



House of Commons  
CANADA

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

---

ETHI • NUMBER 008 • 3rd SESSION • 40th PARLIAMENT

---

**EVIDENCE**

**Tuesday, April 20, 2010**

—  
**Chair**

**Mr. Paul Szabo**



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

Tuesday, April 20, 2010

•(1110)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** I call the meeting to order.

This is meeting number 8 of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day are pursuant to Standing Order 81(4). We will be dealing with the main estimates for 2010-11, specifically vote 40 under Treasury Board, which was referred to the committee on Wednesday, March 3, 2010.

Our witnesses today are the Commissioner of Lobbying, Ms. Karen E. Shepherd, Deputy Commissioner René Leblanc, and Bruce Bergen, senior counsel. Welcome to all of you.

We're dealing with your estimates.

Commissioner, it's good to see you again. We have some new members and I know they're going to want to have an opportunity to introduce themselves to you, probably at the end of the meeting as well.

Let's move on.

I understand you have an opening comment. I'd ask you to proceed now.

[Translation]

**Mrs. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying):** Thank you, Mr. Chair and members of the committee. I am pleased to be here today to provide you with an overview of my accomplishments from the past year and outline my priorities for 2010-2011.

I am joined today by René Leblanc, the new Deputy Commissioner, and Bruce Bergen, Senior Legal Counsel. My mandate comes from the Lobbying Act. There are three activities that help me fulfill this mandate: maintaining the Registry of Lobbyists, raising awareness of the Lobbying Act and the Lobbyists' Code of Conduct, and ensuring compliance with both.

[English]

The registry is the online application used by lobbyists to register and record lobbying activities. It is also the tool the public uses to search and retrieve information on these activities.

[Translation]

When the Lobbying Act came into force, the registration requirements had changed, and lobbyists were required to resubmit their registrations. This created a significant backlog because each

registration needed to be updated to meet the new requirements. My office then verified the information before it could be posted and made available to the public. At any given time, my office was verifying over 1,000 pending registrations per month. I am proud to say that this backlog was completely eliminated this past year.

[English]

The number of registered lobbyists has stabilized at around 3,500, which represents a reduction of almost 30% since the coming into force of the Lobbying Act. Some in-house lobbyists have indicated that the additional reporting requirements introduced in 2008 led corporations and organizations to rationalize their approach and reduce the number of employees engaged in lobbying activities. This, combined with the impact of the economic downturn, may explain the reduction in the number of registered lobbyists. However, my office has experienced an increase in the number of transactions in the registry, primarily due to the new requirements for lobbyists to disclose communications with designated public office holders on a monthly basis.

[Translation]

As I stated earlier, my mandate includes fostering awareness of the requirements of the Lobbying Act. In the past year, I used a variety of approaches, such as presentations, and written and electronic documents to explain the requirements of the Lobbying Act to various audiences. The Web continues to be a cost-efficient way to distribute our outreach material and provide information on the Lobbying Act.

[English]

Education is one means of increasing compliance and must be complemented with a program of monitoring, verification, and investigation to ensure compliance with the Lobbying Act and the lobbyists' code of conduct.

My office continuously monitors publicly available information to identify lobbying activities and verifies that the activity is properly registered. Last year, my office verified nearly 300 individuals, corporations, and organizations after learning that they may have lobbied federal public office holders. My office found that 90% of them had filed returns in the registry of lobbyists.

Last year, my office also verified over 400 monthly communication reports by contacting the designated public office holders listed in the reports. A small percentage of them contained errors, such as incorrect dates or job titles, and in some cases the communication did not necessitate a report, as it was not carried out orally or arranged in advance. To ensure that information in the registry of lobbyists is accurate and complete, my office will continue to take steps to have registrants amend or delete incorrect entries.

This past year I initiated 16 new administrative reviews to look into suspected or alleged contraventions of the Lobbying Act or the lobbyists' code of conduct that were brought to my attention, either through monitoring activities or complaints. These reviews include background research, in-depth interviews, and searches of the registry and other publicly available information. The information is analyzed and a comprehensive report is prepared to assist me in determining a suitable means of ensuring compliance. Last year, my office completed 10 administrative reviews.

[*Translation*]

If there is reason to believe an investigation is necessary to ensure compliance with the Lobbying Act or the Lobbyists' Code of Conduct, I will initiate a formal investigation. Last year, I opened three new investigations. Once they are finalized, the Lobbying Act requires that I table a report, which includes my findings and conclusions, to both houses of Parliament.

[*English*]

If, during the course of an investigation, I believe on reasonable grounds that a person has committed an offence under the Lobbying Act or any other act of Parliament, or under a provincial act, I must advise a peace officer who has jurisdiction to investigate the alleged offence. Last year, four files were referred to the Royal Canadian Mounted Police for investigation.

As I said at my last committee appearance, and for the benefit of new members, I would like to state that subsection 10.4(3) of the Lobbying Act instructs me to conduct investigations in private. Therefore, I will not comment on specific cases, nor will I confirm or deny that I am looking into a file.

A five-year prohibition on lobbying the federal government after "designated" public office holders leave office was introduced into the Lobbying Act in 2008. These former designated public office holders may apply for an exemption from the five-year prohibition. I have the authority to grant one if to do so is not contrary to the purposes of the act.

Since the Lobbying Act came into force, I have granted only three exemptions. As I stated during my last appearance before this committee, I grant exemptions on an exceptional basis only.

Also, at my last committee appearance, I mentioned that I would issue new guidance on rule 8 of the lobbyists' code of conduct on conflict of interest, in accordance with the Federal Court of Appeal decision. In November 2009, I provided guidance to lobbyists regarding the application of rule 8. The guidance is designed to assist lobbyists in determining whether the activities they engage in could create a conflict of interest, or the appearance of a conflict of interest, for a public office holder.

I would now like to explain some organizational changes I made to the office. I implemented plans to improve the capacity of the organization in helping me meet accountabilities and fulfill my mandate. I created the position of deputy commissioner and appointed Mr. René Leblanc so that the corporate functions of my office would be consolidated under one executive.

● (1115)

[*Translation*]

I would now like to turn your attention to the priorities for this year. As a small organization, my office has accomplished much in its first two years to advance the transparency of lobbying activities. This year, I intend to build on our successes to refine and streamline our operations, which will allow me to administer the Lobbying Act even more effectively.

[*English*]

My budget for this fiscal year is \$4.6 million. I currently have 25 full-time employees. I am pleased to note that my office has not experienced a high turnover of employees. However, as a small organization, even one vacancy can have an impact on my office's operations. I therefore have and will continue to use a variety of staffing measures to fill vacancies.

This year I will continue to invest significant resources into maintaining and improving the registry of lobbyists. I plan to establish more rigorous monitoring practices to ensure performance standards. I also intend to implement and monitor new client service standards for registration activities. Over 30% of my budget is dedicated to my registration program.

[*Translation*]

With respect to outreach activities, I will continue to use several approaches to reach various audiences and raise awareness about the act and the code. Outreach activities represent about 20% of my budget. I will continue to meet with groups of lobbyists to discuss the requirements of the Lobbying Act, exchange information and answer questions.

I would also like to continue to focus activities this year on raising awareness among public office-holders, including parliamentarians, as they meet with lobbyists on a regular basis.

[*English*]

I also plan to reach out to the academic community by visiting universities that have programs focused on public policy and public management to inform them about the Lobbying Act and discuss my role as Commissioner of Lobbying.

This year my office will implement a more rigorous case management system to make it easier for the investigation team to track progress on a growing caseload. At any given time, my office has a caseload of about 50 files of varying complexity. These include administrative reviews, investigations, and reviews of applications for exemption from the five-year prohibition on lobbying. The cost of ensuring compliance is nearly 30% of my budget.

In closing, I would like to note that the Lobbying Act is eligible for its five-year review this June. I look forward to working with Parliament, as required, to provide my views on the legislation. To this end, I have asked my staff to start reviewing and gathering information on our experience in administering the legislation since 2005.

• (1120)

[Translation]

Mr. Chair, this concludes my remarks. I look forward to answering any questions you or the committee members may have.

[English]

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

I want you to know that the committee has already noted the legislative requirement to do the five-year review of the Lobbying Act. That will commence once it's referred to us by the House.

Thank you very much.

We will start our questions with Mr. Easter, please, for seven minutes.

