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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Monday, June 8, 2009**

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**Chair**

**Mr. Paul Szabo**

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## Standing Committee on Access to Information, Privacy and Ethics

Monday, June 8, 2009

• (1535)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** Order.

This is meeting 26 of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day, pursuant to Standing Orders 110 and 111, is a certificate of nomination of Karen E. Shepherd to the position of Commissioner of Lobbying, referred to the committee on Monday, May 11, 2009.

Our witness today is Karen E. Shepherd, proposed appointee for the position of Commissioner of Lobbying. Welcome, Ms. Shepherd. It's nice to see you again, although in a different capacity.

I understand you have a brief opening statement, something less than ten minutes, and then the committee I'm sure would like to ask you some questions about this new opportunity and the state of the union.

Please proceed.

[Translation]

**Mrs. Karen Shepherd (Proposed appointee for the position of Commissioner of Lobbying, As an Individual):** Thank you.

Mr. Chair and members of the committee, it is an honour and a privilege to have been nominated for the position of Commissioner of Lobbying and to appear before you to consider my candidacy for this important position.

I would like to make some introductory remarks to highlight various aspects of my career. I would also like to share with all of you my experience to date in administering the lobbyists' registration regime, my role as Interim Commissioner, and the duties and obligations of this independent parliamentary office in serving both Parliament and Canadians.

[English]

First, let me tell you a little about myself. I was born in Montreal, Quebec. I have been married for 19 years. My husband is an assistant professor at Carleton University and teaches in the fields of program evaluation, ethics, and public administration.

In terms of my academic career, I attended Concordia University, where I obtained my baccalaureate of arts, with a major in economics and a minor in administrative studies. This degree was a cooperative program; as such, my first work term in the summer of 1985 was as an analyst with Employment and Immigration Canada. It was with this experience that I knew I wanted to move to Ottawa and start a career with the federal government. I regarded my

decision as the right choice for me, as Canada's federal government provided me with several challenging and exciting opportunities. I saw great value in using my training to serve Canada and Canadians. This thinking has been unwavering on my part.

[Translation]

I moved to Ottawa in May of 1987 to begin my career as a federal public servant. I soon realized that my objective was to become a leader and executive in the public service, so I enrolled in the master of arts program in policy and administration at Carleton University. Not only did I learn the fundamental concepts and practices that would form the basis of my training, but I also gained practical work experience in the co-op program. The combination of theory and practice was ideal, and I consider this training pivotal to success in my career.

[English]

As you've likely learned from my résumé, I worked in a number of federal departments prior to joining the Office of the Registrar of Lobbyists in 2004. These include Industry Canada, the Office of the Auditor General, Revenue Canada Customs, Employment and Immigration, and Energy, Mines and Resources. I have performed a variety of functions at both the officer and executive levels and have gained significant experience in operations, policy, program management, and human resources. Each of these experiences has provided me with important knowledge, abilities, and experience, which has served me well in my executive function and in my role as interim commissioner of lobbying.

Since joining this office, I have gained an in-depth knowledge of the Lobbying Act, the lobbyist code of conduct, and managing the institution responsible for this important legislation. It is my view that the Lobbying Act and the role of the commissioner is to support the integrity of government decision-making by ensuring that those who are active in lobbying the federal government are behaving in an ethical and transparent manner.

[Translation]

Some of the key developments that I have been involved with have strengthened the integrity of the office. I have created or improved the building blocks necessary for effective lobby legislation including the Lobbyists Registration System, education and outreach function, and supporting effective compliance.

[English]

The registry is the primary tool used by this office to maintain transparency in lobbying activities conducted at the federal level. Prior to assuming the role of director of investigations I was primarily responsible for the day-to-day management of the registry and for ensuring that lobbyists were provided with efficient service to register and report on their activities. It was also necessary to ensure that lobbyists complied with both the act and its spirit in order to provide Canadians with the most reliable information.

The amendments that came into force in 2005 and in 2008 required lobbyists to disclose either additional or different information. I was involved in these implementation strategies and preparing development updates to incorporate the new legislative and registration requirements.

Regarding education and research, I believe it is important to educate people regarding the act and its requirements rather than rely exclusively on enforcement measures to achieve compliance. In this respect, I have developed a number of interpretation bulletins or advisory opinions to ensure that those subject to the act are clear about their obligations. Although these documents are not legally binding, they provide lobbyists and others interested in lobbying legislation information on how the commissioner intends to implement the act.

I have developed and delivered several training sessions and made presentations to lobbyists, public office holders, parliamentarians, and others interested in the federal lobbying regime. I have represented the office in both national and international forums to explain lobbying legislation and how it is administered.

[Translation]

Although education is important, maintaining an effective compliance system cannot be understated. As such, I have been involved with developing, implementing and ensuring that the necessary enforcement approaches and processes were in place in order to be consistent with the requirements of the act. Such processes have included conduct of administrative reviews and investigations, submitting initial investigative reports to Parliament, verifying monthly communication returns, and assessing applications to the five-year lobbying prohibition.

• (1540)

[English]

I have been a key player in establishing the office's overall governance structure. I know it well and I have worked to ensure that it has the necessary resources to effectively carry out the responsibilities bestowed upon it by Parliament. In this respect, I have laid much of the groundwork with respect to the office's human resources policy, establishing financial controls and creating the administrative systems necessary to carry out our regular reporting and monitoring functions.

