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

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**EVIDENCE**

**Tuesday, October 27, 2009**

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**Chair**

**Mr. Paul Szabo**



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

Tuesday, October 27, 2009

•(0905)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** This is the 33rd meeting of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day are pursuant to Standing Order 32(5), the annual report of the Commissioner of Lobbying for the fiscal year that ended March 31, 2009, referred to our committee on Wednesday, July 22, 2009. Our witness today, from the Office of the Commissioner of Lobbying, is Ms. Karen Shepherd, Commissioner of Lobbying, and she has a couple of colleagues with her.

Welcome, Commissioner. It's good to see you again. As you know, we have some new members on our committee, and we thought it was important to have the commissioners with whom this committee has a relationship come before us and update us on their affairs, as well as to have an exchange with the members so they can learn more about your office and its operations.

I welcome you. I understand you have some opening remarks. I would appreciate it if you would introduce the colleagues you have brought with you today. Thank you.

[Translation]

**Mrs. Karen Shepherd (Commissioner of Lobbying , Office of the Commissioner of Lobbying):** Thank you, Mr. Chair and members of the Committee.

Chairman and Members of the Committee. I am pleased to be here today to discuss the first Annual Report of the Office of the Commissioner of Lobbying. I am accompanied today by senior counsel, Bruce Bergen, and by Pierre Ricard-Desjardins, Director of Operations. Mr. Chair, I thought that for the benefit of new members, I would give a brief overview of the Lobbying Act and the Lobbyists' Code of Conduct before discussing our annual report.

[English]

The Lobbying Act ensures that lobbying activities conducted at the federal level are open and transparent. It provides for the public registration of individuals who are paid to communicate with public office-holders. The purpose of the Lobbyists' Code of Conduct is to assure the Canadian public that lobbying is done ethically and with the highest standards. This in turn conserves and enhances public confidence and trust in the integrity, objectivity, and impartiality of government decision-making. The code complements the registration requirements of the Lobbying Act.

I was honoured to be appointed as the first Commissioner of Lobbying in June 2009. My goal is to build on significant progress

we've made in implementing the Lobbying Act. This progress, as well as our priorities and challenges, is highlighted in the Office of the Commissioner of Lobbying's first annual report.

The report, tabled in Parliament in June 2009, discusses three main areas: the lobbyist registration system; the office's education and outreach activities; and our efforts to ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct.

[Translation]

The Lobbyists Registration System, which is often referred to as the Registry of Lobbyists, is the primary tool used by the Office of the Commissioner of Lobbying to ensure transparency in lobbying activities conducted at the federal level.

[English]

The registry consists of an online database in which lobbyists disclose their lobbying activities. However, this is not simply a tool for lobbyists to register their activities. The registry is an easy-to-use, searchable database. It is visited by public office-holders, journalists, the Canadian public, and others looking for information regarding who is carrying out lobbying activities with the federal government. The registry is accessible free of charge, 24 hours a day, seven days a week via our website.

As discussed in my annual report, the Lobbying Act introduced new reporting requirements for lobbyists on July 2, 2008. This meant that we needed a major upgrade of the registry to allow for the efficient processing of a significantly larger number of transactions. Additional functions were also added to the registry to improve its usability and efficiency.

I am pleased to report that the changes required to the registry were made on time, within budget, and with no major difficulties. I am proud that our lobbyists registration system is at the forefront of electronic registration and it is considered to be a model for other jurisdictions involved in lobbying legislation.

From April 1, 2008, to March 31, 2009, the number of registered corporations and organizations increased by 7% and 10% respectively, while the number of individual in-house lobbyists contained in those registrations decreased by 17% and 9%. While it appears that there was an increase in lobbying activity, we have noticed a decrease in the number of individual in-house lobbyists registered by those corporations and organizations. We have attributed these changes to a rationalization effort on the part of corporations and organizations. The number of consultant lobbyists remained virtually unchanged during that period.

However, since April 1, 2009, we have seen a further decrease of 4.6% in the number of registrations for all categories of lobbyists, accompanied by an 18.6% reduction for the number of individuals actively involved in lobbying activities. The trend is particularly noticeable with regard to consultant lobbyists, where fewer lobbyists manage larger numbers of clients, and with regard to corporations, where fewer employees are involved in corporate lobbying activities. Although it may not be the only cause, the recent economic situation may be an important contributor to this decrease.

I should add that we have not witnessed a significant drop in overall registration activity. This is likely due to the new monthly communications reports.

• (0910)

[Translation]

The Lobbying Act provides the Commissioner of Lobbying with a clear mandate for education and outreach so that Parliamentarians, Canadians, departments and agencies, and lobbyists have a better understanding of the act.

[English]

This annual report provides details on the development and implementation of a comprehensive education and awareness strategy. We have used various means of communication, such as information sessions, online multimedia tutorials, and implementation notices, to raise awareness and build a greater understanding of the Lobbying Act.

Over the past year, presentations were made to lobbyists, public office-holders, and national and international organizations interested in Canadian federal lobbying. Meetings and briefing sessions were held with senior officials from various departments and agencies on the Lobbying Act. The office helped familiarize them with the new requirements of the act and addressed any issues regarding lobbying activities facing their departments or officials.

[Translation]

Although education is an important priority for me, actual enforcement of the Lobbying Act cannot be ignored. The act gives the Commissioner of Lobbying enhanced enforcement powers.

[English]

These include the extension of the period during which possible summary conviction infractions may be prosecuted, the doubling of monetary penalties available upon conviction under the act, and the fact that I may conduct investigations in order to ensure compliance with the Lobbying Act as well as the Lobbyists' Code of Conduct.

When allegations of non-compliance with the act are brought to our attention we conduct a preliminary information-gathering exercise called an administrative review. An administrative review involves searching the registry and other publicly available sources of information, as well as interviewing potential witnesses. The recommendations contained in an administrative review assist me in making my decision on whether or not there are grounds for further actions. In 2008-09, 13 administrative reviews were initiated by my office. Eight recommendation reports were sent to me for decision.

Under the Lobbying Act the commissioner may initiate a formal investigation if the commissioner has reason to believe an investigation is necessary to ensure compliance with the Lobbying Act or the Lobbyists' Code of Conduct. The act requires an investigation to be conducted in private. A report of the commissioner's findings and conclusions following the completed investigation is then tabled before both houses of Parliament.

The Lobbying Act introduced a five-year prohibition on lobbying on former designated public office-holders. The act also gives me the authority to grant exemptions to this five-year prohibition. An internal review process was developed to ensure that I have the information needed to make decisions on applications for exemption.

In June 2008-09 my office received seven applications for exemption from the five-year prohibition on lobbying. I believe that by enhancing both the awareness of the act's requirements and the nature of lobbying as an activity, compliance can be better attained. This is particularly true in the context of a recent Federal Court of Appeal decision that broadened the definition of conflict of interest referred to in the current Lobbyists' Code of Conduct to cover certain political activities performed by lobbyists, among other things.

[Translation]

Although educating people about the act is important, violations of the Lobbying Act and Lobbyists' Code of Conduct have been and are still dealt with as rigorously as the Act permits.

Mr. Chair, this concludes my remarks. I hope that I have given you and members of the committee, a comprehensive overview of our annual report. Thank you for your attention and now I look forward to answering any questions that you may have.

• (0915)

[English]

However, as I mentioned in my opening remarks, before answering questions I would like to state that subsection 10.4(3) of the Lobbying Act instructs me to conduct investigations in private. Therefore, to respect this confidentiality I will not be confirming whether I have opened up an investigation, which I understand is different from what some of my other commissioners are able to do. Their acts permit them to at least confirm whether they have a file open on someone.

**The Chair:** Thank you. So in other words you will make no comment.

**Mrs. Karen Shepherd:** Yes.

**The Chair:** The Ethics Commissioner will confirm that she is conducting an investigation but will give no further details.

**Mrs. Karen Shepherd:** That's my understanding.

**The Chair:** So there's a difference. Okay.

Madam Simson, please.

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

Thank you, Commissioner Shepherd, for appearing before the committee with your associates. As you mentioned, we haven't seen you since your nomination, so it's nice to see you back. I also want to thank you for a very comprehensive annual report. It was quite interesting.

I want to zero in on the tail end of your opening remarks where you touched on the fact that the Lobbying Act introduced the five-year prohibition period for former designated public office-holders. You have the authority to grant the exemptions. Could you expand on the internal review process you implemented and the specific criteria you have in place to either approve or decline an exemption request?