**Hon. Wayne Easter (Malpeque, Lib.):** Thank you, Mr. Chair.

Thank you, folks, for coming.

I think you made it fairly clear in your remarks that you won't comment on specific cases; you won't confirm or deny a certain file. So that changes our approach a little bit.

We know there is a specific case in the news these days. There seems to be a lot of confusion when it comes to public office holders versus designated public office holders, and the differences between the two. Could you explain that? And where does a parliamentary secretary fall?

**Mrs. Karen Shepherd:** As I sometimes say, if you were to throw a stone down on the city of Ottawa you would probably hit a public officer holder. But I'll pull out the definition.

The designated public office holder is a specific group that the government has identified. It includes ministers, ministers of state, and their staff; deputy heads and assistant deputy heads; and assistant deputy ministers and those of comparable rank, which I have defined in a bulletin. An additional 11 were designated through regulations, primarily to cover individuals in the forces and individuals who were order in council in the Privy Council Office.

Parliamentary secretaries are not designated as public office holders.

**Hon. Wayne Easter:** If a parliamentary secretary has been delegated authority for any activity by a minister, I take it that activity doesn't meet the criteria of the Lobbying Act. Should it meet the criteria?

From having been in government, I know that ministers and parliamentary secretaries don't all work the same. Pierre throws spears for the Prime Minister lots of times. There are others who are quite quiet. But every minister operates differently with their parliamentary secretary. Some give them lots of authority and some give them none.

If a parliamentary secretary has been designated certain files, be they on infrastructure or anything else, does that activity fall under the Lobbying Act now? You may not want to answer this, but from your point of view, should it?

**Mrs. Karen Shepherd:** I guess there are two questions. In terms of an individual who would be communicating with a public office holder—which a parliamentary secretary is—they would need to determine whether an initial registration is filed.

What is not required, because the parliamentary secretary is not a designated public office holder, is the requirement to file a monthly communication report in terms of a monthly communication. The communication with the public office holder—if it is communicating—is still defined under the act as registerable activity.

**Hon. Wayne Easter:** Let me put it this way. Does a lobbyist or anyone seeking a grant from a public office holder have to report that contact? I'm talking about a public office holder, which is a parliamentary secretary. Does anyone seeking a grant from a public office holder have to report that contact?

• (1125)

**Mrs. Karen Shepherd:** Again we're into the difference between the need to file an initial registration... If the individual is communicating with a public office holder on a registerable activity—it's defined in the act as someone who is receiving payment to communicate for the making, development, or amendment to any proposal or legislation, bill or regulation, or the awarding of any federal grant or contribution. The communication month captures all types of communication, so it's written communication, oral communication. All of those would determine whether an initial registration would then have to be filed. The monthly communication, according to the act, is with a designated public office holder.

**Hon. Wayne Easter:** I think we have a serious problem here in terms of the role of a parliamentary secretary. They're not designated public office holders, yet they have, depending on the minister, access to the minister, the department, all the senior officials. They sit and chat with the minister, so if an individual or a lobbyist is really pushing a specific project, they can go to the parliamentary secretary and in a roundabout way bypass the Lobbying Act. Is that not correct, you're just going through a third party?

**Mrs. Karen Shepherd:** Again, if you're trying to capture the monthly communication with the DPOH, it does not have to be reported. But the lobbyist or the individual would still need to be filing a registration because that's still a registerable activity.

**Hon. Wayne Easter:** Okay.

**The Chair:** Thank you.

[*Translation*]

Ms. Thi Lac, you have the floor.

**Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ):** Good morning, and thank you for being here today. I will go ahead with my first question.

In your view, Madam Commissioner, what are the biggest challenges that your office will face in the next few years?

**Mrs. Karen Shepherd:** In terms of registration, we must constantly work on our system to ensure that lobbyists can register themselves. We have adopted many measures so that lobbyists can continue to do their work in the event of a technical difficulty. I am very proud of my team because we are always ready when changes to the act are discussed. The important thing is to carry out educational activities on an ongoing basis, and to ensure that we use all the methods available so people understand the reasons and requirements related to the act, as well as the proper procedure. So we do a lot of work in terms of putting systems in place, especially the electronic system. I have also had many meetings with public office-holders and given presentations because, as I said, they are the ones who meet with lobbyists.

**Mrs. Ève-Mary Thaï Thi Lac:** Thank you.

Do you think the current lobbying legislation is in keeping with Parliament's intent, which was to create an entity that is totally independent from politics? Do you have all the political independence you need to carry out your mandate?

• (1130)

**Mrs. Karen Shepherd:** If I understand correctly, you are asking whether I have the independence to do what I want. I would have to say yes. Absolutely. The government does not tell me when to do or not to do an investigation. I have the budget and staff necessary to do what I think needs to be done. I am independent. No one tells me how I should do my job.

**Mrs. Ève-Mary Thaï Thi Lac:** The commission is fairly new. Given what you have accomplished in the past two years, what do you think needs improvement?

**Mrs. Karen Shepherd:** As you said, our organization is fairly young, but there is always room for improvement. I created the position of deputy commissioner in order to consolidate all of the organization's functions in one place, in other words, human resources, finance, technology and information management, media relations and communications. My director of registration and my investigators can now spend their time doing their jobs directly. Before....

**Mrs. Ève-Mary Thaï Thi Lac:** I will put my question in a different way. What were the biggest hurdles you faced during the past two years?

**Mrs. Karen Shepherd:** Honestly, I cannot name any major hurdles. On our end, the legislation that came into force did not include the two-month transition period, as in 2005, and we experienced a backlog of registrations, as a result. The team had to work overtime to eliminate the backlog, on top of doing its regular

work. That was a big challenge for us. I am very proud of my team members who worked on that.

As for investigators, the new legislation came with new requirements. So they had to implement the required procedures.

**Mrs. Ève-Mary Thaï Thi Lac:** You said that your biggest challenge, your priority, is streamlining your operations. What do you mean by that?

**Mrs. Karen Shepherd:** I will use investigations as an example. With the new legislation coming into force, we had to review all of our practices and procedures and make the necessary changes so that investigators could perform their duties, namely, administrative reviews and investigations. As for streamlining, based on our experience with the procedures, we can create models. More time has to be spent looking at the information from the political standpoint. With the procedures in place, we can streamline by taking certain steps to move files along more efficiently. But, by the same token, we cannot sacrifice quality just to move files along.

**Mrs. Ève-Mary Thaï Thi Lac:** Do you think your budget is large enough to meet the objectives you set for yourselves in terms of carrying out all your plans for the coming years?

• (1135)

**Mrs. Karen Shepherd:** As I said, I have a budget of \$4.6 million. So far, I would say that it is sufficient. But, as a small organization, I cannot do the same thing as a large department and take the money from another area if something unforeseen or urgent comes up.

For instance, my decisions can be reviewed by the courts. If a number of my cases were before the courts, I would not have the budget for that.

[*English*]

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

Thank you for being here again, Commissioner, and congratulations to Monsieur Leblanc on his appointment as deputy commissioner.

Commissioner, in your report this morning you mentioned that last year your office verified nearly 300 individuals, corporations, and organizations after you noticed that they were engaging in lobbying activity.

What happened to the other 10%? I guess you found out that 30 of those individuals weren't properly registered. What do you do when you discover that? What happens in those cases?

**Mrs. Karen Shepherd:** One of the compliance measures we have in place is what we call media monitoring. If we see something in the media, we do a further analysis and determine whether these individuals may need to be registered. As I said, for instance, in the case in which we found roughly 300, 90% of them were registered. We determined upon further analysis—because we just don't go with what we see, there's a lot more work—that the individuals were either volunteers and, as the Lobbying Act requires, don't need to register, or the lobbying was actually taking place in the provincial or municipal sphere. For the remaining ones, we send what we call the advisory letter to the organizations to let them know that there is a Lobbying Act. It's one of the compliance education tools: asking them whether they are aware of the Lobbying Act and saying here is what the Lobbying Act entails and that they may need to register.

Last year, we sent out twelve letters. Nine of them came back indicating, after reviewing the act, that they did not hit the significant amount of duties, so they did not need to register, and three of the individuals actually registered.

**Mr. Bill Siksay:** By provincial and municipal, do you mean they were representatives of provincial or municipal governments, or elected officials?

**Mrs. Karen Shepherd:** No. I don't have any cases in front of me, but it's one of those cases, when you're looking at the articles talking about lobbying, in which on further analysis they weren't lobbying the federal government but were lobbying the province or the municipality.