Members of the committee, this is what I have done. This is the past. Now let me speak to you about how I understand our priorities and challenges for administering the act and managing the Office of the Commissioner of Lobbying.

[Translation]

The registry is our bread and butter. It is the office's primary tool for ensuring transparency in lobbying activities. Therefore, it will be important to continue improving its functionalities in order to make it more user-friendly and also technically capable of supporting the increasing demands being made on it.

[English]

Despite all of our efforts in the areas of education and outreach, there is still much more that can be done to ensure that lobbyists, public office holders with whom they communicate, and others interested in lobbying activities better understand the rationale and the requirements of the act.

It will be important to finalize and implement our communication strategy and develop the necessary tools and products to maximize our outreach efforts aimed at our various audiences. This will assist registrants to better understand the reporting requirements and reduce their difficulties when reporting their lobbying activities with our office.

I regard it as one of my principal responsibilities to reach out to parliamentarians, public servants, and indeed the public about this legislation and to demystify lobbying activities. Lobbying is a legitimate and democratic activity that should not be diminished by misunderstanding.

With respect to compliance, one of my key priorities will be to review and refine our case management of new and outstanding compliance files in order to be more efficient in administering the act. I will also respect new guidance by the Federal Court of Appeal regarding the application of the conflict of interest provisions of the lobbyists code of conduct. Similarly, I believe it will be a core responsibility to provide lobbyists with additional guidance on other rules contained in the code in order to enlighten potential areas of breach for purposes of clarity.

In closing, let me emphasize that I have found performing in the role of interim commissioner to be exciting and challenging. My goal has been to implement and administer the Lobbying Act in a way that builds the confidence of parliamentarians and Canadians by working always to ensure transparency and integrity in government decision-making through a well-functioning and independent office of Parliament.

Should the committee and Parliament decide to entrust me with the distinct honour of being Canada's first Commissioner of Lobbying, I can assure you that I will continue to work hard to earn your trust and to make certain that this office continues to offer professional and loyal service to Parliament and Canadians.

[Translation]

Thank you.

I am now pleased to take your questions.

[English]

**The Chair:** Thank you very much. This is obviously a very important position as an independent officer of Parliament. We hold these positions in very high esteem.

We're going to ask for questions from the members.

Mrs. Simson, please.

**Mrs. Michelle Simson (Scarborough Southwest, Lib.):** Thank you, Chair.

Thank you, Ms. Shepherd, for appearing before the committee today.

I took a look at your résumé, which is very impressive. I was really interested in your first paragraph, under "Goals", where it states that you look forward to utilizing your ability in changing the public sector environment, particularly with respect to how you see it changing. Could you elaborate on that statement? How do you see it changing? What is it that you think you'd bring to that change, whether it be good or bad?

**Mrs. Karen Shepherd:** Thank you.

In terms of how I see things changing as the process continues to evolve and as we look at the future, I think continuing to attract young Canadians to the public service is important. As I said in my opening remarks, I think the public service provides a wide variety of challenges and opportunities to Canadians that allow them to move around. In my own experience, I have benefited from working in a number of departments, which has allowed me to gain the experience I often draw upon to assist in mentoring or coaching others.

• (1545)

**Mrs. Michelle Simson:** That actually is a good segue into my next question. You obviously have some human resources background. In the course of this committee's work with the various commissions, there has been a common concern with respect to staffing, particularly recruiting and training staff, then also retaining that staff. Is that currently the case in your office? If so, what plans would you have to eliminate the revolving door syndrome that appears to be the case in smaller offices, like a lot of the commissions? That appears to be a systemic problem that nobody's been able to adequately address during their testimony.

**Mrs. Karen Shepherd:** First of all, I think that education and training are extremely important. One of the things I actually put into place was a learning and training policy. There are four types of mandatory training that the staff have to take, such as harassment training, health and safety. In addition, as we go through the evaluation process, employees each fill out a training plan that looks at their future—the training they need within the next year or two or three years, or the long-term objectives. The priority is always to train first for the job at hand, but to look at developmental training as well.

In terms of the revolving door, it hasn't been an issue with this organization. We've had very little turnover in starting up the organization.

**Mrs. Michelle Simson:** Are you running at full complement currently?

**Mrs. Karen Shepherd:** We're still hiring.

**Mrs. Michelle Simson:** What's your full complement and what are you currently running with?

**Mrs. Karen Shepherd:** My full complement is 28, and I believe we're at 25 right now. We're in the process of finalizing the position for the CIO, chief information officer.

**Mrs. Michelle Simson:** But then, in fairness, this is a relatively new office, because it was July 2, 2008.

**Mrs. Karen Shepherd:** Right. Just to give you an idea, employees are very happy within the organization. On the public service survey that was done in 2008, I think in most of the things we scored either A or A+ in terms of how we're managing the organization. People feel very comfortable in terms of speaking truth to power.

That said, we have still put in place succession planning on the registry side, because we have noticed that when you're hiring good-calibre staff, others may be interested if they have to leave for promotions. So we're now putting a developmental process in place.