**Mrs. Karen Shepherd:** In terms of the process, we have a description on our website of the type of information we would like to see. When an application comes in for review, we will look at their past employment, résumés, whether they happen to know any information on their future employer, and so on. Interviews will be conducted with witnesses, and maybe past employers, or the applicants themselves if there's a new employer. Once all of that is done and analyzed, the report is given to me for consideration.

Part of the process we introduced was to give the applicant 30 days to comment on my intent. In other words, if I'm going to be granting the exemption or not, they get 30 days to respond. If I grant the exemption, or an exemption with some conditions, they are given a letter with an exemption number that they then have to use for registration. If the exemption is granted, the act indicates that I must, without undue delay, post my reasons for that exemption on the website.

To answer your second question on criteria, the act provides some criteria, for example, if the person has been in an acting position for a short period of time—maybe student employment, administrative duties only—whether the employer would gain an unfair advantage. In the case of transition team members, there are a few others that are added.

The position I have taken is that Parliament put the five-year prohibition in the act for a reason, which was to stop the revolving door. To me, the rule is that the five-year prohibition holds, and it is only with exceptional circumstances that I will grant an exemption.

**Mrs. Michelle Simson:** Okay.

Your report stated that you received seven applications in 2008 and 2009. Two were granted, and you have to post that information to the website. Is there any access for the public for the other five that maybe were declined, or is that kept private?

**Mrs. Karen Shepherd:** I have actually received ten applications to date. Two applications dealt with individuals who had left prior to the act coming into force, so even though they were comprehensive

applications, there was no authority for me to grant an exemption. Two individuals withdrew. I denied three applications. And there is one current application.

With respect to those who are subject to the five-year prohibition, if they are not granted an exemption that is posted on my website, then they are subject to the five years.

● (0920)

**Mrs. Michelle Simson:** Is the information on the ones you decline publicly accessible?

**Mrs. Karen Shepherd:** The department is subject to the Access to Information Act and Privacy Act.

**Mrs. Michelle Simson:** So the public could access that information.

**Mrs. Karen Shepherd:** They could put in a request and we would go through the process of analyzing it. Because they are public office-holders, I would assume that some of the information would be permissible to give out. However, according to the Privacy Act, if the information is of a personal nature or there is confidentiality from a third party, I couldn't give it.

**Mrs. Michelle Simson:** I'd like to move on to page 11 of your report, where you indicate that approximately 600 reports are filed monthly but that a small percentage of the reports contain errors. Can you be a little more definitive on what percentage, approximately, of the monthly reports contain errors?

**Mrs. Karen Shepherd:** Those are 600 monthly communication reports. We verified about 6% of the 5,000 entries last year and found that more than 90% of them were accurate. The errors were more on wrong dates, spelling mistakes of the individual's name, or they were over-reporting in terms of, say, putting in meetings with a director general, who is not a designated public office-holder.

**Mrs. Michelle Simson:** So if you over-report, that would be considered an error?

**Mrs. Karen Shepherd:** Yes.

**Mrs. Michelle Simson:** Okay.

It says in here that as you move forward, you're planning to introduce a "new registry functionality" to allow registrants to amend those errors on a monthly basis.

If it's only 6% and they're negligible errors—clerical, maybe, or wrong spelling—what's the rationale behind allowing them to fix it?

**Mrs. Karen Shepherd:** Actually, that communications function, I'm pleased to say, is actually in place. Registrants can go in now.

The way I view the Lobbying Act and the need to report on the monthly communications is that it should be as accurate as possible. If there have been communications that are letters, for example, and not oral or arranged, which is what the act requires, this is part of trying to make the database as accurate as possible.

We found that we actually had lobbyists calling us who wanted to change their own data. Because that's their responsibility, we were giving them access to it.

**Mrs. Michelle Simson:** What percentage of all the errors are clerical in nature? In other words, are there one or two companies that have more frequency in terms of their errors, or is it basically all over the map?

**Mrs. Karen Shepherd:** It's more like factual errors, and that's what we're trying to correct.

In terms of whether it's specific companies, I don't think we've noticed a trend at this point.

That's something I can get back to the member on, if she's interested, Mr. Chair.

**The Chair:** Thank you.

*Madame Freeman, s'il vous plaît.*

[Translation]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Thank you.

Good morning, Ms. Shepherd. Thank you for coming to make this presentation on your annual report. I would like to ask you a few questions.

In your presentation, you said that under the act you now have expanded powers. You referred to at least three of those powers. Regarding the first, you said: "These include: the extension of the period during which possible summary conviction infractions may be prosecuted". I would first like to know what the nature of that extension is.

Second, you talk about the doubling of monetary penalties. I would like you to give us more details on that subject.

And third, you talk about the fact that you "may conduct investigations in order to ensure compliance with the Lobbying Act as well as the Lobbyists' Code of Conduct". You have the power to conduct investigations. There was a time when you could do that if you had "reasonable grounds to believe", but now it is "reason to believe". I would like you to explain what the distinction is between the two wordings.

• (0925)

**Mrs. Karen Shepherd:** Thank you. On the question of expanded powers,

[English]

previously the act talked about the fact that I could look into doing investigations under the code of conduct. It wasn't clear under the act that I actually had the ability to look into infractions of the act.

You may recall that, as I mentioned in one of my previous appearances, there was a court case that actually questioned the previous registrar's ability to look into infractions of the act. It forced us to hold off from seeing some of the files until we actually won that particular argument. It's now explicit in the act that I have the ability to look into both the act and the code of conduct. That's something that I think is good.

In terms of the penalties and so on, previously if there had been a penalty on a summary conviction, it was \$25,000 and a six-month jail term. It's now \$50,000. The jail term stays the same. In terms of a summary conviction, the act talks about....

It's now doubled, I think. It's \$200,000—right?—and two years....

**Mr. Bruce Bergen (Senior Counsel, Office of the Commissioner of Lobbying):** For an indictable offence.

**Mrs. Karen Shepherd:** Yes.

**The Chair:** It's good to have a team with you.

**Mrs. Karen Shepherd:** It is good to have a team. It's great.

**The Chair:** By the way, did you introduce your team?

**Mrs. Karen Shepherd:** I did. Bruce Bergen is my legal counsel.

**The Chair:** Okay. That's why he answered the question.

**Mrs. Karen Shepherd:** That's right. He did.

**The Chair:** Thank you.

Please go ahead.

**Mrs. Karen Shepherd:** In terms of the member's question,

[Translation]

under the act, it is a criminal offence. The act requires that if I consider there to be reasonable grounds, I must send the RCMP...

**Ms. Carole Freeman:** Excuse me.

**The Chair:** Ms. Freeman?

**Mrs. Carole Freeman:** Mr. Chair, I asked Ms. Shepherd my questions in French and I would like her to answer me in French.

Please, if you are able to do that. If you are not able, I would like to know why you are not answering my questions in French, in French.

I asked three questions. First, I wanted to know how long the period during which the alleged offences may be prosecuted is. I have not had an answer to that.

[English]

**The Chair:** I understand, Madame.

[Translation]

**Mrs. Carole Freeman:** I would like to know whether she can answer me in French.

**Le président:** I understand.

[English]

But—

[Translation]

**Mrs. Carole Freeman:** It is just a question. Ms. Dawson could not answer in French. So I—

[English]

**The Chair:** And the commissioner has been giving her answer

[Translation]

in both official languages.

[English]

I think we operate on that basis, and sometimes it's more of a courtesy to all when someone does that. I don't think it's meant to be anything else than that, but I'm sure the commissioner will respond accordingly. Okay?

[Translation]

**Mrs. Carole Freeman:** Mr. Chair, I asked Ms. Shepherd whether she could answer me in French, not you. I asked Ms. Shepherd the question. Can she answer my questions in French?

[English]

**The Chair:** Madame, of course she is. She is fluent in French, yes.

Okay, Madame—

[Translation]

**Mrs. Carole Freeman:** So let her answer, Mr. Szabo.

**Mrs. Karen Shepherd:** Excuse me, Ms. Freeman, but sometimes it is easier for me to express myself in English.

On the first question, concerning the powers, the difference in this act is that now the act states that I have the power to conduct investigations or examine offences under the act and the Lobbyists' Code of Conduct.