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

You also mentioned that the number of registered lobbyists is stable at around 3,500. I seem to remember in the past a number of 7,500 or 7,000 in a yearly report. Is that the change we're talking about?

**Mrs. Karen Shepherd:** That may be from the departmental performance report, which talks about the number of transactions.

**Mr. Bill Siksay:** Okay, so I'm confusing transactions and the number of lobbyists.

Have you done any further analysis of why the number has gone down? You mentioned that you think it might be related to a rationalization of activity among lobbying organizations, but have you done any further analysis of it?

**Mrs. Karen Shepherd:** We haven't in terms of actually going....

One of the things we've talked about is that as we're getting rid of the backlog, and now that the staff is free, we can do some analysis; we can actually call some of the organizations that have chosen not to register to figure out if it's because they are no longer involved in lobbying activities. We haven't done that yet, but it is something we're looking at doing.

**Mr. Bill Siksay:** Are you at all concerned that it might reflect organizations hiding under the 20% rule, that they've reduced or spread around the lobbying efforts among different people who spend less than 20% of their time on lobbying activities?

**Mrs. Karen Shepherd:** You're saying "spread it around". The one thing that's different with an organization versus a corporation for in-house lobbyists is that anyone who's communicating in an in-house organization, if they're paid, does not have to.... All of that

cumulatively is added together, so it's not a matter of spreading it around, whereas with corporations you have the two lists, those who may be communicating for lesser amounts of their time versus those who are hitting the 20% rule.

• (1140)

**Mr. Bill Siksay:** Thank you. You mentioned in your report this morning that you plan to establish a more rigorous monitoring practice to ensure performance standards. Can you tell us what kinds of things you're considering?

**Mrs. Karen Shepherd:** One of the things we're looking at is once a lobbyist files, there are about seven steps for consultants and corporations from the filing of the registration until it hits the system. The performance indicators will allow us to figure out where in those steps we need to focus more of our efforts to see if we can improve process or if there needs to be more education, depending on what's happening in each of those steps.

**Mr. Bill Siksay:** You're not talking about a new step or anything like that, that you think is missing in the process?

**Mrs. Karen Shepherd:** No, this is allowing us to get better at capturing information we have and trying to put things in place.

**Mr. Bill Siksay:** You also mentioned this morning that you have granted only three exemptions. Can you tell us how many applications for exemptions you have received?

**Mrs. Karen Shepherd:** Since July 2008 I have received 12, and one just came in recently.

**Mr. Bill Siksay:** You mentioned that the review of the act is coming up and you're starting to prepare for that. Can you tell us what sorts of things you do in your preparation for that, and will you be coming out with specific recommendations for changes in the legislation?

**Mrs. Karen Shepherd:** There has been a lot of experience in terms of the registration side. Comparing what we've experienced since 2005 to when the act came in, in 2008, one big difference was not having that two-month transition period, because when you put in new disclosure requirements and all the lobbyists had to file, that was a significant backlog. At the time it was more than 4,000 lobbyists to go through. So when you're getting all the new ones coming in, plus you've got those who have to update their registration.... That would be one thing.

Another experience is in terms of what we needed to do with the system on the education front. I was looking at my big categories: the experience with designated public office holders, how many exemptions, what types, if I'd granted them, and so on; and the experience on the compliance side, because when the Lobbying Act came into force in 2008 it gave clear ability to look at both the act and the code. So it would be looking at the big areas and trying to have the necessary information and stats so I can better answer the committee's questions as we're going through deliberations.

**The Chair:** Thank you.

Mrs. Block, please.

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

I echo my colleagues' welcome to you here today. Congratulations, Mr. Leblanc.

It certainly is a pleasure to have you at the committee. As a fairly new parliamentarian, I think it's important to note it was this government's first bill after being elected that made key improvements to this office since it came into force in July 2008. To put it in context, as an independent commissioner of lobbying, your mandate is to investigate violations under the new Lobbying Act and lobbyists' code of conduct, and that now includes over a million dollars for investigations that would not have been possible under the previous Liberal government.

With respect to the estimates, this process allows us to monitor the expenditures of government departments, agencies, and offices of Parliament, and in reviewing them, I notice your projected spending chart on page 9 of the RPP shows the office resource requirements as fairly stable over the next three fiscal years. Can you anticipate anything that might change this projection? How do you project out that far?

**Mrs. Karen Shepherd:** As I was saying when I was asked the previous question on the budget and whether I have enough resources, if one or more of my decisions became judicially reviewable, that could have an impact, depending on changes that may come up. When the act comes up for review, if there are to be changes in a new act, that could also affect my ability to request funds.

• (1145)

**Mrs. Kelly Block:** This is the first year the main estimates of this office have come before the House of Commons Standing Committee on Access to Information, Privacy and Ethics. Last year the estimates went before the Standing Committee on Government Operations—

**Mrs. Karen Shepherd:** Sorry, can I just make one correction when you're looking at page 9? I was just referring to my budget, but that is the appropriation we have been given to work with.

**Mrs. Kelly Block:** Thank you.

So this is the first year you're presenting your main estimates here. Last year the estimate went before the Standing Committee on Government Operations and Estimates.

I think this is timely, considering that you deal with allegations of non-registration or misconduct by lobbyists and that you conduct formal investigations when required to do so. How do you ensure that you stay independent from government?

**Mrs. Karen Shepherd:** By doing the job I am doing. Both Houses of Parliament entrusted me with the integrity of the act and ensuring that lobbying was done in a transparent manner and that those who were communicating were doing so with high ethical standards. I take that seriously.

As I was indicating, there has been no political interference. When there are allegations of unregistered lobbying, I take these seriously, no matter...

**Mrs. Kelly Block:** So we know that staying independent from government is something you take seriously, but what makes that possible within the act itself? What specifically do you rely on when it comes to keeping at arm's-length distance?

**Mrs. Karen Shepherd:** In terms of the reporting, I report to Parliament through this committee, which I think is one of the ways.

**Mrs. Kelly Block:** Thank you.

I would like to share my time with Mrs. Davidson.

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** Thank you, Mr. Chair. I'll echo my colleagues' comments and welcome you here this morning, and congratulate Mr. Leblanc again.

I certainly think the report you've given us has really outlined your accomplishments. So I congratulate you for those. When I see that you have verified over 1,000 pending registrations per month to deal with the backlog and to get things brought up to speed, I certainly think that's a huge accomplishment. So congratulations for doing that and for moving forward.

The one thing I would like you comment on is the following. It's my understanding that lobbying is a legitimate activity, but there are things that must be done to make it transparent. So if the lobbyists or individuals who are paid to lobby the public office holder must disclose the details of their activities—and I believe that's correct—how often do they have to do that?

**Mrs. Karen Shepherd:** They need to file their initial registration. Once they have filed their initial registration, if they communicate with a designated public officer holder then they have to file a monthly communication. They have 15 days in the next month to file the monthly communication. If they need to amend their registration or are terminating it, then again they have until the 15th of the next month to do so. If for some reason they have had a lot of communications, but no communications with the designated public officer holder, and there has been no need to amend the registration, then after five months the act still requires them to re-certify that everything is still correct in their registration.

**Mrs. Patricia Davidson:** You talked about the educational process and trying to get more information out so that people are aware of what's required of them under the act. How do you do that? Do you host seminars? I know you talked a bit about the web and that being one way to get good information out in an economical way.

• (1150)

**Mrs. Karen Shepherd:** In terms of the lobbying community, we're communicating with them on a daily basis. The advisors who are answering the phone are not only providing technical support, but are also providing advice for those who have questions about the Lobbying Act. So providing advice is done on a daily basis.



I've also had meetings with particular groups of lobbyists, such as the Chamber of Commerce and the Government Relations Institute, to answer questions and to have a dialogue with them. I find that dialogue is sometimes one of the better ways of getting information across. Plus, there are a number of interpretation bulletins or advisory opinions that we issue.

People learn and need different things, so we're making an effort to produce written documents because people like to have those to take home. Now we have the code of conduct, and you can have it. I'd be pleased to send it to the committee if you are interested.

**Mrs. Patricia Davidson:** That would be great.

**Mrs. Karen Shepherd:** Okay, we'll do that. We're quite proud of it actually. It's the first one we did as part of our marketing resources or outreach activities this year.