**Mrs. Michelle Simson:** Do you have any idea, of the 25 you currently have, how many were fresh recruits from outside, as opposed to having shifted from other departments within the federal government?

**Mrs. Karen Shepherd:** All of those currently on staff are not new to the public service; they have come to us from other departments because they have won competitions or were interested and were deployed.

**Mrs. Michelle Simson:** Does your office have any plans to recruit from outside? For instance, you said you wanted to educate to get people interested in public service, so going out to some of the universities to recruit new people into the public sector area would make sense. Is that in your game plan?

**Mrs. Karen Shepherd:** Actually it is. When we did the competition for the chief information officer, it allowed people external to and within the government to apply. So that was one method.

I also had a co-op student from Carleton University who worked with us for a while to gain experience.

**Mrs. Michelle Simson:** The only issue I have is that every commission has been running well under complement—sometimes up to \$1 million of their budget. When you hear about that type of thing and the backlogs that are being experienced, together with the unprecedented unemployment rate, you can see where it just doesn't make a lot of sense to continue recruiting the same way we have in the past.

**Mrs. Karen Shepherd:** We have a student coming back to us this summer. I believe it's her third summer with us, and she has gained experience on the registry. In the summer people are going in and out on vacation, and we now have someone from outside the public service who keeps coming back to us year after year. I think that's one way of getting the word out.

• (1550)

**Mrs. Michelle Simson:** So you've been the acting commissioner since July 2. Your first report is due this month. Because I'm not familiar with the process, I'm curious about the circumstances under which you would deem it necessary to provide Parliament with a special report, as opposed to a scheduled report.

**Mrs. Karen Shepherd:** The report that's due this month is our annual report, as required under the legislation. The Lobbying Act now provides the commissioner with the ability to provide a special report if something is sufficiently urgent that it can't wait until the annual report.

Given that it's been only ten months, I haven't experienced anything yet that has required me to do that. If it were a matter of unethical lobbying that I thought couldn't wait, I could see that being an example.

**Mrs. Michelle Simson:** Thank you.

**The Chair:** Ms. Thaï Thi Lac.

[*Translation*]

**Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ):** Thank you, Ms. Shepherd. Welcome to our committee, and congratulations on your nomination.

First of all, I would like to know whether you are bilingual.

**Mrs. Karen Shepherd:** Yes, I am bilingual.

**Mrs. Ève-Mary Thaï Thi Lac:** You also mentioned the people around you, the members of your team. How many people do you have on your team, and how many permanent and contract positions are their in your service?

[*English*]

**Mrs. Karen Shepherd:** Currently on staff there are 27 individuals. I have one casual....

[*Translation*]

Pardon me. I have one casual employee and one contract employee.

**Mrs. Ève-Mary Thaï Thi Lac:** On average, how long do employees stay working for you? Is the turnover rate high in your office? Do you think it is acceptable?

**Mrs. Karen Shepherd:** There is no one working on investigations and policies. In terms of registration, a few people have received promotions outside the organization.

**Mrs. Ève-Mary Thaï Thi Lac:** What type of training would someone need to apply for a position in your office? Clearly, candidates need specific training, and security investigations are done. What type of employee are you looking for, what type of experience would a candidate need to apply for a job in your office?

**Mrs. Karen Shepherd:** In terms of operations, we look for people who know how to interpret the act, who can communicate well verbally and in writing, who can speak both languages and who are comfortable doing so.

As for investigations, given the sensitive and complicated nature of this field, we look for people who have already worked on a variety of investigations, who can analyze and manage information, and who can prepare comprehensive reports. Basically, these employees make recommendations that I use to make decisions.

They must also have very strong interpersonal skills, because they are required to interact with people from Parliament as well as people at various levels.

• (1555)

**Mrs. Ève-Mary Thaï Thi Lac:** According to what you said, you require people to be bilingual, as far as operations go. Is that right?

**Mrs. Karen Shepherd:** I talked about operations, but that affects people assigned to the lobbyists registry.

**Mrs. Ève-Mary Thaï Thi Lac:** One of the requirements is that those people have to be bilingual. Fine. Thank you.

You have until June 30 to submit the 2008-2009 annual report. Can you tell us whether the report will indeed be tabled by then?

**Mrs. Karen Shepherd:** Yes, we have made every effort to ensure that the report is issued on time.

**Mrs. Ève-Mary Thaï Thi Lac:** For the past year, you have been in an acting position. Because of that, have you decided to hold off on certain projects until your status changes?

**Mrs. Karen Shepherd:** No. I have always acted as if I were really the commissioner. I have taken my work seriously, and I have never put anything off because I was in an acting position.

**Mrs. Ève-Mary Thaï Thi Lac:** If you had to set one or two priorities for the next year of your mandate, what would they be?

**Mrs. Karen Shepherd:** I have three or four years' experience in administering the registration regime. Since it is our main tool for ensuring that the process is transparent, I will continue to work on it. Specifically, I want to make it possible for lobbyists to make their own changes to the monthly communication return, correcting an incorrect title, for example. As things stand now, if a lobbyist wants something changed, he or she has to ask us to do it.

As for education, I would like to finalize our strategic plan so that we can make parliamentarians and Canadians aware of how important the requirements, and the whys and wherefores of the act are.