Before that, the act gave only the power to examine offences under the Lobbyists' Code of Conduct. The Federal Court has held that the registrar of lobbyists also had the power to examine offences under the act. I am very pleased that the act now provides that I have the power to consider offences under both the act and the Lobbyists' Code of Conduct.

On the second point, the penalties have doubled and are now \$50,000, on summary conviction, and a penalty for an offence, where there is an indictment. On summary conviction, there is a penalty of \$200 and also imprisonment for two years.

• (0930)

**The Chair:** One last question, Ms. Freeman?

**Mrs. Carole Freeman:** On the question of your power, you have the power to prosecute if you have “reason to believe” that there has been an offence, where previously it was if you had “reasonable grounds to believe”.

Could you explain the distinction between the two?

I think senior counsel may be in the best position to answer.

**Mr. Bruce Bergen:** Before July 2008, in order to decide to initiate an investigation, the registrar had to suspect there had been a breach, a violation of the Lobbyists' Code of Conduct. That related only to the Lobbyists' Code of Conduct. Now, in the Lobbying Act, the commissioner has the power to initiate an investigation if she thinks it is necessary to ensure...

**Mrs. Carole Freeman:** ... to ensure. Right, continue.

**Mr. Bruce Bergen:** ... if she thinks an investigation is necessary to ensure compliance with the Code or the act. I have the impression that the powers are broader, not just as regards the Lobbyists' Code of Conduct. And second, it is not necessary that the commissioner think an offence has actually been committed, under the Code.

**Mrs. Carole Freeman:** Thank you.

**Mr. Bruce Bergen:** You're welcome.

[English]

**The Chair:** Merci, Madame.

Mr. Martin, please, you're up.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Well, thank you, Mr. Chair.

Good morning, Ms. Shepherd. I'm surprised to see in your report that you report a reduction in corporate lobbyists and even staff lobbyists. It's been my experience that you can't swing a cat on Parliament Hill without hitting a lobbyist. It feels like an infestation sometimes, especially in the members' gym, where a lot of the highest paid lobbyists in the land are in fact former cabinet ministers who skulk around the members' gym and look for secret meetings, etc.

I'm very surprised to see you see that. I don't see it as a bad thing—a reduction in lobbyists—as you might be able to tell. I liken it to driving the money-lenders from the temple even, if you ask me.

I'm very surprised, though, to see you say that the ink is not even dry on the new act and you're already granting exemptions. Who have you granted exemptions to, to date?

**Mrs. Karen Shepherd:** Mr. Chair, would the member like me to address the first point, in terms of the reduction of the number of lobbyists or...?

**Mr. Pat Martin:** I'd rather not. We don't really have time for that.

**The Chair:** Take him off the list.

**Mr. Pat Martin:** I just want to know who you have granted exemptions to, specifically the names of the people you've granted exemptions to.

• (0935)

**Mrs. Karen Shepherd:** They're on the website: one is Mr. Mark Brosens, who was in the minister's office, and Monsieur Guy Bujold, who had been the former president of the Space Agency.

**Mr. Pat Martin:** I'm not even going to ask you for the rationale, as I don't think any reasonable rationale would exist. Why you would, after all the work we went to, to put a Lobbyists Registration Act, a toughened registration act, in place... And on the Federal Accountability Act, as I say, the ink is hardly dry.

I think we should remind ourselves as a committee how important this act is. The difference between lobbying and influence peddling is about five years in prison. And it's a fine, fine line. Lobbying in an incorrect way, lobbying in the way that we were trying to address under the Federal Accountability Act, bastardizes democracy, undermines democracy in a very substantial way. So you have one of the most important jobs on Parliament Hill.

I don't mean to be critical, but we didn't put in place a robust Lobbyists Registration Act so it could be ignored within months of it being finally implemented. We had frustrations with the former act. I turned in Don Cherry for lobbying on the Hill, I believe, illegally, and we are very frustrated that even after a lengthy investigation, they found nothing wrong with Don Cherry bringing his jar of COLD-fX into the Prime Minister's Office and the very next day having COLD-fX deregulated under the Canada Health Act as a medication.

There have been glaring problems with lobbying.

Well, I suppose my question would be this. Does it not concern you that somebody like these two individuals can peddle the information they used to have privileged access to, to advantage a private sector corporation or organization?

**Mrs. Karen Shepherd:** Mr. Member, to answer the question, what I said to the other member, I meant it. In terms of granting exemptions it's very much that. There will be exceptional circumstances.

I very much respect what Parliament passed in terms of wanting to avoid the revolving door and to ensure that those who were in certain positions could not use their contacts or other benefits for lobbying purposes for five years. So when in reviewing those requests that I did grant—and I still denied more than I've actually granted—the review and analysis done by the team that presented me with the report was extremely thorough to ensure that the individuals in question could not use the contacts that they use for benefit.

**The Chair:** I may also add that it's not the commissioner who decided whether she would make exemptions. The act empowered the commissioner to do that. The committee that came forward with the act must have thought there would be some circumstances under which it would be appropriate.

**Mr. Pat Martin:** We should have slammed that loophole shut while we had the chance.

**The Chair:** That's true, and maybe we can still do it. We could do it with another private member's bill.

**Mr. Pat Martin:** There could be one in the offing.

**Mrs. Karen Shepherd:** The act is coming up for review in another year.

**Mr. Pat Martin:** I guess this committee is particularly sensitive to the issue. We're the oversight committee for it. But we've also just gone through this exercise with Karlheinz Schreiber. The lobbying in the old days, with sacks of dough, exceeds it. Nobody ever said back then that what Karlheinz Schreiber was doing was illegal lobbying. That was just the culture of Ottawa at the time. People with vested interests sought the favour of people in power who had the ability to do what they wanted. I don't know if that's really changed today, except that we have no evidence of sacks of money changing hands in secret meetings in hotel rooms. But everything else is pretty much exactly the same, except for the five-year cooling-off period.

We're also faced with a problem. A lot of people bolted when the getting was good and got in just under the wire. We know that in the Conservative ranks a memo went out. It said that if you want to lobby, you'd better get out now, because the law is going to change pretty soon. There was an exodus, a rush, of people who established

themselves before the rules. Is there any satisfaction available to the Canadian taxpayer regarding that flurry of new lobbyists who set up shop just before you and the act had the ability to deal with them? They got away with it.

• (0940)

**Mrs. Karen Shepherd:** Sorry?

**Mr. Pat Martin:** The act doesn't give you any ability to dig back retroactively.

**Mrs. Karen Shepherd:** With the new changes to the act, there are more disclosure requirements regarding offices held and whether these people had been what we now call public office-holders. Moreover, the communication entries are showing which of those individuals, if any, are meeting with public office-holders.

**Mr. Pat Martin:** When you say “oral encounters”, does that include bumping into somebody in the members' gym?

**Mrs. Karen Shepherd:** The regulations specifically mentioned oral and arranged meetings. If you were to bump into a member at the gym, an initial registration might be required if it's about a registerable activity. To just bump into someone, that would be oral, the individual would be paid, but the act also required the meeting to have been arranged.

**Mr. Pat Martin:** A lobbyist would probably submit that as a billable encounter. If he got 10 minutes of a minister's time in the steam room, you can bet that a \$600-an-hour lobbyist is going to bill for \$60 worth of oral contact time in the steam room of the members' gym.

**The Chair:** Mr. Martin, it's always a pleasure.

**Voices:** Oh, oh!

**The Chair:** I'm moving on.

Mr. Rickford.

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair, and my thanks to the witnesses.

I have a couple of questions with respect to monthly reporting, and I'm hoping to work through some education and awareness questions having to do with the mandate you mentioned in your report and in your presentation today. It's my understanding that the Lobbying Act requires lobbyists to file monthly reports if they engage in any oral or organized communications with designated public office-holders, including ministers, ministers of state, their political staff, deputy ministers, ADMs, and any other positions designated by regulations, like senior members of the Canadian Forces. Further to that, Commissioner, the act empowers you to confirm the accuracy of the information provided by those lobbyists. Do you exercise this power regularly? If you do, what have your findings been?



**Mrs. Karen Shepherd:** In terms of education purposes, one of the requirements for filing a monthly return is just that, if the individual communicates with a designated public officer-holder. But there are also other reasons why a person may file a monthly communication, such as new information, he or she is now lobbying another department, additional subject matter, maybe the chief operating officer in the company has changed, or an addition or the termination of the activity. So those are some other reasons that may occur.