In terms of other groups, one of the things that I did last year was to get the word out to public office holders. As a group, if they understand the Lobbying Act, it helps them with their jobs. It's almost as if they're ambassadors as well, in terms of their communications. But also for designated public office holders in understanding their responsibilities for answering questions and verifying their communications logs when I ask them to....

This last year I met with the 20 most lobbied departments or deputy heads of the government institutions. I was pleased to find that all of them were well aware of the Lobbying Act, and some had put in place different practices for designated public office holders. One of the things that came out of those meetings was the need to create an orientation page that would go into binders. So we've been working on that with the different groups.

**The Chair:** Ms. Foote, please.

**Ms. Judy Foote (Random—Burin—St. George's, Lib.):** Thank you.

I, too, want to thank you for appearing before the committee today.

I'm going to ask you to bear with me in the event you have answered my questions already in responding to some of my colleagues here.

I'm still trying to focus on, or get my head around, the public office holder. Does anyone who approaches a member of Parliament have to register their activity or register as a lobbyist if they're looking to access government funding?

**Mrs. Karen Shepherd:** A member of Parliament is a public office holder.

**Ms. Judy Foote:** That's right, yes.

**Mrs. Karen Shepherd:** So if the individual is being paid to communicate with a public office holder—and, as I said, it could be for the making or development of a bill, proposal, or policy or program—and if it's for the awarding of a federal grant or financial contribution, that is something that's registerable. Also, for consultant lobbyists, arranging a meeting between a client and a public office holder is a registerable activity. As well, for consultant lobbyists, if they are trying to get a contract, that would be a registerable activity.

For consultant lobbyists, once they agree to the undertaking, they have 10 days to register. The 10 days are from when they agreed to do the undertaking, not 10 days from when they actually started doing the lobbying activity.

For in-house organizations and corporations, aside from the criteria I've just listed on communicating a registerable activity, there's also an additional requirement, which is that it must be a significant amount of time. It would be considered a significant amount of time if it were performed by just one person. In the interpretation bulletin, as Mr. Siksay was saying, that is defined as 20%.

**Ms. Judy Foote:** I take that as a yes.

**Mrs. Karen Shepherd:** Well, it's a little more complicated than just a simple yes. If it were an in-house organization and they were paid and it were about communicating a registerable activity, they must also hit the significant amount of time to register.

• (1155)

**Ms. Judy Foote:** All right.

What's the obligation on the part of the public office holder in terms of having been approached by someone looking to access government funding?

**Mrs. Karen Shepherd:** The onus is on the lobbyists to ensure they comply with both the Lobbying Act and the lobbyists' code of conduct.

The only requirement for designated public office holders is that if I were to request that they verify a communication entry then they must respond to me.

**Ms. Judy Foote:** So there's no obligation on behalf of the public office holder to report any activity of having been lobbied?

**Mrs. Karen Shepherd:** Not under the Lobbying Act.

**Ms. Judy Foote:** Okay.

I'm looking at the Lobbying Act and implementation notice number 5, which is "Communication with a Designated Public Office Holder". Do you have the same type of communication for a public office holder?

**Mrs. Karen Shepherd:** I don't have an interpretation bulletin specifically for a public office holder. Actually, there is one. It doesn't specifically say "public office holder", but it is if you are communicating with a public office holder, which would include members of Parliament.

The one document that I think might be of interest, which my office is finalizing and that came from doing some of my outreach activities, is "The Ten Things You Should Know About Lobbying". We thought that would be useful for parliamentarians. That's the document we're currently working on, which would hopefully be something like this that you can easily have.

**Ms. Judy Foote:** Okay.

I want to go back to your monitoring requirement. You have 25 full-time employees, and you say there's a substantial amount of monitoring taking place through your office. How does that break down in terms of the 25 full-time employees, given the work you're expected to do under the act? Is there a percentage of how many of those employees would be engaged in monitoring activities?

**Mrs. Karen Shepherd:** Well, right now I have 25 full-time employees, but I have three staffing actions, so we hopefully will have 28 in the near future.

In terms of monitoring activities, almost 30% of my budget, that is of the FTE count—sorry, person, easy on the bureaucratic terms—is involved in doing some kind of compliance work. With respect to the monitoring specifically, we have one officer dedicated to that.

**Ms. Judy Foote:** One of the 25?

**Mrs. Karen Shepherd:** Yes, but everybody is keeping an eye. I have one person dedicated to it. It's the one thing.... We're doing a lot even with 28 people. I have five investigators, or actually I'm in the process of staffing for one of them.

**Ms. Judy Foote:** Do you think that one is sufficient, given what you've discovered in terms of your investigations? Is one individual sufficient to be delegated to that overall responsibility for it, even though there are others doing it?

**Mrs. Karen Shepherd:** In terms of what we have right now, in terms of what we're finding.... I mean, with the monitoring that we've done and with 90% of individuals actually being registered, it would seem it's a good use of resources right now.

**Ms. Judy Foote:** Thank you.

**The Chair:** Mr. Rickford, please.

**Mr. Greg Rickford (Kenora, CPC):** I appreciate the witnesses being here today. It's good to see you again, Bruce, and the commissioner as well. Thank you for your time.

I have a couple of technical questions, probably following from some of the ones that have been asked today. Our government introduced what I certainly will argue, and what could be argued, is the toughest anti-corruption law in Canadian history vis-à-vis the Federal Accountability Act. This introduced tough new reporting standards for lobbyists, and it required that they report to you, an independent commissioner of lobbying.

With that in mind, we sometimes hear that it's hard to define lobbyists. I think the act goes to some length to do that.

Do you have a definition of each kind of lobbyist that the act contemplates? I was wondering if you could share those definitions with the committee so we can understand the important technical distinctions that we're working through today and how they're interpreted.

• (1200)

**Mr. Bruce Bergen (Senior Counsel, Office of the Commissioner of Lobbying):** The act doesn't contain a definition of lobbying per se. The activities that are registerable lobbying activities are set out in two sections in the act, section 5 and section 7.

Section 5 deals with consultant lobbyists. This is the term the act uses for people who are, in essence, professional lobbyists who take on clients and do registerable lobbying activities on their behalf.

**Mr. Greg Rickford:** They get paid.

**Mr. Bruce Bergen:** They get paid, exactly.

Section 7 deals with corporations and organizations. There's a definition of organizations in the act that is very, very broad and is designed to include not-for-profit corporations, partnerships, all sorts of trusts, all sorts of unincorporated corporations that are not what are called share capital corporations, or for-profit corporations. It's a very broad capturing of lobbyists under those two categories.

The constituent elements for what are registered lobbying activities are set out in a number of paragraphs under subsection 5 (1) and subsection 7(1). They are, as the commissioner mentioned earlier, communicating in relation to the making of an act or a regulation, the amendment of a policy, the seeking of a grant or financial benefit—a number of paragraphs.

For consultant lobbyists as well, there's the awarding of a contract by or on behalf of Her Majesty, or arranging a meeting between a public office holder and any other person. So that's different for these professional lobbyists.

I think the rationale seems clear that it's different for a person who is paid by a client to seek a meeting with a public office holder, or to seek a contract on behalf of a client, than if the corporation is obviously in the tendering process. That's not intended to be captured by section 7.

That's a long answer to a very short question.

**Mr. Greg Rickford:** No, it's a good answer. It's the kind of understanding that I think we want.

Commissioner, I've had a look at the website and I reviewed a few documents in an effort to understand the act better. Just for some certainty, could you provide examples of situations, or examples that do not require registration? That is, are there exceptions that exist?

I was wondering if you could give me examples and explain what they might be to this committee.

**Mrs. Karen Shepherd:** The act itself provides for a number of exemptions in terms of any oral or written submissions made to the committee, or the Senate—so appearances such as this—and any oral—

**Mr. Greg Rickford:** You're talking about paragraph 4(2)(c)?

**Mrs. Karen Shepherd:** It's (a), (b), and (c).

**Mr. Greg Rickford:** Okay.

**Mrs. Karen Shepherd:** It's any oral or written communication made by an individual or person or organization with respect to the enforcement or interpretation of the act. So, for example, someone who's even calling my office to get clarifications on the Lobbying Act or some of its interpretations is communicating with a public office holder, but they're doing so with something that's actually existing. Somebody who might call and is communicating with me to try to get me to change maybe one of my interpretation bulletins would then fall into the category of lobbying. That's the difference.