Finally, with respect to investigations and administrative reviews, I want to improve our process and case management systems.

**Mrs. Ève-Mary Thaï Thi Lac:** I would like to know, on average, how long you spend on your investigations?

**Mrs. Karen Shepherd:** To be honest, it is very hard to say. It really depends on the complexity of the case and the availability of the people we need to meet with for information.

**Mrs. Ève-Mary Thaï Thi Lac:** Okay.

How many investigations have you completed in the past year?

**Mrs. Karen Shepherd:** I do not know the exact number. Six investigations are in the process of being finalized.

**Mrs. Ève-Mary Thaï Thi Lac:** But I would imagine that you would include that in your next report.

**Mrs. Karen Shepherd:** Yes.

**Mrs. Ève-Mary Thaï Thi Lac:** Thank you very much, Ms. Shepherd.

[*English*]

**The Chair:** Thank you.

Mr. Siksay, please.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Chair.

Congratulations on your nomination, Ms. Shepherd. I know you'll take to the position the same enthusiasm that you had as acting commissioner.

Chair, maybe this is a question for you. I wanted to be clear about this committee's role in the process of confirmation. I understand there has to be a resolution before the House and the Senate, since this is an officer of Parliament. Does that resolution come from this committee or does that start through some other process?

**The Chair:** No, the committee's involvement is to consider and to make its observation or recommendation with regard to supporting the nomination.

**Mr. Bill Siksay:** Do we make that to a particular individual or office?

**The Chair:** We'll report it to the House.

**Mr. Bill Siksay:** It's just in a report to the House. Okay. Thank you, Chair.

Ms. Shepherd, this is the first time I've had to question an officer of Parliament about the process they went through to get the job. Could you tell us a bit about what process is engaged for your getting this position? Do you send off an application somewhere? Do you go to a board? What is the exact process that happens? You might describe the process you went through in terms of coming to this point of nomination.

• (1600)

**Mrs. Karen Shepherd:** Yes, I can speak to my own experience.

In terms of how the process was managed, in terms of the details, I would have to defer to the Privy Council Office, who are managing the process.

In terms of my own experience, I was approached and asked if I would consider having my name go forward, which I did. Since the process began, I had a couple of meetings with the office. The next meeting is with the Privy Council Office, because I will actually have to leave my position as a public servant in order to accept this position.

**Mr. Bill Siksay:** So you have an upcoming meeting with the Privy Council Office?

**Mrs. Karen Shepherd:** No, it's before the nomination actually goes forward. Our legislation actually requires that before it comes to committee, the three party leaders are consulted, and that was done.

**Mr. Bill Siksay:** It must feel good to have the confidence of the party leaders, knowing that you got that to get to this point.

**Ms. Karen Shepherd:** Yes.

**Mr. Bill Siksay:** I think that already speaks volumes.

At any time in that process, did you ever see that the government had a skills-based qualifications list? Or is there a job description other than the act for the Commissioner of Lobbying?

**Mrs. Karen Shepherd:** Yes. When they posted the job they had specific criteria in terms of whether the individual had experience managing an oversight function on decisions impacting others, had leadership skills, had the ability to represent in national and international forums, had the ability to manage investigations, and so on.

**Mr. Bill Siksay:** Was there any job evaluation process that you went through as acting commissioner, any sort of formal kind of process that you're aware of?

**Mrs. Karen Shepherd:** I'd have to defer to what PCO did informally before approaching me and afterwards.

**Mr. Bill Siksay:** Right, but nothing formal or structured?

**Mrs. Karen Shepherd:** No. I think the formality for the officers of Parliament, I would assume, is appearing before this committee and the Senate, in terms of a full resolution.

**Mr. Bill Siksay:** Okay.

You said something earlier, I think, in response to Ms. Simson, when you were talking about the comfort level or the happiness of the employees with whom you were working. You said that your employees were comfortable speaking the truth to power.

**Ms. Karen Shepherd:** Yes.

**Mr. Bill Siksay:** Can you say a bit more about how that comes up in that kind of evaluation?

**Mrs. Karen Shepherd:** I don't remember the exact question, but it was basically, "Do you feel you can speak to your boss without fear of reprisal?" And a very high percentage, I think it was almost an A-plus-plus percentage, indicated that they felt very comfortable in our organization doing that.

**Mr. Bill Siksay:** It says something about your management style, I suspect, that your employees felt that way.

When the Privacy Commissioner was here, one of things we noted was that this workplace had almost 69% women. I asked the Privacy Commissioner if she thought this set up a different kind of workplace culture. Is that the case in your office? Do you know the statistics on men and women, or minorities, equity groups, in your office? And does that set up a particular culture in your office of which you're aware?

**Mrs. Karen Shepherd:** Again, from the results, one of the areas where we did well is that employees felt no matter what gender, race, religion, or disability, they were all an equal member of the team.

I have not seen anything in terms of the gender that has affected the way the culture has managed it at all.

**Mr. Bill Siksay:** I know there was some discussion recently about possible changes that might be made to Canada's Lobbying Act. One of the concerns that was raised, and correct me if I'm wrong, is that in Canada the Lobbying Act doesn't follow the money that's spent on lobbying and there's no requirement for disclosure. Is that the case?