In terms of confirming accuracy, the answer is yes. I have one person who's dedicated to reviewing the previous communication entries on a monthly basis, doing a sampling of those entries that we send off to the designated public officer-holders to confirm whether the entries are, indeed, accurate. Things are brought to our attention from designated public officer-holders themselves, who are looking at the entries.

As I mentioned to the other member, in terms of the errors, what we're finding when we go through is not that people aren't reporting meetings; they're over-reporting. They're putting in meetings with members of Parliament, for example. While that requires an initial registration because you are public officer-holders, you are not designated public officer-holders, so the communication entry is not required. Or they're putting in meetings with the directors general, which is lower than what they're required to report. Or the meetings haven't occurred. Or there are written communications, which don't fall into a requirement to file.

So to try to correct some of those things to make the database more accurate, we did a mass mail-out about three weeks ago, listing all the common errors we're finding. And we have the feature that lobbyists themselves can now go in and correct something, if something is brought to their attention.

• (0945)

**Mr. Greg Rickford:** Education seems to be an important part of this. You've held information sessions for both lobbyists and senior officials. Do you offer these proactively or on demand? You mentioned mail-outs, but I'm just asking about the information sessions.

**Mrs. Karen Shepherd:** A lot of information is available on our website. But we do respond to requests for presentations. Pierre can speak even more.... Just recently he's been in discussions with those who were lobbying and wanted additional clarification. I recently sent out 21 letters to most lobby departments and met with the deputy ministers to talk about the implementation of the act and what's occurring as well as what needs there are. So it was another opportunity to talk to them and educate them in terms of their requests.

**Mr. Greg Rickford:** Do the letters have a function in that you can understand what clarifications or what further education might be required? In other words, part of it may be a questionnaire. Are there specific things people who are in receipt of this information might communicate to you that they need further education or awareness on?

**Mrs. Karen Shepherd:** The letters were my opportunity to speak to public officer-holders. I'm planning to offer that to the respective leaders as well.

But in terms of the lobbyists, one of the things we've done recently...for anybody searching our website, we did a survey of the information available on our website. And we're currently going through the comments to see if we can do additional things.

**Mr. Greg Rickford:** Did you get the sense from that survey...? Did it take you anywhere in terms of understanding whether lobbyists and senior officials have a good understanding of their obligations under the act?

**Mrs. Karen Shepherd:** Yes. I was quite pleased in meeting with the deputy ministers that all of them were very well aware of the act, and, depending on the department, had different processes in place to keep track of the meetings, so when I come to verify the information, it's easier for them to respond. One thing that's interesting is that the act doesn't require them to maintain the information, but when I come to verify, they have to be able to. So they've been putting things in place proactively.

**Mr. Greg Rickford:** Do I have just a minute left?

**The Chair:** Yes.

**Mr. Greg Rickford:** For the benefit of the committee, Pierre, I know you wanted to make some contributions. You looked as if you were going to chime in on the education piece.

**Mr. Pierre Ricard-Desjardins (Director of Operations, Office of the Commissioner of Lobbying):** No, I have nothing to add. Thank you.

**Mr. Greg Rickford:** I guess the final question, very quickly, is this. In order for you to do this important education function, what percentage of your budget is allocated towards education and awareness of that mandate, if you will? It takes up a significant portion of your budget.

**Mrs. Karen Shepherd:** It takes up a significant portion. If I look at 2009-10 in terms of the program activity of my \$4.5 million budget, I have roughly a million for that.

**Mr. Greg Rickford:** It's about a quarter of it, just under a quarter. Okay.

I have no more questions.

**The Chair:** Thank you, Mr. Rickford.

Mr. Wrzesnewskyj, please.

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

Madam Shepherd, is there an obligation on the part of the lobbyists or lobbying companies to report their efforts when they lobby senior party officials with access to the Prime Minister's Office?

**Mrs. Karen Shepherd:** If I'm understanding the question—

**Mr. Borys Wrzesnewskyj:** I'm talking about unelected non-parliamentarians and senior party officials.

**Mrs. Karen Shepherd:** The act specifically covers those individuals who are lobbying public office-holders. If these individuals that are being lobbied are not public office-holders, then those meetings would not be covered, Mr. Chair.

**Mr. Borys Wrzesnewskyj:** What we have is a huge gap here. Senior officials who are intimately involved with officials, for instance, in the Prime Minister's Office, have direct regular contact and access and can in fact circulate among lobbyists and organize fundraisers to which they invite companies interested in infrastructure projects. There are no set rules at the present time that would compel those individuals to report those sorts of activities.

● (0950)

**Mrs. Karen Shepherd:** Under our act there are not.

**Mr. Borys Wrzesnewskyj:** What we have is a loophole. Ethically, would you be concerned if it was brought to your attention, as the commissioner in charge of lobbying, that federal agency officials attended fundraisers for the Conservative Party of Canada where both high-ranking Conservative officials were present as well as company executives who were bidding on infrastructure projects that these federal agency officials represented?

**Mrs. Karen Shepherd:** Mr. Chair, I'm not sure if we're not potentially getting into a specific case in terms of my comments.

**The Chair:** Just a moment, Mr. Wrzesnewskyj. Maybe we can deal with this.

I think the original question was a very good question, and it had to do with whether—really succinctly—indirect lobbying exists or doesn't exist in your world. Instead of going straight to a public office-holder, you go to someone who clearly has significant influence over that public office-holder. Is that within your purview?

Even under section 18 of the Conflict of Interest Act we have anti-avoidance provisions where the purpose of the activity would be to circumvent the rules. Certainly going through an intermediary, as it were, effectively achieves the same objective without in fact directly contravening the rules. So the question is very good from the member.

Do you have the authority to look through the transaction or the communication?

**Mrs. Karen Shepherd:** I'll let counsel add to this. As far as I can see, the act is pretty specific in that the communication has to be with the public office-holder. That's what I have the ability to look at.

**The Chair:** So you don't have any anti-avoidance provisions within the Lobbying Act? There is nothing that is parallel to what's in the Conflict of Interest Act?

**Mr. Bruce Bergen:** No. If I may add a few words here, I think the Lobbying Act is quite specific about lobbying activities being in relation to payment with public office-holders in relation to the enumerated types of activities—such as changing a statute, changing policy, a grant—that are set out in sections 5 and 7 of the Lobbying Act.

The Office of the Commissioner of Lobbying has always said, and I think it's clear, that if there are allegations or facts, they are looked into. And that's the policy: to look into everything. I think in the member's question with respect to a lobbyist speaking to a party official who is not a public office-holder, that's not lobbying as

contemplated in the act. However, I suppose if there were some facts or circumstances that would enable a link to be drawn between that activity and actual lobbying, then that would be something we would look into.

We do look into all sorts of allegations, but strictly speaking, the circumstance or the fact scenario that the member laid out would not be lobbying under the Lobbying Act.

**The Chair:** Okay. This little exchange is on my clock. The member still has four minutes.

**Mr. Borys Wrzesnewskyj:** Thank you, Mr. Bergen.

That's exactly, Commissioner, where I was heading with the example I used. In a situation of that sort where you had a major fundraiser organized, where agency officials who have outstanding infrastructure bids attended, along with senior party officials, as well as representatives, senior executives of a company that is bidding on those contracts, would you find that type of scenario something that should be registered and, if not registered, an activity that you would look into?

● (0955)

**Mrs. Karen Shepherd:** The activity in question is probably whether the individual was registered, and it might be that I'd be looking at a breach of the code as opposed to a breach of the act in that particular scenario.

**Mr. Borys Wrzesnewskyj:** In that case, has Mr. Housakos ever been registered as a lobbyist?

**Mrs. Karen Shepherd:** Not that I'm aware of, but I can get back to the member on that one.

**Mr. Borys Wrzesnewskyj:** Has the company he worked for, BPR, ever been registered as a lobbying company?

**Mrs. Karen Shepherd:** Not that I'm aware of, no.

**Mr. Borys Wrzesnewskyj:** Thank you.

There is an expectation that parliamentarians would be forthcoming when investigated. There is an investigation happening in the Senate, but there are also reports that the senator under investigation made some pretty threatening commentary, saying he felt someone within his caucus, perhaps a member of Parliament, had been leaking information, which does not instill confidence. But the wording that was used regarding this person was that he would "take care of him soon". As it—

**The Chair:** Order, please.

With due respect, I think the commissioner has made it clear that they are not aware that either Senator Housakos or the company are lobbyists and therefore don't fall under the commissioner's purview, and the matter is beyond the scope of what the commissioner probably can or should comment on.