It's one of those things where...we've talked about the federal grants. While the activity is one that's registerable, when you actually get the federal grant, there may be things in there that require the individual to actually communicate with a public officer holder. So in order to be in compliance, they would have to communicate. At that point, it wouldn't be a registerable activity.

•(1205)

**Mr. Greg Rickford:** So it's confined to a communication or restricted to a simple request for information then.

**Mrs. Karen Shepherd:** That's (c).

**The Chair:** Thank you. We have to move on.

Madame Bourgeois, *s'il vous plaît*.

[Translation]

**Ms. Diane Bourgeois (Terrebonne—Blainville, BQ):** Thank you, Mr. Chair.

Madam Commissioner, gentlemen, good afternoon. It is a pleasure to have you here. Lobbying is an issue that people are not necessarily familiar with and that I was not that familiar with. We hear about it, of course, but I really appreciated your explanation, especially the clarification you gave in response to my colleague's question about what it is exactly.

Furthermore, it is clear that your staff is not sitting around twiddling its thumbs. They seem to be hard at work, because I can see from your report that you verified a huge number of people and reports, and carried out many reviews and even investigations. So, yes, I do think your people are hard at work, and that is good to know. However, there is something I really want to ask, but I do not want to offend you.

It is no secret that there are lobbyists in this Parliament who are duly registered and recognized but who make introductions for other lobbyists—lobbyists who are not duly registered or recognized and who are then able to meet with members of the Prime Minister's Office, if not the Prime Minister, himself. That is a weakness in the Lobbying Act. I want to know if you have heard about this situation and whether you plan to do anything to bring the situation under control, in accordance with the act. That is my first question.

**Mrs. Karen Shepherd:** Generally speaking, I do not have an example of a case where a lobbyist arranged a meeting with someone, but the act is clear: it is incumbent upon the lobbyist to comply with the act. If you know of any examples, please tell me, because I take allegations....

**Ms. Diane Bourgeois:** Ms. Shepherd, when I say it is no secret, I mean it is known within Parliament. That is something you hear within the House walls. Without necessarily naming a specific

example, I think this is something you may want to look into because, in your report, you say you are going to continue “to invest significant resources to maintain and improve the Registry of Lobbyists.” This is a well-known occurrence.

On another note, your report on plans and priorities refers to bringing together the strategic planning and corporate functions under the responsibility of the new deputy commissioner. But you do not mention it in your report. You said that Mr. Leblanc—and I want to congratulate him on his appointment—will carry out administrative functions. But administrative functions and strategic planning are two things. So what will Mr. Leblanc work on exactly?

**Mr. René Leblanc (Deputy Commissioner, Office of the Commissioner of Lobbying):** The organization used to have two directors. One was mainly responsible for the registry, and the other for investigations. These individuals also had to carry out all corporate functions, human resources management, financial management and so forth, as well as a good chunk of awareness work in terms of the public and lobbyists. All of that is now my responsibility.

•(1210)

**Ms. Diane Bourgeois:** Very well. As for planning....

**Mr. René Leblanc:** That includes strategic planning.

**Ms. Diane Bourgeois:** You have not done the strategic planning yet. I assume you have not started?

**Mr. René Leblanc:** Absolutely.

**Ms. Diane Bourgeois:** You have started?

**Mr. René Leblanc:** Meaning in order to prepare the report on plans and priorities....

**Ms. Diane Bourgeois:** Plans and priorities, that is one.

[English]

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** I'd like to start with legal definitions. I've just been looking through the definitions section of the Conflict of Interest Act and the interpretation section of the Lobbying Act, and the analysts have been sharing with me some information on the Parliament of Canada Act. It seems to me that there are three different definitions of a public office holder, and that one definition is not consistent with another. Part of that is because we're dealing with statutes that have been developed over decades, sometimes in isolation from one another.

Just to summarize, in the Conflict of Interest Act definitions section, parliamentary secretary is included along with minister and minister of state.

In subsection 2(1) of the Lobbying Act, a designated public officer does not include a parliamentary secretary, at least as I see it here.

I understand—and please correct me if I'm wrong on this point—the Parliament of Canada Act includes not only ministers and parliamentary secretaries, but also members of Parliament.

Is that your understanding?

**Mrs. Karen Shepherd:** I don't....

**The Chair:** It's just order in council appointments.

**Mr. Pierre Poilievre:** They're just order in council...so that would include parliamentary secretaries, but not members of Parliament?

**The Chair:** That's right.

**Mr. Pierre Poilievre:** So is it your view that we would be better served if there were a single, unified definition of a public office holder?

**Mrs. Karen Shepherd:** It would probably make things easier in some respects.

In terms of the different legislation, when I look at the office of Mary Dawson, the Conflict of Interest and Ethics Commissioner, there is some overlap between our two definitions, but our acts are targeted at sort of different individuals, in terms of communicating. I think with lobbyists who are communicating with the government, it's the broader group that they're actually meeting with.

**Mr. Pierre Poilievre:** I understand that's a policy question, but—

**Mr. Bruce Bergen:** The definition of public office holder in the Lobbying Act is very broad. It includes members of the armed forces and members of the RCMP. So it's very much anyone who receives a pay cheque from Her Majesty—or maybe not entirely, but it's very broad.

I think the commissioner has said this act is targeted at dealing with the registration and the activities of lobbyists. So the public office holder definition is not, strictly speaking, to capture the public office holders per se. Rather it deals with who it is that lobbyists must register having had communication activity with.

**Mr. Pierre Poilievre:** Right, so there is a different approach. I guess that leaves the committee with some things to think about for the future.

I'd like to talk about the process that follows an allegation of an infraction of the Lobbying Act. Let's start at the very beginning.

If someone comes to you with a complaint, an allegation of a Lobbying Act infraction, what do you do? What's the first thing you do?

**Mrs. Karen Shepherd:** The first thing I would do is to decide whether to open what we call the administrative review, which is a fact-finding exercise to gather information. It conducts searches of publicly available sources and does interviews. I am then presented with a comprehensive report that allows me to make decisions, such as whether I have reasonable grounds on which to believe that a breach of the act has occurred and to refer the matter to a peace officer, to the Royal Canadian Mounted Police, or whether I have enough information to determine that an investigation is necessary to ensure compliance with either the act or the code.

**Mr. Pierre Poilievre:** What would differentiate between an instance in which you would carry out an investigation under the code or act and one in which you would refer it to a peace officer, through the RCMP?

• (1215)

**Mrs. Karen Shepherd:** There were three recent cases I actually referred to the RCMP. After opening an investigation, I determined that I had reasonable grounds on which to say there was an offence under the act, so I referred it to the Royal Canadian Mounted Police.

Something I should point out is that once I refer something to the Royal Canadian Mounted Police, I must suspend further looking at that until it is dealt with by that body.

**Mr. Pierre Poilievre:** Again, the question is, what is your criteria for investigating something yourself versus giving it to the RCMP? Is there a protocol you follow?

**Mrs. Karen Shepherd:** There is a protocol. If I have reason to believe that an investigation is necessary to ensure compliance with the act or the code, for example, because the activities that have occurred, that have been brought to my attention, are sufficient. But if during that investigation I actually determine that there are reasonable grounds, then I will refer it to the peace officer right away and I must stop. Because there are no penalties under the act in terms of fines or imprisonment, a code of conduct investigation is something I would do, and I would not refer that to a peace officer.

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

Mr. Siksay, please, and then Mr. Easter.

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

Commissioner, I noticed in your statement today, and in your RPP, that you were talking about doing a review or update of the code of conduct, or possibly doing that. Is that in your work plan?

**Mrs. Karen Shepherd:** With the act coming up for review, I've been looking at it. I recently issued the guidance on rule 8. I think for this year it's more looking at the actual existing code and seeing whether we should be providing guidance on some of the other rules. With the act coming up for review, that could be one of the things that actually gets touched during the review. Bruce could elaborate on this further, but right now, if I took the Conflict of Interest Act, for example, the code is actually in the act, so it would not be prudent at this point, probably, to actually launch something in terms of reviewing the code. The act requires that if I were to do it, it would be a major consultation, and I think these same groups will be applying to Parliament, in terms of what there is on the review. But it could be a decision as to whether I actually have the ability to do something with the code, so I will probably wait for a full review at this point.