**Mrs. Karen Shepherd:** That's correct.

**Mr. Bill Siksay:** Yet in other jurisdictions one of the key aspects is the lobbyists' registration and the work that goes on to ensure that's done in an open and transparent way. I believe the United States is one of those jurisdictions.

**Mrs. Karen Shepherd:** Yes, they are.

**Mr. Bill Siksay:** Do you know if that was considered in Canada when we were looking at changes?

**Mrs. Karen Shepherd:** I believe that issue has come up. I know definitively the last time the legislation was looked at, and I believe before, Parliament chose not to add that as one of the measures to strengthen the act.

• (1605)

**Mr. Bill Siksay:** Do you participate in international forums with other folks who do similar kinds of jobs to the one you're doing?

**Mrs. Karen Shepherd:** Yes, I do. Since 2004 I have been part of an organization called the Council on Government Ethics and Law, or COGEL, and each year I sit with my counterpart from the Senate and provide an update on Canadian lobbying.

**Mr. Bill Siksay:** Coming out of those kinds of meetings, is there any mechanism for you to recommend changes or suggest updates to the law? Would you do that through an annual report, or is that even part of your mandate under the act?

**Mrs. Karen Shepherd:** In terms of whenever the report comes up for renewal, I would welcome the opportunity to come before Parliament and talk about the potential. At this point it's only been ten months with this current legislation, but I would welcome the opportunity to do so.

**Mr. Bill Siksay:** Thank you, Chair.

**The Chair:** Thank you.

Mrs. Block, please.

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** Thank you, Mr. Chair.

Welcome, Ms. Shepherd, and thank you for your opening remarks.

Over the weekend I had an opportunity to review your CV and learn a little about your current role as the acting commissioner of lobbying. I think the Prime Minister showed excellent judgment in nominating you to this position. Do you agree?

**Mrs. Karen Shepherd:** I think so.

[Laughter]

**Mrs. Kelly Block:** I also want to follow up on Madame Thi Lac's comments.

You indicated that being interim did not have an impact on your ability to explore and/or initiate projects. I have had the opportunity to serve in some interim positions and felt somewhat hamstrung, or had to grapple with the status quo nature of such an appointment. Do you think the fact that you didn't feel hindered may have been due to the fact that this was a newly created office?

**Mrs. Karen Shepherd:** No, I don't think I felt hampered in terms of administering the legislation because of the knowledge of the act and the code and having been with the particular organization since 2004. I felt confident with what I had put in place in terms of processes, and the reports that I was able to use to make decisions were well documented and comprehensive. During that first six-month period I engaged legal counsel to help with providing advice. When I made decisions I felt they were independent, impartial, and well-founded. Now with the seven-year mandate—if you want to look at constraints—I know I can move ahead and look at planning

resources and better integrating human resources and business planning.

**Mrs. Kelly Block:** Do you think Canadians are well served by the Lobbying Act?

**Mrs. Karen Shepherd:** Yes, I do. I have looked at the legislation over time. I've been particularly involved with the legislation since 2004. I find that each amendment Parliament chose to make has strengthened the act with improved transparency and government decision-making through improved disclosure requirements, improved compliance measures, and the lobbyists' code of conduct.

**Mrs. Kelly Block:** What do you think Canadians should know about the Lobbying Act, both in theory and in practice?

**Mrs. Karen Shepherd:** I would defer to the four principles: lobbyists should have open access to government officials; lobbying is a legitimate activity; Canadians and public office holders should know who is lobbying them and on what issues; and the measures and so on that are put in place should not be so restrictive that they prohibit this legitimate activity from occurring.

**Mrs. Kelly Block:** I have one final question. We've heard from other commissioners about their desire to have an implicit mandate for education. Do you feel you have that mandate built into your job description and the description of your office?

**Mrs. Karen Shepherd:** Yes. In fact, since I've been involved with the organization, we've always realized the importance of education in terms of ensuring compliance. And one of the things I was quite pleased about with the Lobbying Act, when it came in, is that it actually gives the commissioner the mandate. There is an education and research mandate specifically in the legislation now.

• (1610)

**Mrs. Kelly Block:** Okay, thank you.

**The Chair:** Thank you very much.

Madam Thi Lac was asking about investigations. Could you give generically the kinds of things you would be investigating? How complex? I think she worded it that way—"complex investigations". I'd like to understand how complex an investigation might be if someone has breached some provision of the Lobbying Act.

**Mrs. Karen Shepherd:** The majority of administrative reviews or fact-finding cases are issues of individuals who have not registered. There are some cases we look at in terms of improper reporting or they may not have disclosed everything they should have. That tends to be the type of genre of cases. And then there are a few cases of those who have breached the code of conduct in terms of not behaving in an ethical manner. There are three principles and eight rules.

**The Chair:** Okay, that's interesting.

Mr. Wrzenewskyj, please.

**Mr. Borys Wrzenewskyj (Etobicoke Centre, Lib.):** Thank you, Chair.

Ms. Shepherd, who approached you? You mentioned that someone approached you. Who was it who approached you?

**Mrs. Karen Shepherd:** It was Dave Penner, from the Prime Minister's Office.



**Mr. Borys Wrzesnewskyj:** Are you a member or have you been a member of any political party?

**Mrs. Karen Shepherd:** I have never been a member at any level of any political party.

**Mr. Borys Wrzesnewskyj:** Do you believe it's important for officers of Parliament, commissioners, in their particular role not to have been members of political parties?

