguard against abuses. For example, the post-employment cooling-off period for holders of public office, discussed by the Committee, would become subject to penalty in the event of violation.

Conclusion

Although the current study was not designed to cover this issue, the Bloc Québécois cannot conclude its dissenting opinion without referring to the secondary role reserved for Members of Parliament in the establishment of public policy. Many witnesses affirmed that lobbyists' time and attention is essentially directed towards the bureaucracy and the executive branch. Here is what one witness told the Committee about legislative issues:

> [MPs] are usually much farther down the list of people you need to deal with, because the genesis of legislation in this country usually is two or three years prior to the date it hits the floor of the House of Commons. (Sean Moore)

However, the Bloc Québécois knows that the citizenry would be the winners in a system where their elected representatives had more power, because it is the Members of Parliament who have direct contact with the people and are the most likely to speak for them. The Bloc Québécois hopes the government will recognize the importance of parliamentarians, and the essential contribution they make, to the public policy process.

MINUTES OF PROCEEDINGS

Thursday, May 31, 2001
(*Meeting No. 29*)

The Standing Committee on Industry, Science and Technology met at 9:05 a.m. this day, in Room 209, West Block, the Chair, Susan Whelan, presiding.

Members of the Committee present: Reg Alcock, Mauril Bélanger, Pierre Brien, Bev Desjarlais, Walt Lastewka, Charlie Penson, James Rajotte and Susan Whelan.

Acting Members present: Denis Mills for Dan McTeague, Joe Fontana for Andy Savoy and Raymond Lavigne for John Cannis.

In attendance: *From the Library of Parliament*: Geoffrey P. Kieley and Dan Shaw, Research Officers.

Witnesses: *From the National Research Council of Canada*: Arthur J. Carty, President. *From the Vancouver City Savings Credit Union*: David Mowat, Chief Executive Officer. *From the Conference Board of Canada*: Brian Guthrie, Director, Innovation and Knowledge Management. *From the Canadian Medical Discoveries Fund Inc.*: Calvin Stiller, Chair and Chief Executive Officer. *From the Department of Industry*: Gwillym Allen, Assistant Deputy Commissioner of Competition Economic Policy and Enforcement, Competition Bureau. *From the University of Toronto*: Nancy Gallini, Professor of Economics , Department of Economics. *From the Canadian Association of University Teachers*: Paul Jones, Research and Education Officer.

Pursuant to Standing Order 108(2), consideration of the Science and Technology Policies:

At 9:05 a.m., the Committee proceeded to the following Roundtable: **Research and Development Spin-off Firms and Finance Issues.**

Arthur J. Carty, David Mowat, Brian Guthrie and Calvin Stiller each made an opening statement and answered questions.

At 10:45 a.m., the sitting was suspended.

At 10:58 a.m., the sitting resumed.

Pursuant to Standing Order 108(2), consideration of the Science and Technology Policies:

At 10:58a.m., the Committee proceeded to the following Roundtable: **Intellectual Property Rights and Protection.**

Gwillym Allen, Nancy Gallini and Paul Jones each made an opening statement and, answered questions.

At 12:05 p.m., the sitting was suspended.

At 12:10 p.m., the sitting resumed.

Pursuant to Standing Order 108(2), the Committee proceeded to the Statutory Review of the *Lobbyists Registration Act*.

It was agreed, — That the Draft Report (as amended) be concurred in.

It was agreed, — That the Chair present the Third Report (as amended) to the House at the earliest possible opportunity.

It was agreed, — That pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to this report within one hundred fifty (150) days.

It was agreed, — That the Chair be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the Draft Report to the House.

It was agreed, — That 1550 copies of the Report be printed in both English and French in tumble format.

It was agreed, — That the Committee authorize the printing of dissenting opinions as an appendix to this report, immediately following the signature of the Chair.

It was agreed, — That any dissenting opinions be limited to not more than 5 pages.

It was agreed, — That any dissenting opinions be received by the Clerk in both official languages no later than in the morning of Tuesday, June 5, 2001.

It was agreed, — That a News Release be issued.

At 1:05 p.m., the Committee adjourned to the call of the Chair.

Normand Radford
Clerk of the Committee