**Mr. Bill Siksay:** Okay.

When the code was originally developed, I think it was supposed to be run by a parliamentary committee. Which committee looked at the code when you originally produced it?

**Mrs. Karen Shepherd:** I must admit that was before my time, but if you're interested, I can get back to the committee on that one.

Do you know?

**Mr. Bruce Bergen:** I would hazard a guess that it was the industry committee at the time. Because it was the former ethics counsellor who developed the code, and he operated within the Department of Industry at the time, I'm quite certain that's what it was.

**Mr. Bill Siksay:** How old is the existing code now?

**Mr. Bruce Bergen:** It came into force in 1997.

**Mr. Bill Siksay:** And the interpretation that you issued in November, Commissioner, is that the first interpretation of the code, or are there others?

**Mrs. Karen Shepherd:** That's the first, in terms of additional guidance to the code.

**Mr. Bruce Bergen:** By you, by the Commissioner.

**Mrs. Karen Shepherd:** By me, yes.

**Mr. Bill Siksay:** Is there other existing guidance on the code?

**Mr. Bruce Bergen:** There had been previous guidance on that ruling issued by the ethics counsellor earlier, and there is some guidance about Chinese walls, or lobbyists, as well.

**Mr. Bill Siksay:** Okay.

In terms of the interpretation that you issued in November, one of the issues it covered was political activity. I know there was some criticism from some lobbyists at the time that it wasn't well defined what "political activity" meant. I wonder if you have any further thoughts on the interpretation or on that particular phrase, "political activity", and how it's defined.

**Mrs. Karen Shepherd:** Well, the guidance was looking at conflict of interest in terms of placing a public office holder in a conflict of interest. Rule 8 hasn't changed. The guidance is just that, it's guidance, and it's consistent with what the court instructed I must look at, in terms of it no longer being simply a "real" conflict of interest, but actually a reasonable apprehension of it.

Political activity may vary in terms of the different activities. I mean, the guidance was set up to provide lobbyists with some sort of criteria they can use to assess whether the activities they want to do on the political side may affect...and what they wish to do on the lobbying side. In terms of being prescriptive, that wasn't within the mandate, I felt, because what may be acceptable in one circumstance may not be in another.

● (1220)

**Mr. Bill Siksay:** Commissioner, is it a failing of the act that it doesn't talk about limitations on the expense of a lobbying campaign that's undertaken, or is that something we need to address when reviewing the act?

**Mrs. Karen Shepherd:** It's one of those questions that has come up each time over the years. There are two ways I've heard the question phrased: how much is a lobbyist being paid; and how much is the lobbyist actually spending on the lobbying activity. It's probably something that will come up again, and it's worthy of debate.

In talking to others who have it, the one thing that might happen—and I'm not sure of the answer to this—is whether double accounting may actually occur. If you have a corporation or an organization that might actually be filed as a lobbyist and they have actually hired a consultant, depending on how they're reporting it, there are a few factors that will need to be considered when that issue comes up.

**Mr. Bill Siksay:** Right now, isn't there a requirement of financial disclosure?

**Mrs. Karen Shepherd:** There is no requirement, no.

**Mr. Bill Siksay:** Okay.

I have another quick question. I thought it was curious that in your RPP you were talking about reporting areas, and you said that you continue to educate lobbyists and designated public office holders regularly on how to reduce errors, including overreporting. It's

interesting that overreporting is an issue. Can you just say something about what that looks like and why it's an issue?

**Mrs. Karen Shepherd:** With Parliament it was pretty specific as to the types of communications they wanted to capture in terms of it being a designated public office holder, and through the regulations it further defined the oral, and arranged, and who was initiating it.

What we've found in doing the reporting is that 80% of this is overreporting. And that's the question. There's a significant amount that is going to members of Parliament and senators who are not designated public office holders. When the act comes up for review, the debate should be whether the communications should now be captured through designated public office holders.

**The Chair:** Thank you. That's pretty good.

Mr. Easter.

**Hon. Wayne Easter:** Thanks, Mr. Chair.

Earlier, you indicated that there were some cases—and I thought four—that were sent to the RCMP. Mr. Poilievre asked a question along these lines and you said that three were sent to the RCMP. How many was it? I'm not sure I heard you.

**Mrs. Karen Shepherd:** We were talking about a question of process and where I am, actually, after conducting one of the administrative reviews. I felt I had reasonable grounds to refer the matter directly to the RCMP, which is what I did. I didn't wait to open an investigation.

So there actually were four referrals to the RCMP.

**Hon. Wayne Easter:** There are four files.

**Mrs. Karen Shepherd:** There are four files that I have referred.

**Hon. Wayne Easter:** And some you have started to investigate and then sent them, and one you just sent.

**Mrs. Karen Shepherd:** Yes.

**Hon. Wayne Easter:** Okay, thanks. That clears up that matter.

You monitored the media. From your monitoring of the media, how do you determine a suspicion that somebody is doing lobbying or whatever? There has been lots of media around this issue lately, but what triggers a request by you, from monitoring the media, that somebody may be doing lobbying that's not registered?

**Mrs. Karen Shepherd:** Well, it's done on a daily basis in terms of monitoring the media and other public information. You'll often see in articles that person X is lobbying either on a particular issue or.... So we will look at that in terms of determining whether, upon further analysis, the individual.... And as I indicated, 90% of them are actually registered. So that's the process we use.

● (1225)

**Hon. Wayne Easter:** Let me use an example. The parliamentary secretary seems to be out of the loop and I really think he should be in. Let me put it this way. Say an individual who is not a lobbyist, from ABC Company, comes to me with a wonderful project. If I walk across the aisle and talk to the Minister of State for Infrastructure, but the individual is not registered as a lobbyist, is that lobbying or is it not?

**Mrs. Karen Shepherd:** Lobbying....

**Hon. Wayne Easter:** All of us are members of Parliament.

**Mrs. Karen Shepherd:** Yes.

**Hon. Wayne Easter:** When I go home this weekend I guarantee you a couple of people will be in my office saying they think they fit the criteria for the economic action plan—which is more propaganda than action, but that's another issue. In any event, they talk to me about this project. Are they lobbying?

So I talk to the minister or write a letter to the minister. Is the parliamentary secretary considered in the same light as I am? I'm sure people who go to a parliamentary secretary think they're getting greater access to the minister than if they go to a backbench MP or an opposition MP. But they're treated in the same light. Is that what you're telling me?

**Mrs. Karen Shepherd:** As I said earlier, in looking at the definition of a public office holder, parliamentary secretaries are not designated public office holders.

**Hon. Wayne Easter:** I don't want to interrupt you, Mrs. Shepherd, but I am; my apologies. If that same individual talked to a project officer at ACOA or Western Economic Diversification, they would have to be registered as a lobbyist. It would have to be reported. There's some confusion here.

**Mr. Bruce Bergen:** There are a couple of different scenarios going on here. If your constituent is working on a project in their back shed and thinks it might have great application and might be just the sort of project that a government grant might assist with, they are not being paid to lobby. Their speaking with the member of Parliament would not be a registerable lobbying activity.

By the same token, if a person is simply seeking information on a grant program, to know how best to apply for the grant, what sort of material should be provided, and whether they should go to the bank first, that might very well fall into the exemption Mr. Rickford was asking about under paragraph 4(2)(c), requests for information. Simple requests for information are exempted from the lobbying requirements. That's another element.

It can be a complicated question about what is and isn't registerable activity.

By the same token, what you suggested about walking across the hall and speaking to the parliamentary secretary...members of Parliament speaking to one another is not a registerable lobbying activity. So there are complications.

**The Chair:** Thank you.

Mr. Poilievre.

**Mr. Pierre Poilievre:** On the same point, I had a question about this from a reporter when I was coming out of a caucus meeting last week, so I want it clarified specifically. The Lobbying Act summary of requirements published in June 2008 defines lobbying activities as those that when carried out for compensation are considered to be lobbying. Is that the line?

•(1230)

**Mrs. Karen Shepherd:** The individual must be paid, yes.

**Mr. Pierre Poilievre:** Is that the frontier between a civic engagement by an ordinary citizen and a registerable lobbying activity? Is that the line?

**Mrs. Karen Shepherd:** That is one of the criteria. The individual must be paid in order for it to be a registerable activity.