**The Chair:** If I may, I don't have the reference, but I think any inquiry about political affiliation is out of order and inappropriate for committee. I'll see if I can get the actual reference, but could you move on to something else until we get that?

**Mr. Borys Wrzesnewskyj:** Sure. I wasn't aware of that.

You talked about the past, and the chair just touched upon those six particular cases and you gave a little more insight, so I guess we'll get that in your report. When do you think, in those three cases you referenced where there was a breach—or if you believe there was a breach—your study of those will come to a conclusion?

**Mrs. Karen Shepherd:** Sorry, I don't know that I mentioned three. If I did in my remarks, I apologize. I don't believe I mentioned a specific number. I don't have that number in terms of how many of the administrative reviews I have on file actually deal with a breach of the code. But I'd be pleased to come back.

In terms of the six investigations that were transferred to the office, the investigations director is currently reviewing each of them on merit to determine whether we should proceed with them, because one of the things under the Lobbying Act is that I have the ability to cease an investigation for reasons such as length of time or if it would be better dealt with under another act.

Of those six, I've received one that is recommending it should go forward in terms of tabling. So what I'd like to do over the summer is to actually work in writing up the report, so I can table it sometime in the fall, hopefully.

**Mr. Borys Wrzesnewskyj:** And are there any timelines on the other ones?

**Mrs. Karen Shepherd:** Not as yet.

**Mr. Borys Wrzesnewskyj:** But they have been ongoing for at least a year?

**Mrs. Karen Shepherd:** Yes, they have. They were initiated under the previous regime.

**Mr. Borys Wrzesnewskyj:** Okay.

Moving towards the future, in your introduction you talked about the past and then the future and you said that perhaps at future meetings such as this—your reports—you'd envisioned making certain recommendations of changes. Where do you envision the most problematic area will be in regard to lobbying and the temptations that might exist around lobbying, and what particular areas? Obviously there's lobbying for legislative purposes by corporate entities. There's lobbying for contracts—any particular type of contracting. There are hundreds of millions for defence, and that seems to be increasing. Is there any particular area that you would think would require some special attention?

● (1615)

**Mrs. Karen Shepherd:** At this point, the lobbying legislation has only been there for ten months. I don't have an answer, but that is something I can look at in preparing something for when the act comes up for review. I don't have an answer for it right now.

**Mr. Borys Wrzesnewskyj:** Lobbying takes place in various types of environments, in meetings and in MP offices. It takes place at social gatherings, at dinners. What are your personal thoughts about the actual environment in which that type of activity takes place? Have you any thoughts?

It's not that we're asking for recommendations, but just in terms of your own ease, have you any thoughts as to whether there perhaps should be more stringent rules around the way that lobbying takes place?

**Mrs. Karen Shepherd:** The Lobbying Act, which has been in force for approximately ten months, is pretty specific as to which activities constitute lobbying. In terms of meetings, the act introduced the new requirement of monthly reporting. If communication is on a lobbying activity and has been arranged by the lobbyist, that meeting would be reported, and given the volume we are seeing coming into the registry, I think so far the Lobbying Act is showing that this new development seems to be working.

**Mr. Borys Wrzesnewskyj:** We have certain guidelines concerning ministers and parliamentary secretaries being lobbied, when it comes to contracting and the potential for future considerations, but do you think it appropriate that at any point in the future someone who was in a decision-making capacity on contracts worth hundreds of millions at times might take on positions with those very companies that would have been lobbying them?

**Mrs. Karen Shepherd:** The act is very specific again as to what constitutes lobbying, and one of the things the Lobbying Act put into place was a five-year prohibition for those who are occupying designated positions.

**Mr. Borys Wrzesnewskyj:** I was trying to get at your personal thoughts; that is the act. I referred to your potentially making recommendations in the future. We have contracts that are worth huge amounts of money. We've seen that certain industries in the past have hired people from within ministers' offices, or ministers or parliamentary secretaries. Do you think that might be an area you would look at for changing what is on the books at the present time?

**Mrs. Karen Shepherd:** To be honest, I find that ten months is still early to see how the five-year prohibition on other activities will be. That is something I would look at, yes.

**The Chair:** Let me address the member's question that I interrupted. I can refer members to Standing Order 111(2), which says we "shall examine the qualifications and competence of the appointee or nominee to perform the duties". Marleau and Montpetit, on page 876 in the English version, repeats this:

Questioning by members may be interrupted by the Chair, if it attempts to deal with matters considered irrelevant to the committee's inquiry

—that being the qualifications and competence.

Among the areas usually considered to be outside the scope of the committee's study are the political affiliation of the appointee or nominee, contributions to political parties and the nature of the nomination process itself.

**Mr. Borys Wrzesnewskyj:** Does it say “may”, or was it categorical—

• (1620)

**The Chair:** No, it's outside the question, because the standing order itself says that we shall examine “the qualifications and competence of the appointee or nominee to perform the duties”.

Anything that is viewed to be outside that scope.... Marleau and Monpetit, based on practice and precedent in the past, has identified political questions to be out of order.

Ms. Block.