I want to put that in. I think if the member can couch his comments, he can keep it relevant to the commissioner's mandate.

**Mr. Borys Wrzesnewskyj:** Thank you.

Commissioner, will you be looking at suggestions and recommendations that we could make as a committee to make sure that this particular loophole that senior party officials with access to ministers and the Prime Minister—although ethically you would think people would not conduct themselves in this manner.... Would they in fact be compelled to register if they do lobby on behalf of private interests on contracts?

**Mrs. Karen Shepherd:** On whether I would welcome comments from this committee, the answer is clearly yes. I would look at them. The act I'm administering is a parliamentary act, after all.

On comments as to where there may be changes, the act is coming up for review in 2010, so there will be another opportunity for all of us to comment at that point.

**The Chair:** Thank you kindly.

Mrs. Davidson, please.

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** Thank you very much, Mr. Chair.

Thanks very much, Commissioner and your colleagues, for being here this morning.

I'm new to this committee, so I have a couple of questions that hopefully aren't too simplistic in my grasping to understand this.

You do investigations under both the Lobbying Act and the Lobbyists' Code of Conduct. Is that correct?

**Mrs. Karen Shepherd:** Yes.

**Mrs. Patricia Davidson:** But I don't think the act includes any punishment for violation of the code. Am I correct in that assumption?

**Mrs. Karen Shepherd:** There is no financial penalty or jail term for a breach of the code, but when conducting an investigation I am obliged to table a report before Parliament.

I can tell you that of the four reports the previous office tabled in Parliament, the names of these individuals carry quite a bit of weight. We are in court on the matter of an individual trying to show why they were not a lobbyist. So while there is no financial penalty or jail term, I think the bread and butter provided by their names is important to these individuals.

**Mrs. Patricia Davidson:** So if there has been a violation of the code, your report goes to Parliament.

**Mrs. Karen Shepherd:** It does.

**Mrs. Patricia Davidson:** What can Parliament do with the conclusions of your investigation?

• (1000)

**Mrs. Karen Shepherd:** They can ask me to come before this committee to discuss the report, but it is tabled before both houses.

**Mrs. Patricia Davidson:** Okay.

**The Chair:** Excuse me.

Commissioner, I wonder if you could elaborate a little further. A report to Parliament is one thing, but there are authorities under which there can be consequences pursuant to the consideration of that report as well. Is that correct? You don't impose the sanctions, but you report to a jurisdiction that can.

**Mrs. Patricia Davidson:** Are you saying that Parliament can impose different sanctions?

**Mrs. Karen Shepherd:** I'll ask my legal counsel if he can comment further on that.

**Mr. Bruce Bergen:** Certainly, Madam Commissioner.

When the commissioner completes an investigation in relation to the Lobbyists' Code of Conduct, the reports are required under the Lobbying Act to be tabled before each house of Parliament. Then it sits with each house of Parliament. So there is no criminal sanction for breach of the code, such as a fine or imprisonment. The matter stands referred to the houses of Parliament. As the commissioner mentioned, the house of Parliament could ask the commissioner to explain the report or consider the report at a meeting of a committee such as this one.

In 2007 the commissioner's predecessor, the Registrar of Lobbyists, completed four reports on the lobbying activities of one very busy lobbyist. They were filed and tabled before both houses of Parliament, but I don't think the committee took it upon itself to do more with those reports following their tabling.

**Mrs. Patricia Davidson:** Thank you.

In your report you indicate that the total number of paid lobbyists dropped between 2007-08 and 2008-09. You indicate a 17% drop in the number of paid lobbyists for corporations and a 10% drop in lobbyists working for organizations.

Why do you suspect this decline took place? Do you have any ideas on that?

**Mrs. Karen Shepherd:** There are a number of reasons. I think the economy has played a role. I've seen in some articles in American newspapers that they've noticed a drop in registrations due to the economy as well.

In addition, among corporations and organizations, we also noted in last year's annual report that the number of firms actually increased, but the number of lobbyists dropped. I think what was going on was that firms were restructuring.

While there's not a cost of registering if they file online, what some companies have said to me is there is a cost of compliance. In order to make sure they are complying with the act, they've either hired somebody specifically to keep track of meetings and to file the registrations or if there need to be changes made to the monthly report they have somebody taking care of that. Pierre can comment further, but where there maybe used to be six individuals in a firm, we're noticing that this number has almost dropped by two people per corporation on average. And in-house organizations are doing the same thing, reducing the number of people.

The other thing we've seen with the in-house organization is that they're pretty small in this grand scheme of things anyway. So what I think some of the previously registered ones have done is not to register. Previously, if they were hitting 15% of their time, they thought they'd register, but our anecdotal evidence is now showing that with the additional requirement of the monthly communications, they are looking at their activities and if they're not hitting a specific amount of time, they seem to be choosing not to register.

It's one of the things we take seriously and are keeping track of. Pierre's shop is keeping track of what's happening with the stats, and he and I actually meet on a weekly or bi-weekly basis to go through the statistics. At some point we're going to try to look through them, and if our analysis picks up a trend among some of these firms, we may actually go back out and—

**Mrs. Patricia Davidson:** Are you seeing a decreasing trend in your tracking?

• (1005)

**Mrs. Karen Shepherd:** Since April, I think there was another 4.6% decrease in the overall number of registrations. But when I'm looking at what's happening in the States, it seems to be pretty consistent there as well, in that the economy is still playing a role.

**Mrs. Patricia Davidson:** Thank you. That's all.

**The Chair:** Thank you.

Monsieur Desnoyers, please.

[Translation]

**Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ):** Thank you, Mr. Chair.

Welcome.

In your annual report, you say that 91% of monthly entries were verified by a designated public office holder. That was 327 reports out of a total of about 5,000. It seems to me that 327 is not a lot, given the total number of entries. That may make your work less accurate, given the sample.

How do you determine whether the number of entries is sufficient?

**Mr. Pierre Ricard-Desjardins:** First, there are two kinds of entries. There are the underlying reports, the large reports that contain information concerning the purposes in terms of federal institutions that are the target of lobbying activities. Those reports are examined one by one. There are nearly 4,000 active reports in the registry at present. The purpose of that review is essentially to verify the accuracy of the information in terms of the requirements of the act. Those are not investigations, but we want to ensure that the information provided is plausible and clear, and can be easily understood by a member of the public who wanted to consult the registry.

Second, there are the communication reports, which are monthly reports that are called, internally, "ComLogs". On the 15th of each month, the communication reports for the previous month are submitted, with the designated office holders. Given the quantity of reports submitted and the fact that they are generally submitted before midnight on the 14, we decided to allow the reports to be entered in the registry as they are. Systemic checking is done by the

system itself, to validate information, and so on, so human intervention is reduced to a minimum.

That being said, if we had to do a detailed review of each of those monthly reports, it would probably take several months to get them on line, given how many of them there are. So a choice had to be made. It seemed to us, when the system was designed, that it would be in the public interest for the information to be available as quickly as possible, even if a small portion had to be corrected afterward. As the commissioner said, there is a function in the system that allows a person who made an error in submitting the monthly report to correct the date or spelling of a name or things like that.

If there is over-reporting, if a monthly report should not have been submitted regarding a person because the person is not designated, the report can simply be deleted. I say "deleted", but access to what was submitted and was published in the registry is always possible. A correction is superimposed, but what was originally submitted is always available. The information is not really deleted, because it is still there.

**Mr. Luc Desnoyers:** Like some of my colleagues, I am puzzled about the decline in the number of lobbyists. In your report, you talk about the economic context. Is there anything other than that? There have been much more active periods in Parliament, and that called for lobbyists to be used. Can you comment on that?

**Mrs. Karen Shepherd:** There may have been more activity in certain months. At the end of the year, what is important is what is there. It is possible to determine the point in the year when activity was highest. If we compare it with the annual reports, it is activities in March. That is where we have seen a difference. Because I was coming here today, we also examined the difference between activities at the end of March and more recent activities, on October 22.