**Mr. Pierre Poilievre:** Okay.

**The Chair:** In cash or in kind...?

**Mr. Bruce Bergen:** The act doesn't say. The requirements are set out in the act. It's an interpretative guide designed to be of assistance to somebody who looks on the website, or to guide them in how they apply the act. It's Parliament that speaks in the act and tells us...

**Mr. Pierre Poilievre:** I just want to add—I don't have a lot of time—would you say this is the line between civic engagement and registerable lobbying activities?

**Mrs. Karen Shepherd:** Yes.

**Mr. Pierre Poilievre:** Mr. Bergen, what is the protocol that determines whether or not your office turns an allegation over to the RCMP or investigates it internally?

**Mr. Bruce Bergen:** Well, I think the office is driven by what's in the act—

**Mr. Pierre Poilievre:** Okay, so what's in the act?

**Mr. Bruce Bergen:** The act clearly states that:

If, during an investigation...the Commissioner believes on reasonable grounds that a person has committed an offence under this or any other Act of Parliament... the Commissioner shall advise a peace officer having jurisdiction to investigate

**Mr. Pierre Poilievre:** All right, so it's not either/or. The turning over of information to the RCMP would follow an internal investigation to determine whether or not there was reasonable suspicion of a contravention.

**Mr. Bruce Bergen:** It would follow a determination by the commissioner that she has reasonable grounds to believe that an offence has been committed.

**Mr. Pierre Poilievre:** Okay, so as soon as you have reasonable grounds of a contravention of that act or any other—

**Mrs. Karen Shepherd:** And that could occur, as I was indicating to the other member, after an administrative review, or it might occur during an investigation.

**Mr. Pierre Poilievre:** All right, so if you get a credible complaint, you carry out an investigation. If you find reasonable grounds, you turn it over to the RCMP.

**Mrs. Karen Shepherd:** My first step is the administrative review.

**Mr. Pierre Poilievre:** So an administrative review—

**Mrs. Karen Shepherd:** And that may lead to—

**Mr. Pierre Poilievre:** —which may lead to an investigation.

**Mrs. Karen Shepherd:** Or a referral to—

**Mr. Pierre Poilievre:** —to the RCMP, if you have reasonable grounds.

**Mrs. Karen Shepherd:** And in some cases I may even determine before initiating an investigation that I have reasonable grounds. Once I determine that I do have reasonable grounds, I must send it to the RCMP.

**Mr. Pierre Poilievre:** Okay, great.

Thanks.

**The Chair:** Thank you.

We have three more, but I think this is extremely important. The committee has punched around trying to get an answer on this.

There was recently a decision by the Federal Court of Appeal in *Democracy Watch v. Barry Campbell and Jim Peterson*, concerning rule 8 under the lobbyists' code. The thrust of the decision was that you don't have to prove there was influence; all you have to do is demonstrate there was an attempt. Right?

•(1235)

**Mrs. Karen Shepherd:** Yes.

**The Chair:** Keeping that in mind, Mr. Bergen said you are not trying to deal with the public office holders but are just monitoring the lobbyists—and the rules are there for that.

The question that has been asked by members, to which I think we would like an answer, concerns the following—if I could refer to what the Speaker says in the House all the time—that you cannot do indirectly what you can't do directly. We can't quote a member's name directly to him, which means that you also cannot read from an article using their name. It's matter of being direct or indirect. So here's the question.

Do we have a loophole in the system that would allow someone, whether paid or unpaid, to go to a person who has influence over a minister but not have an obligation to report? It's bypassing the obligation to register because it's not a direct communication. If I'm going to someone who's not a designated public office holder, is there this loophole where they can in fact go through someone else? For example, if Mr. XYZ, who has a company and wants to get a grant for a client who has a project, goes to the assistant of a minister, whom he knows personally, and that assistant then goes to the minister and says, "Yes, I can take care of it"—and that happens—that seems to me to fall through the crack. And if the employee in the minister's office knows this person and knows they're not a registered lobbyist, there's no obligation on them to report that someone lobbied them, directly or indirectly, on a matter.

Do you understand what the question is?

**Mrs. Karen Shepherd:** I think, Mr. Chair, there are a couple of points there.

One, the act requires that the individual be paid, so a volunteer or someone who is not paid, as Mr. Bergen indicated, but is working in their back shed.... One of the principles of the act is free and open access—

**The Chair:** Assume they're paid.

**Mrs. Karen Shepherd:** If they're paid, that individual is—

**The Chair:** Say I have a client and I'm representing that client to the minister's staff.

**Mrs. Karen Shepherd:** If the individual is a public officer holder, that activity, combined with other things, is a registerable activity. For in-house organizations and corporations, they would need to determine whether they are also hitting a significant amount of time.

The difference, as I've been trying to say, is that the monthly reporting is between the designated public officer holder and the lobbyist. There is still a requirement, as I've been explaining, if you are communicating in terms of a registerable activity, for that individual to file an initial registration. So there would still be a

registration in the system if all of the other criteria were met, that here is person X and here are the different things they are lobbying on.

**The Chair:** You've missed one element, and that is that the person they talk to is not the person you want to directly lobby. It's some intermediary who's out of the system but has influence over the minister, such as an assistant in the minister's office.

**Mrs. Karen Shepherd:** Ministers and ministers of state are public office holders. Also, under the act, ministers and ministers of state and their staff are designated public office holders as well. So communication with a political advisor and the minister's staff would be a registerable....

**The Chair:** You're satisfied that there is not a loophole and that someone can't circumvent it by going through other intermediaries. Eventually it has to be a public office holder, a designated public holder, or their staff?

**Mr. Bruce Bergen:** People are very imaginative.

I think the one thing the commissioner mentioned was that any staff in a minister's office or any member of Parliament's office is a public office holder under the Lobbying Act. A communication with them would be a registerable activity.

It's only the exempt staff, who are appointed under subsection 128 (1) of the PSEA, who, as the act states, are designated public office holders. So in any minister's office or minister of state's office, there will be a number of people who are also designated public office holders.

**The Chair:** Okay. Thank you.

Finally, we have Mr. Easter, Madame Bourgeois, and Mr. Siksay.

Mr. Easter.

**Hon. Wayne Easter:** Thank you, Mr. Chair.

I'm going to come back to this media monitoring. Maybe I have to be more direct. If there is a statement in the press along these lines—some individual was reported to have opened up the Prime Minister's Office to us or said that he or she could get the money—would that be something you would investigate if you saw the individual's name, knowing that the person wasn't a registered lobbyist?

**Mrs. Karen Shepherd:** Well, as I said, in terms of media monitoring, we're looking to see whether there are references to lobbying, and we do further analysis.

In terms of my administrative reviews, we have 47 active files right now, and I think roughly 25% to 26% we've initiated if I've felt that there was a reason to look into something.

**Hon. Wayne Easter:** Okay.

What are the penalties for lobbyists not registering when they lobby a designated public office holder?

•(1240)

**Mrs. Karen Shepherd:** If a lobbyist is unregistered, under the act it would be referred to the Royal Canadian Mounted Police for investigation. If they lay charges because a person is found to be in breach of the act, the fines are listed in the act. I think it's \$50 to a \$100 for a summary conviction and up to six months in jail.

**Hon. Wayne Easter:** The last question, Mr. Chair, comes back to this confusion—I think it's confusion—about parliamentary secretaries not being placed properly within the act. There is a major role for parliamentary secretaries, and ministers put a lot of confidence in them. They have a lot of access to people within the department. Yet if they're lobbied, they do not have to report, as a low-level bureaucrat in a regional development agency has to. It doesn't have to be reported.

Somebody doing projects at ACOA in, say, the Charlottetown office on Prince Edward Island, would have to report it, but not a parliamentary secretary who has daily access to the minister and the deputy and the ADM. Is that not correct, or am I lost here, Bruce?

Pierre thinks I am.

**Mr. Bruce Bergen:** I don't know about the exact organizational structure of ACOA, but in that office in Charlottetown, I'm not sure there's an assistant deputy minister in charge.

**Hon. Wayne Easter:** It's a vice-president within the region.

**Mr. Bruce Bergen:** In all likelihood, perhaps that isn't an ADM. So that person would be a designated public office holder with the attendant responsibility to file a monthly communication report—but that person alone; you're correct. Other people in an office like that, or in any government office, would not be designated public office holders. It doesn't mean there wouldn't be a need to register for lobbying activities, if you're communicating with them, but there would not be that need to file the monthly communication report.