**Mrs. Kelly Block:** Mr. Chair, was it then out of order to ask who approached Ms. Shepherd from the PMO concerning her nomination?

**The Chair:** I would think, based on this, that referring to the nature of the nomination process itself tends to move in that direction. Had I been a very good chair, I would have reviewed this with the committee before we started the questions. I apologize for that; I'm responsible. But now we know.

The way this thing came out, as I recall it, is that the same issue came up when Madam Stoddart was being considered for the privacy commission.

We're going to move right on.

Mr. Dreeshen, please.

**Mr. Earl Dreeshen (Red Deer, CPC):** Thank you, Mr. Chair.

Ms. Shepherd, thank you very much for your presentation this afternoon. Welcome to our committee.

I'm impressed with your resumé and your in-depth knowledge of so many of the important government departments as well as of the Lobbying Act that you've been working with. Your goal is to implement and administer the act so that we can build confidences with parliamentarians and Canadians, as you've stated, in order to ensure transparency. Integrity is the main goal of our government as well.

You said that you developed and delivered training sessions and made presentations to lobbyists, public office holders, and others. Is this part of the education mandate, or is this simply trying to get the message out to lobbyists as to what was taking place?

**Mrs. Karen Shepherd:** I would say it's part of the education mandate. As I indicated, I always appreciate the importance of educating as the best way to ensure compliance. The developing of these training programs is getting the message out, yes—it's talking about the lobbying legislation—but it's educating. I've seen a difference just in how public office holders now use the legislation. They're checking the registry; they're verifying that individuals who are coming to meet with them are registered, if they should be, and on what subjects. I find that process of training and doing presentations is actually working on an educational front.

**Mr. Earl Dreeshen:** I'll ask this question, because we've asked it of other commissioners as well.

What percentage of your budget do you think would be going towards an education mandate?

**Mrs. Karen Shepherd:** I'm not great with percentages, but I can tell you from the RPP, the report on plans and priorities for next year, that of my budget of \$4.5 million a little over \$1 million is being allocated to education and research.

**Mr. Earl Dreeshen:** Do you think that in the future it's going to be higher or lower? Once the message is out, are you going to have to spend the same amount of money? What are your thoughts on that?

**Mrs. Karen Shepherd:** Given the importance of education, I'm not sure that I see it diminishing. It may expand, or I may want to change the way we're getting the message out. I think we can always improve.

**Mr. Earl Dreeshen:** Sometimes there's a negative view of lobbyists. Of course, you've indicated that they're an essential part of our system.

Could you describe the role the lobbyists play and the value they add to our system of government?

**Mrs. Karen Shepherd:** Having been in a position where I was lobbied, or people were coming to me to provide ideas to change legislation or improve a program, I can say that as a public servant and someone in policy, you benefit from having all of the best information among your resources. There is a role that lobbyists play in the policy field. The negative tone usually comes because the media will be playing the negative lobbying that has occurred, rather than because the act.... It doesn't necessarily define a lobbyist; it defines that those who are communicating with a public office holder to try to attempt.... In doing this, you are capturing the accountants, the lawyers, the professors at university who are experts in their domain and field within lobbying. That, to me, is the importance that lobbyists play in the policy field.

• (1625)

**Mr. Earl Dreeshen:** Thank you.

You also stated that you've represented the office, as you answered Mr. Siksay's question, in both national and international forums to explain our lobbying legislation. How has our lobbying legislation been received at these forums? What have you learned and what have you been able to indicate to others? What kind of feedback have you been getting?

**Mrs. Karen Shepherd:** At the forums, it's actually been quite positive. I think one of the things for the U.S., for example, which puts a lot emphasis on the financials and so on, is that they're quite intrigued with this idea of monthly reporting and what that means. They have quarterly reporting, as I understand it's supposed to be, and they take part in the different departments, but they don't get into the specific individuals and topics they're meeting with. So I find that's one avenue.

We've also had different countries that are thinking of putting in lobbying legislation approach us, and given that Canada is considered to be an expert, or has a legislation we should be proud of in terms of the lobbying field, it's quite favourable.

**Mr. Earl Dreeshen:** Thank you.

**The Chair:** Monsieur Nadeau, *s'il vous plaît*.

[Translation]

**Mr. Richard Nadeau (Gatineau, BQ):** Thank you, Mr. Chair.

Good afternoon, Ms. Shepherd.

You are the commissioner for the House of Commons. Is that right?

**Mrs. Karen Shepherd:** I am the Commissioner of Lobbying.

**Mr. Richard Nadeau:** And that is for the House of Commons. You said earlier—

**Mrs. Karen Shepherd:** As Commissioner of Lobbying, I report to the House of Commons and the Senate.

**Mr. Richard Nadeau:** So, to all of Parliament.

**Mrs. Karen Shepherd:** Correct.

**Mr. Richard Nadeau:** The reason I ask is that earlier, I got the impression that there was a commissioner for the Senate and another for the House of Commons. But you cover both chambers.

**Mrs. Karen Shepherd:** Yes, there is only me.

**Mr. Richard Nadeau:** How fortunate you are. Congratulations.

Without naming anyone specifically, of course, could you tell us where the complaints come from? From private businesses? From members?