Yes, it is because of the economy, but I also mentioned that companies are really... They can't have 10 people doing communications, because they then have to put something in place to ensure that all those communications...

• (1010)

**Mr. Luc Desnoyers:** Does that have a particular impact on the law? Does that decline have an impact on the law?

**Mrs. Karen Shepherd:** Not in my opinion. The law shows that everyone who does lobbying with public office holders has to register.

**Mr. Luc Desnoyers:** Let's go back quickly to the education aspect, because I think that's important. If I understand correctly, you have developed communications and education tools to ensure that lobbyists...

Are the awareness and education tools updated regularly?

**Mrs. Karen Shepherd:** That is something we do regularly.

Richard Desjardins can perhaps also speak to that. We have a system that includes multimedia tutorials. In view of the changes in regulations and policies, he and his team work with the multimedia tutorials to make the necessary changes.

An interpretation bulletin has just been added regarding tax credits. Because there were a lot of questions. As Mr. Rickford asked, if we find an answer, we incorporate it in the system, yes.

I also consult the deputy ministers to determine what other tools could be put in place. For example, I was told that we could perhaps add a page about lobbying to their orientation system.

**Mr. Luc Desnoyers:** In your report, you use the term “designated public office holder” and you also talk about “non-designated public office holders”. Are both categories subject to the act in the same way? How does that work?

**The Chair:** Thank you.

**Mrs. Karen Shepherd:** First, the Lobbying Act deals with communication between a lobbyist and a public office holder. Mr. Martin was talking about all lobbyists. We sometimes say a public office holder, under the act, that means just about everyone in Ottawa.

If there are communications between the two people, the lobbyist has to register with the commissioner. However, for designated public office holders, the difference is that if there are communications with those persons the lobbyist has to submit a monthly report on them.

In addition, designated public office holders are subject to the prohibition on acting as lobbyists for five years after the end of their term in office. That is the big difference.

**The Chair:** Thank you, Mr. Desnoyers.

[*English*]

Mr. Dechert, please.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Ms. Shepherd, it's nice to see you again. Thank you for your annual report.

Like Mr. Desnoyers and Ms. Davidson, I was also quite interested to see that the registrations by consultant lobbyists, and in fact by lobbyists in all categories, had decreased. Here we have the most significant increase in infrastructure stimulus spending in several generations and in fact lobbyist registrations have gone down. I would have thought there would be a dramatic increase.

Did you find that curious as well?

•(1015)

**Mrs. Karen Shepherd:** We have found it curious. As I explained, Mr. Chair, there seem to be some reasons in terms of corporate rationalizations and the fact that the number of firms actually did go up last year. But I have to admit from the complaints coming into the office on different matters that I have no evidence to suggest there is unregistered lobbying occurring.

**Mr. Bob Dechert:** Right.

Here we have these wild and crazy allegations of favouritism by some members of the House about the billions of dollars being spent on infrastructure across the country, including support for the auto industry, and yet the registrations are going down. That should make Mr. Martin very happy, I would have thought. So thank you for that.

**An hon. member:** He looks happy.

**Mr. Bob Dechert:** He looks very happy today.

When we last met in March, I'd asked you about comparisons of lobby registration and lobbyist restrictions in Canada versus the United States. I was wondering if you could comment on lobbying activity in the United States as compared with that in Canada. Are you aware of any lobbying activity in the United States that would be a violation in Canada of either the Lobbying Act or the Lobbyists' Code of Conduct.

**Mrs. Karen Shepherd:** Regarding the member's last question about ethics, Mr. Chair, the lobbying legislation in terms of the culture in the U.S. is quite different from that in Canada. They have to report on the amount of money they spend on lobbying activities and sometimes, I believe, on the success of lobbying as well. They have quarterly reporting, whereas we have monthly reporting. So there's some similarity in trying to keep things current.

**Mr. Bob Dechert:** Ours is more stringent in that it's monthly.

**Mrs. Karen Shepherd:** Yes, and in ours we actually have the names of the designated public office-holders who are being lobbied, which they don't.

**Mr. Pierre Ricard-Desjardins:** The context is different. Canada has developed ethics legislation, mechanisms, and infrastructure that is different from what we see in the U.S. One of the major changes is electoral financing. The way it is regulated in Canada is unknown in the United States. And the relationship between lobbying and money is quite different. So for that reason, I think it's hard to compare the two systems.

**Mr. Bob Dechert:** In the United States, there is a lot of stimulus spending going on. I expect you'd see a lot more lobbyist activity there. I think these things tie together and indicate that Canada is handling the lobbyist registration system very well.

I want to thank you for all the good work you've done to help regulate this industry.

**The Chair:** Thank you.

Mr. Martin.

**Mr. Pat Martin:** Commissioner, you report to Parliament, do you not? I notice you have a letter to both the Speaker of the Senate and the Speaker of the House, tabling your report. You also tell us that you won't confirm or deny whether you have initiated investigations on any particular complaint or firm. I'm critical of that. I think you should tell us, especially the parliamentary committee.

But if you won't tell us, Parliament, about companies you are investigating, how does the PMO know that you have an investigation on Navigator, a big lobbying PR firm out of Toronto? Who in your office is telling the PMO who you are investigating when you won't tell us? Does the PMO have a mole in your office who tells them things that even members of the ethics committee, which is the parliamentary oversight committee of your office, can't seem to find out? And if you are telling them freely, why won't you tell us that Navigator, the new Earnscliffe, is now under investigation by your office?

**Mrs. Karen Shepherd:** That's a good question. But I honestly don't know, nor do members of my staff with whom I've spoken know, where that PMO comment came from.

**Mr. Pat Martin:** Have you initiated an investigation in your office to see who the rat is? Who is the mole in your office who is telling the PMO stuff you won't even tell members of Parliament, your oversight committee? I think you should be discussing these things freely with us and the PMO. But the fact that you're telling them and not us really irks me as a member of Parliament. Will there be an investigation?

• (1020)

**The Chair:** Mr. Martin, let's be clear. That's certainly in the public domain today. But under the act, the commissioner can't comment directly or indirectly on matters before her office. You might want to get to this by asking whether the Prime Minister's Office informed the public about something that is going on. That could be the more likely scenario. I wouldn't assume that the commissioner's office has leaked anything. But she can't comment, so we're not going to get there from here. Maybe we should consider that angle, too.

**Mr. Pat Martin:** It almost constitutes a matter of privilege. Our privileges as members of Parliament have been breached. Information is going to the PMO that should properly come before Parliament first. That gives an advantage to the PMO, because the investigation into Navigator is about the revolving door that exists within Navigator and the PMO and people like Guy Giorno and Jaime Watt, who used to work together under Mike Harris, and now have this very friendly...

**Mr. Greg Rickford:** [*Inaudible—Editor*]

**Mr. Pat Martin:** I don't heckle you, Greg.

And Robin Sears, everybody's favourite pinko. I think Navigator should be investigated, but you should be telling us first.

Is there an investigation going on in your office to find out who might have leaked this information? If so, is this an action that warrants discipline, if you find that somebody is leaking this information to the PMO?

**The Chair:** Don't look to me. You're on your own with this one.

**Mrs. Karen Shepherd:** I don't have any evidence, with the professional staff I have on board, of any indication of staff having spoken to the PMO.

The member is quite correct. If I could comment, I would be reporting to Parliament. I would not be reporting to others.

**Mr. Pat Martin:** That doesn't answer my question. Will you be investigating your professional staff? You have no evidence on your

desk or in front of you. What steps are you taking to plug the leak you may have in your office?

It's a matter of serious concern. I'm not overstating things here. We worked very hard to put in place a new Lobbyists Registration Act and to put in place a commissioner with teeth, an independent third party who reports to Parliament, to govern what we thought was a problematic lobbyist regime in Ottawa. If there's a leak, if there's some kind of advantageous direct connection between a senior lobbyist and the PMO, it should be investigated. That shouldn't be leaked by them. Somebody in your office could have leaked this to wind up in today's *Globe and Mail*. I think it's a horrifying situation, personally.

**Mrs. Karen Shepherd:** Again, Mr. Chair, I have every confidence in my staff, but I will look into this when I get back.