**The Chair:** Madame Bourgeois, *s'il vous plaît*.

[Translation]

**Ms. Diane Bourgeois:** Thank you, Mr. Chair.

I have two questions. The first one is for Ms. Shepherd, and the second for Mr. Leblanc.

Ms. Shepherd, on the last page of your opening remarks, you say, and I quote: "This year, my office will implement a more rigorous case management system to make it easier for the investigation team to track progress on a growing caseload."

There are two key elements in that sentence. When you talk about implementing "a more rigorous case management system", does that mean that your current case management system needs improvement to fix flaws in the system?

When you say "a growing caseload", does that mean you have a tremendous amount of cases? You have done a great deal of verification, 300 people and 400 reports. I told you from the outset that there was a great deal of work. Is there that much verification and case management? Are they constantly on the rise?

**Mrs. Karen Shepherd:** In response to your first question, my team and I are very proud to have a director of investigations who takes his responsibilities seriously. He has been acting in that

position since the act came into force in 2008. He set up a case management system that allows us to identify files by type, see how many are the subject of administrative reviews or investigations and allocate staff appropriately.

We want a more rigorous case management system simply because we have to deal with applications for exemption under the new legislation. We receive a number of complaints. Furthermore, there are no weaknesses in our system because it is working and because all of our files are moving forward. The world has become increasingly electronic. And we have put an electronic system in place so that our staff knows which stage in the game a file is at. With paper, you have to locate the document, but with an electronic system, everything is right there, and it is easier to see a file's status. This makes it easier to see where things stand.

We worked on the procedure for two years. One of my investigators agreed to serve as acting director. We did our work with four investigators because we did not have all five doing the job. I would say we have more experience with the legislation now, we know more. A number of factors come into play, but the idea is to reduce the number of cases.

•(1245)

**Ms. Diane Bourgeois:** Thank you very much.

My next question is for Mr. Leblanc.

We touched on strategic planning earlier, but we did not have time to delve deeper. You said that strategic planning had been undertaken because you had a report on plans and priorities. I think that is what you meant. If so, I agree with you. However, is that the new strategic planning that the commissioner referred to in her opening remarks? She seemed to say that many measures would be adopted in the months and years ahead. I assume she was referring to the new strategic planning that you are going to work with.

In addition, could you submit that here, to the committee?

**Mr. René Leblanc:** The strategic planning....

[English]

**The Chair:** My stop signal is for the questioner, to allow you to answer. Their time is up, but your time is not up.

[Translation]

**Mr. René Leblanc:** Thank you.

First of all, strategic planning is an annual exercise. It is undertaken year-round, not just at a specific point in time. Of course, at the beginning of the year or in planning for it, we arrange a certain number of meetings in order to set priorities and allocate resources appropriately.



The report on plans and priorities is, to a certain extent, the outcome of this strategic planning exercise. Strategic planning goes beyond that, of course. You are absolutely right. It will soon give rise to what we call an integrated business plan. It is more of an operational plan that allows us to determine our agenda and allocate resources in more detail.

If you are asking me to submit a business plan today, I cannot because we do not have one right now. But we are working on it.

[*English*]

**The Chair:** *Merci.*

Finally, we have Mr. Siksay.

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

Commissioner, has anyone been penalized, fined, or prohibited from lobbying since the Lobbying Act came into force?

**Mrs. Karen Shepherd:** There have been no fines or jail terms. We had one case that was referred from the Royal Canadian Mounted Police to the prosecutor's office. That's one of the things: we have our test, but in terms of being successful in court, they also look at the intent and the success of prosecution. In that one file, it was an alternate dispute mechanism that the prosecutor's office went with.

• (1250)

**Mr. Bill Siksay:** Do you need some kind of administrative penalty to make this act effective, or is the current penalty system appropriate, in your experience?

**Mrs. Karen Shepherd:** I have to be honest; it's one of the things.... I've heard this discussion before. When the act comes up for debate, it would probably be worth exploring. Right now, an infraction of the act is a criminal infraction, or its referral to the five.... There isn't anything about someone being late in filing, or on some other issues, at this point.

**Mr. Bill Siksay:** Is there any way by which, if someone were penalized under the Lobbying Act, that fact somehow wouldn't become public, or that information would be withheld and their violation of the act would somehow remain secret? Do you have any options that way, or would it always be public?

**Mrs. Karen Shepherd:** If there were criminal charges laid, I believe that information would become public through the courts, yes.

**Mr. Bill Siksay:** In terms of post-employment requirements, should MPs and senators and their staff be brought under the Lobbying Act in some way, in terms of their employment as a lobbyist after their term as an MP or senator is up?

**Mrs. Karen Shepherd:** My understanding of the Lobbying Act is that the designated public office holder was brought in to capture the communications of these decision-makers with lobbyists. Also, the prohibition faced the issue of the revolving door and whether the individuals could not use any advantages or contacts they had made in performing that particular function as a designated public office holder. The question in terms of debate in Parliament is whether the prohibition should be expanded from what it was introduced for.

**Mr. Bill Siksay:** Do you think it should be extended to party leaders, committee chairs, caucus chairs, folks like that—people who have specific responsibilities within Parliament?

**Mrs. Karen Shepherd:** This is a specific view of.... I respect the debates that have gone on in Parliament, and I look forward to.... As I said, I'm gathering information on the exemptions and will be pleased to participate in the debate when it comes up.

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

Thank you, Chair.

**The Chair:** Thank you.

Colleagues, I believe we've now completed our review of the main estimates for the Commissioner of Lobbying.

If there's no further discussion or concerns, I would like to put the question. Shall vote 40, under Treasury Board, less the amount voted in interim supply, carry?

TREASURY BOARD

Office of the Commissioner of Lobbying

Vote 40—Program expenditures.....\$4,203,000

(Vote 40 agreed to)

**The Chair:** Shall I report the estimates to the House?

**Some hon. members:** Agreed.

**The Chair:** Finally. I'm again going to make another commitment to the commissioner.

Last year I raised the issue that the Standing Orders of the House did not incorporate the new officer of Parliament, being the Commissioner of Lobbying of Canada. Indeed, section 108 of the Standing Orders also refers to the Lobbyists Registration Act, which was changed to the Lobbying Act, so we have some updates to do.

For a next meeting or a future meeting I would hope that each of the members and parties would consider a motion that the committee recommend that the House update the Standing Orders concerning the mandate of committees to incorporate the Office of the Commissioner of Lobbying of Canada and to replace references to the Lobbyists Registration Act with the Lobbying Act.

I'd like to deal with that, so could members please consult with your parties on that?

Maybe we can deliver for you, Commissioner, and get you into the Standing Orders.

Madame Thi Lac.

[*Translation*]

**Mrs. Ève-Mary Thāi Thi Lac:** Mr. Chair, we are not against the principle, but you know that Standing Order 108 sets out the roles. I think it is the responsibility of the Standing Committee on Procedure and House Affairs to review standing orders.

I think our committee's intentions are good. So, as committee chair, I suggest you write to the Standing Committee on Procedure and House Affairs to recommend that it study this issue. I do not think it is our role, as committee members, to propose changes to the standing orders. There is a parliamentary committee with a mandate to do just that, the Standing Committee on Procedure and House Affairs, and I would make the recommendation to them. Further to the standing order, that is their mandate and their role. You know where I stand, but I am not against the principle.

●(1255)

[*English*]

**The Chair:** I think either way probably would work. We'll take this up at the next meeting. Okay?

Commissioner, Mr. Leblanc, Mr. Bergen, thank you kindly for your presentation to the committee and for receiving the questions. I'm sure there will be many other issues to follow up on as a consequence of our meeting. It's been a productive meeting, and I thank you kindly for your attendance.

The meeting is adjourned.

---







**MAIL  POSTE**

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

**Lettermail**

**Poste-lettre**

**1782711  
Ottawa**

*If undelivered, return COVER ONLY to:*

Publishing and Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,*

*retourner cette COUVERTURE SEULEMENT à :*  
Les Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5

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

### **SPEAKER'S PERMISSION**

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and  
Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5  
Telephone: 613-941-5995 or 1-800-635-7943  
Fax: 613-954-5779 or 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the  
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

### **PERMISSION DU PRÉSIDENT**

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les  
Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5  
Téléphone : 613-941-5995 ou 1-800-635-7943  
Télécopieur : 613-954-5779 ou 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à  
l'adresse suivante : <http://www.parl.gc.ca>