**Mrs. Karen Shepherd:** We have received complaints from parliamentarians, industry representatives and Canadians. Furthermore, we do not necessarily wait for a complaint. If we believe that a situation we are monitoring should be the subject of an administrative review, we take action.

**Mr. Richard Nadeau:** If I understand correctly, a person can become a lobbyist five years after leaving the public service. Is that correct?

**Mrs. Karen Shepherd:** The act sets out a five-year prohibition. It applies to those who want to engage in lobbying as consultants.

**Mr. Richard Nadeau:** Do they have to wait five years?

**Mrs. Karen Shepherd:** Yes.

**Mr. Richard Nadeau:** Okay. They must wait five years before they can become lobbyists as recognized by the Parliament of Canada.

I will not name names, but certain Liberals who were ministers before the Harper government came into power are now lobbyists. So there was no five-year wait in their case.

Are there certain lobbying activities for which the prohibition can be less than five years, or is it always five years?

**Mrs. Karen Shepherd:** Yes, it is five years. That is the rule. The act allows me to grant exemptions, but they must be consistent with the act. I will not name any names, either. The Lobbying Act and the five-year prohibition came into force on July 2, 2008.

**Mr. Richard Nadeau:** It came in the wake of the famous Bill C-2. Before that, there were no rules, per se. If I understand correctly, there was no prohibition before 2008.

● (1630)

**Mrs. Karen Shepherd:** A five-year prohibition applied to certain positions under—and forgive me for forgetting the title in French—the

[English]

post-employment code. That had a five-year ban as well, for those in certain positions.

[Translation]

**Mr. Richard Nadeau:** Earlier, you were asked how many cases you had processed. You do not know the exact number right now, but that is okay. That is not the point I am trying to make.

Do you have the resources you need to make your decisions within the prescribed deadlines?

**Mrs. Karen Shepherd:** I think that is now the case. In recent years, the staffing process was going on. In addition, the act has changed twice since 2004. That situation created challenges. Under my mandate, which is seven years, I would really like to address these issues. Over the summer, I will probably check to see whether my priorities and my resources line up.

**Mr. Richard Nadeau:** When we talk about lobbying—

[English]

**The Chair:** *Je suis désolé.* Time has expired.

Madam Simson, please.

**Mrs. Michelle Simson:** I have a couple of quick questions.

This committee has been reviewing acts that have been around for over a quarter of a century and have been virtually unchanged. Because this is a relatively new act, and you've been the acting commissioner since inception, what would you say is the biggest weakness currently in the legislation, or the biggest area of concern that you have as an individual?

**Mrs. Karen Shepherd:** The Lobbying Act came into force in July 2008, but the act has been around since 1989 and has been strengthened over time with all of the amendments that Parliament has chosen.

**Mrs. Michelle Simson:** But the current Lobbying Act—

**Mrs. Karen Shepherd:** To be honest, I find ten months is early to see where the problems are. What I've noticed, though, in the monthly reporting is that people are tending to over-report, so the importance is in getting the education out there.

In terms of looking, I'd like to be a little bit longer with the legislation so I can better answer the question as to where there may be potential difficulties.

**Mrs. Michelle Simson:** On a go-forward basis, though, as the commissioner, how often would you recommend that the Lobbying Act be reviewed by Parliament?

**Mrs. Karen Shepherd:** There is a mandatory requirement in the law that it be reviewed every five years.

**Mrs. Michelle Simson:** Okay, thank you.

**The Chair:** I have one last question on the investigations. You mentioned about investigating ethical conduct. That ethical conduct is established, I assume, by a body outside of the Government of Canada for the lobbyists organization. Are you actually looking at their ethical conduct vis-à-vis the rules set by the industry?

**Mrs. Karen Shepherd:** The rules set by the industry, no. When I refer to “ethical conduct”, it's in terms of the lobbyist code of conduct and whether they are communicating with all those public office holders, or if they are respecting that particular code and communicating in an ethical manner.

**The Chair:** Okay.

I want to thank you very much for coming before us to introduce yourself more formally. It's a very difficult process, and we take this very seriously. I know the committee will want to report back to the House as quickly as possible on our position. But as you know, the committee only gives its opinion. The decision is a decision of the whole House.

So thank you kindly for being here, and we wish you all the best in your future endeavours.

•(1635)

**Mrs. Karen Shepherd:** Thank you.

**The Chair:** Thank you.

We'll suspend now. We have to go in camera for the next couple of items.

**Mr. Bill Siksay:** Point of order, Mr. Chair.

**The Chair:** Yes.

**Mr. Bill Siksay:** If we're going to do a motion to report back to the House on this, I think we should do it in public session, not in closed session.

**The Chair:** We can, but we're not going to discuss this in public.

**Mr. Bill Siksay:** I'm not sure why we wouldn't discuss this in public.

**The Chair:** Normally even the interview of a candidate is not done in public. Actually, Mr. Radwanski was in camera. It was at the natural resources committee.

**Mr. Bill Siksay:** But, Chair, my experience in other committees is that we did this kind of meeting in public and we passed the motion and had the discussion in public. I don't understand the reticence to have votes of the committee in public session. I'm just flagging that concern.

**The Chair:** Thank you.

We are going to suspend and go in camera.

*[Proceedings continue in camera]*

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