**Mr. Pat Martin:** I appreciate that.

My last question is about the amount of money. In the United States, they have to report the scope and scale of their lobbyists' campaigns. If it's big tobacco, they have to say that they spent \$2.5 billion lobbying Capitol Hill last year, or whatever. Do you not think that's an oversight or a weakness in our system? In the same spirit that nobody should be able to buy an election, we believe that nobody should be able to buy public policy or legislative change or procurement advantages. Yet we have lobbyists being paid \$600 an hour to drift around Parliament Hill. Somebody's spending millions and millions of dollars to try to influence that government. Don't you think that's one of the things the public should be able to find out?

• (1025)

**Mrs. Karen Shepherd:** Mr. Chair, in terms of the member's question on the money being spent, my understanding is that this has come up before, when previous versions of the act came up for review. Each time, Parliament has chosen not to include how much lobbyists are earning or are spending on campaigns. The act is coming up for review again in another year, and that may be an opportunity for Parliament to reconsider that position.

**Mr. Pat Martin:** If I could shed some light on that, that was in the days when businesses were still allowed to donate money to political parties. In my opinion, that's what influenced that choice. Nobody wanted to tick off the private sector, which could in fact be your biggest benefactor politically, by exposing how much money they were spending, whether it was for the tar sands or big tobacco or big pharma or whatever. Now we don't have to worry about it any more. We've cleansed one part of our system by not allowing them to buy influence through political campaign donations. But we haven't fixed the other side. They can buy influence through massive, sweeping lobbying campaigns that overwhelm the poor minister sitting in the steam room at the members' gym.

**The Chair:** Thank you.

Go ahead, Mr. Wrzesnewskyj, please.

**Mr. Borys Wrzesnewskyj:** I just need a point of clarification. Is there a steam room on the Hill? It keeps being referred to.

**The Chair:** It's a sauna. It's a two-by-four sauna.

**Mr. Borys Wrzesnewskyj:** Commissioner, I'm just as concerned about these allegations of a leak from your office to the Prime Minister's Office. Thank you for agreeing to investigate the matter to make sure—you did refer to your staff as very professional—that it's not happening out of your offices. When you conclude your investigation, could you please inform this committee as to your findings, whether the leak occurred from your offices or not?

**The Chair:** Ms. Shepherd.

**Mrs. Karen Shepherd:** Mr. Chair, the newspaper article said the quote came from the Prime Minister's Office. As I read the article, there was nothing in the article that says that our office told the Prime Minister's Office that we were actually looking into this. Is there someone guessing or whatever that we may or may not be looking into this? It's a newspaper article.

The office takes this quite seriously. As Mr. Martin said, I'm quite appreciative of the fact that I've been given an independent position and all that entails.

**Mr. Borys Wrzesnewskyj:** My question was, will you report your investigation on your findings to our committee?

**Mrs. Karen Shepherd:** I guess, yes. As I said, I will look into it.

**The Chair:** If you've done an administrative review and found there's no need for an investigation, you won't be reporting to anybody. Is that right?

**Mr. Karen Shepherd:** No, but if I understand the question I'm being asked.... As I've said, I have confidence in my staff and the relationship we have. Whether I'll actually look into whether I have a leak I think is the question.

**The Chair:** I understand. Thank you.

Mr. Wrzesnewskyj, sorry.

**Mr. Borys Wrzesnewskyj:** For clarification, the article quite clearly states in its first line that a government official stated that the Prime Minister's Office is cutting off communications with officials affiliated with Navigator while the federal watchdog of lobbying looks into the practices of the plugged-in firm. So it's quite clear what that statement by a government official and the PMO's decision relating to it are, that they are under investigation. This brings me to the second point.

If the leak did not occur from among your professional staff, from your offices, then more worrisome is where did it occur? How did the information get to the PMO? The only other potential source is the company that's being investigated. With today's news reports, will you be investigating to find out whether or not a company that is under investigation, that gives the heads-up to the PMO...that their relationship is under investigation? Would that now entail a part of your investigation of this particular company and its lobbying?

• (1030)

**Mrs. Karen Shepherd:** Mr. Chair, I am finding the questions... I'm not comfortable speculating as to how the source.... The one thing about a newspaper article is that they can write whatever they would like to write, in terms of comments.

**The Chair:** I guess my advice to you, Commissioner, is simply to answer within your mandate, within your knowledge, and not to speculate on anything. If you are not aware of a leak, if you have no information to offer—

**Mrs. Karen Shepherd:** Which is what I feel I've done, Mr. Chair.

**The Chair:** And that's all you really have to say. All right.

Mr. Wrzesnewskyj, you still have three and a half minutes.

**Mr. Borys Wrzesnewskyj:** Thank you, Chair.

If a company—we're not specifying which company—is under investigation and the fact that they're being investigated seems to indicate that there may have been some wrongdoing, gives a heads up to those individuals, public office-holders that they've lobbied, perhaps the PMO, would that be part of an investigation that you would look into?

**Mrs. Karen Shepherd:** I'm sorry, I want to make sure I'm understanding the question clearly. You're asking me if I would be investigating where the leak came from during that investigation, or...?

**Mr. Borys Wrzesnewskyj:** There's an investigation taking place. Obviously, there are some concerns about lobbying efforts made by a company. One of the parties that they've lobbied is, theoretically, the Prime Minister's Office. You've begun an investigation. Officials from the lobbying company turn around and give the heads-up to the people they've had an ongoing relationship with, a multi-year relationship, telling them to watch out because our company is being investigated; they've given the heads-up to those who, perhaps, further down the line would be investigated as well, because of potential wrongdoing. Would that be of concern, and would that be part of what you in fact investigate?

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** A point of order, Chair.

**The Chair:** Stop the clock, please.

Mr. Poilievre, a point of order.

**Mr. Pierre Poilievre:** The commissioner has already indicated that she cannot comment on existing cases, and the member cannot elicit from her indirectly what he cannot elicit from her directly. He is trying to manifest a hypothetical scenario by implying that it reflects a real world one, and it's inappropriate for him to continue to ask questions that the witness is bound by law not to address at this point in time.

**The Chair:** Thank you. That's not a point of order, but a point made.

I have to indicate also that members have rights, and if they want to pursue a line of questioning that others feel is not going anywhere or can't go anywhere, it is still their right to ask the question. So I will respect the member's rights, and the member still has a minute left in his intervention.

**Mr. Borys Wrzesnewskij:** Thank you.

When do you expect you might be able to report back to this committee on whether or not you've been able to establish that the leak did or did not occur from your offices?

**Mrs. Karen Shepherd:** I believe I have answered that question, Mr. Chair. I will get back to the committee after I look into the matter. I still have full confidence in my staff that it didn't occur from our office, but I will look into it.

**Mr. Borys Wrzesnewskij:** My question was when, an approximate timeline. I know you can't say exactly, but how long do you envision this taking?

**Mrs. Karen Shepherd:** A couple of weeks. In a week or two I should be able to get back to the committee on that particular point.

•(1035)

**Mr. Borys Wrzesnewskij:** Thank you, Commissioner.

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

Commissioner, there was a significant Federal Court of Appeal ruling on *Democracy Watch v. Campbell* and the Attorney General concerning the interpretation of rule 8, attempt to influence, which is the subject matter of rule 8. It appears that this has a significant change in the historic interpretation or application of rule 8.

Could you please have Mr. Bergen advise the committee of the significance of that decision and how it will affect how we move forward in interpreting what people may or may not have done and the extent to which things have to be proven?

**Mrs. Karen Shepherd:** I'll commence, and if Bruce has something to add, I'll ask him to jump in.

One of the things I've actually been doing with my staff, Mr. Chair, is finalizing some guidance and so on that I'll be hoping to publish within the next week or so, which will actually talk about the court ruling and the guidance that will be out there for lobbyists.

You're right. The court ruling was quite significant if you said that the previous guidance that had been used was unreasonable. Part of what it looked at was that the undue influence in the way it was characterized before was basically permitting some actions to occur while not allowing other conflicts of interest. I think it rightly said that no conflict of interest should exist that would affect the integrity or confidence in government decision-making.

The ruling also looked at the fact that the undue influence is part of the continuum of conflict of interest in the issues where there is divided loyalties. In other words, the public office-holder has a duty to protect the public good and there shouldn't be a competing interest in terms of their private interest occurring. The ruling before looked at the undue ruling...if the action occurred after the activity. So had there been a demonstrated influence in terms of affecting the public office-holder's actions in terms of whether they had changed their mind, now what is there from the court ruling is whether there is a real conflict of interest or the appearance of a conflict of interest. The

guidance that I'll be issuing will actually now talk about the apparent conflict of interest. Most reasonable people come to the determination that a conflict has occurred. For example, where before you would have had the activity and looked at it afterwards to see if the member had changed their mind, the way I'll be looking at each case, and it will be a fact of each case, will be once the activity occurs. Once the activity occurs, whether it's a fundraising event or the gifts being given, it will be at the moment that this particular activity or action has taken place by the lobbyist that the conflict of interest potentially could occur. It will be this moment of time that I would be focusing on.

**The Chair:** As I understand it, all that needs to be satisfied is that there was a clear attempt to influence. You don't have to in fact be seen to have influenced.

**Mrs. Karen Shepherd:** It's not an attempt, with all due respect, Mr. Chair; it's the reasonable apprehension of an apparent conflict of interest. So there doesn't have to be the attempt to influence. If most reasonable people would think that particular action has created a competing private interest for the individual, that would be what I would be looking at.

**The Chair:** In the past, to be in breach of rule 8, you must have been shown to have in fact exerted influence.

**Mrs. Karen Shepherd:** Undue influence would have been the action, yes.

**The Chair:** We've had a fair bit of discussion here, on the fringes of legitimacy, about the Prime Minister's Office, and earlier I had raised with you indirect lobbying of sorts, where you go through another person who is not under your mandate or covered by your umbrella but has influence for other reasons with a public office-holder, so if you worked through an intermediary.... First, is there anywhere we should look for a definition of the Prime Minister's Office and who that would embody?

•(1040)

**Mr. Bruce Bergen:** I'm not sure if I understand, Mr. Chairman. Are we looking for that within the Lobbying Act?

**The Chair:** If I look at this, it says the Prime Minister's Office is cutting off communications. Who is the Prime Minister's Office?

**Mr. Bruce Bergen:** We're speaking about the *Globe and Mail* article. Is that correct?

**The Chair:** I guess we're speaking generically. I don't know for our purposes whether or not any element of the Prime Minister's Office, as may be defined directly or indirectly, relates to lobbying activity that would fall under your mandate.



**Mr. Bruce Bergen:** I'm not sure. I'm certain you'd be able to find a definition of what constitutes the Prime Minister's Office somewhere on the PCO website—the PMO website, for instance. But I don't think that office is created by statute, as are government departments and the commissioner's office, for instance, which is created by statute in the Lobbying Act. So that's a difference.

**The Chair:** I raise it only because I think, in the issue that was touched on earlier by Mr. Wrzesnewskyj, really there isn't a specific individual who's a public office-holder who is being lobbied. It seems that the culture has morphed itself in a way in which I can effectively do the same thing without going straight to that person. So it's implied lobbying. But you don't have anything under the act that allows you to in fact deal with the avoidance provisions in the Conflict of Interest Act and also in the Code of Conduct for Members of Parliament, which are in the Standing Orders. There is also a similar thing. It's either section 25 or 26 under the Code of Conduct for Members of Parliament, anti-avoidance provisions or evasion provisions. I think that's probably something the committee may want to look at, simply because if they can't get it this way, the system seems to find another way to get what they want, and it is a difference in your act, or an addition in the Conflict of Interest Act that is not in your act. And you know how long it takes to amend legislation in this place.

**Mr. Bruce Bergen:** If I may, one thing, of course, is that these amendments to the Lobbying Act have only been in place for a little over one year, and the Conflict of Interest Act that Ms. Dawson administers is also quite new. So I think that during this initial period of time, items like the one you have just mentioned are coming to light—maybe a definition in one statute doesn't quite mesh entirely well or 100% with that in another statute. I think that's part of the process of beginning to understand how the new legislation works and how best to implement it.

**The Chair:** Well put.

On that note, I'm going to thank you all.

*Madame Freeman, vous avez une question.*

Please, go ahead.

[*Translation*]

**Mrs. Carole Freeman:** I would like to ask a question concerning BPR, a firm that is not registered. In the Makhija case, it was said that an investigation could be conducted even if the lobbyists were not registered, whether they were individuals or companies.

We are waiting for the decision of the Supreme Court. Has it ruled as to whether it would hear the appeal?

**Mrs. Karen Shepherd:** If I understand correctly, the situation in the Makhija case was exactly the same. The power of the registrar of lobbyists to investigate offences under the act was challenged. The Federal Court, I think it was in December 2008, made a decision holding that the registrar did in fact have that power. Now the act says very clearly that I have the power to investigate offences under the act or the Code of Ethics.

•(1045)

**Mrs. Carole Freeman:** So you may now do those investigations, with no problem.

**Mr. Bruce Bergen:** I would like to add that as a result of the decision of the Federal Court of Appeal, the lobbyist in question, Mr. Makhija, has asked the Supreme Court whether it could hear an appeal of his case, but his application was denied. So it will stay at the Federal Court of Appeal level, once again. The date is set for January 2010.

**Mrs. Carole Freeman:** You have the power to investigate, but you also have the power to cease investigations if it appears, due to elapsed time, that it would serve no useful purpose.

Could you give some examples? If there has been an offence, an omission, a wrongdoing, I do not understand why the offence would be wiped out by the lapse of time.

I also note that in the case involving Democracy Watch, where you were asked to consider rule 8, the Federal Court of Appeal refused to refer the complaint because too much time had elapsed. So in two cases where there was a basis for the case, a ruling was refused because of the elapsed time.

Could you explain what the justification for that provision is?

**Mrs. Karen Shepherd:** Mr. Chair, that is a very interesting question.

I do not have any examples to offer because honestly, to date, I have never refused to consider a case because too much time had elapsed. However, if it has been a long time, it may be difficult to find testimony, people who can provide evidence. It may be that people will have died since 10 years ago and there are no longer any reports about the incident. In that case, it can be difficult to do...

**Mrs. Carole Freeman:** That is the only reason you see?

**Mrs. Karen Shepherd:** Yes.

**Mrs. Carole Freeman:** Last week, Ms. Dawson, we heard from the Conflict of Interest and Ethics Commissioner. She told us that in her view there was some overlap between the Lobbying Act and the Conflict of Interest Act, particularly regarding post-employment rules for public office holders. She found it extremely difficult to monitor public office holders after the end of their terms.

Do you also think there is overlap between your two areas of authority?

**Mrs. Karen Shepherd:** There could perhaps be better coordination between the two, in some regards, but I do not have any further comment on that point.

**Mrs. Carole Freeman:** You don't think there is overlap?

**Mrs. Karen Shepherd:** No.

**Mrs. Carole Freeman:** Fine, thank you.

**The Chair:** Thank you, Ms. Freeman.

[*English*]

Again, thank you kindly, Commissioner, and to your colleagues for being with us. I think it's been a very interesting meeting, a good meeting, to help members to appreciate the challenges you face. Of course, we look forward to working with you in the future on other matters related to your mandate.

Thank you kindly. You are excused.

We have a couple of administrative matters I want to deal with before we adjourn.

Colleagues, there are two items. One is that the clerk has circulated a copy of the latest—and it's not actually the latest because for Thursday's meeting it shows two possibilities. It shows privacy report or the access report on the 10 fixes. We're only doing one of those at the meeting. The only reason I had this initially as a question mark is it was dependent on whether or not Mr. Marleau was going to be available. Mr. Marleau is only available on Thursday. He will not be in the country for the following two weeks. I thought it would be helpful to have him maybe to answer any of your questions as we review that response, and maybe give you an opportunity to formally say goodbye to him as he left that position after we had met. So we will be dealing with the access quick fixes on Thursday only.

With regard to the November 5 meeting, similarly there's only the Privacy Act quick fixes. The Privacy Commissioner is not available on that date or any near date. As a consequence, we will be having the deputy commissioner appear at that one. PCO has also confirmed that they will be sending someone here; I just can't tell you who. It looks like until at least mid November this schedule of our work should be fairly reliable, and you can prepare for those meetings accordingly.

The last item circulated to you was a response from the President of the Treasury Board with regard to the panel on oversight. This committee had expressed a question or concern about whether or not the supplementary funding to the Access to Information Commissioner should have been extended, and I think the president has responded to us appropriately that the oversight panel, of which I'm a member in this committee, provides input but the decision is made taking broader factors into play. I think we'll have to consider that matter closed.

There being no further business, thank you, colleagues.

The meeting is adjourned.

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