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Chair

Ms. Jean Crowder

Standing Committee on Access to Information, Privacy and Ethics

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•(0845)

[English]

The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): Good morning, and welcome to the Standing Committee on Access to Information, Privacy and Ethics.

I want to welcome the Commissioner of Lobbying and her staff. I'll leave it up to the commissioner to introduce her staff.

We'll have a presentation from the commissioner, and as usual we will go to our round of questions.

Ms. Shepherd, I'll turn it over to you.

[Translation]

Mrs. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Good morning, Madam Chair and members of the committee.

I am pleased to be here today to discuss the legislative review of the Lobbying Act. I am accompanied by Mr. René Leblanc, Deputy Commissioner, and Mr. Bruce Bergen, Senior Counsel.

[English]

Last March I submitted to the committee my report on the experience of administering the act over the last five years. Today I am submitting a revised report. It is essentially the same report, containing my recommendations for improving the Lobbying Act. This report also contains information about three administrative monetary systems currently in existence.

In my view, several aspects of the Lobbying Act are working to increase transparency in government. Approximately 5,000 lobbyists are registered to lobby federal public office holders, and every month hundreds of communications with designated public office holders are disclosed by lobbyists. However, based on my experience, key amendments to the act would capture a greater share of lobbying activities, thus increasing transparency and enabling me to enforce it more decisively.

[Translation]

The Registry of Lobbyists provides a wealth of information on who is engaged in the lobbying activities for payment but does not capture the lobbying activities of organizations and corporations who do not meet the “significant part of duties” threshold. That threshold is difficult to calculate and even more difficult to enforce. That is why I am recommending that the “significant part of duties” provisions be removed from the act. In doing so, I would also recommend that Parliament give consideration as to whom the legislation should capture and whether a limited set of exemptions

might be necessary. I would be pleased to explore this issue with Parliament during its deliberations.

[English]

The senior officer in a corporation or organization is currently responsible for reporting on its lobbying activities. I believe this accountability is important and should not be changed. That said, I believe it would be more transparent if the names of those actually engaging in lobbying activities at meetings with designated public office holders were also listed in the monthly communication report. Currently, only the senior officer is listed, even though he or she may not have attended the meeting.

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

[Translation]

The Lobbying Act provides me with a mandate to develop and implement educational programs to foster public awareness of the act. Communicating the rationale and requirements of the act and the Lobbyists' Code of Conduct leads to greater compliance. I recommend that this education mandate remain explicit in the legislation.

[English]

In terms of my ability to enforce the Lobbying Act, the only measures available to me are referrals to the police for a breach of the act and reports to Parliament for a breach of the code. Previously before this committee, I suggested that these enforcement measures may not be appropriate for the different levels of infractions that I encounter.

When I refer a file to the RCMP, the act requires that I suspend looking into the matter, pending the outcome of their investigation. As I can only continue with my own investigation once a decision has been taken by the RCMP, this affects my ability to render decisions and to table reports to Parliament in a timely manner.

● (0850)

[Translation]

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

[English]

For these and other lesser transgressions, I have decided to educate and monitor the lobbyists. I do not see this as letting them off the hook. Employing such alternative measures encourages others to come forward. In addition, as I indicated, individuals subject to education and/or correction continue to be monitored to ensure they remain in compliance.

For that reason, I am recommending an administrative monetary penalty mechanism be adopted. This would provide a continuum between my current practice of relying on educational measures and the more severe and lengthy processes of referrals to a peace officer or reports to Parliament.

[Translation]

Despite the available penalties under the current act, no one has ever been charged, or convicted, of an offence under the Lobbying Act. I am of the view that, unless there are amendments to include a range of enforcement measures, probabilities of consequences other than reports to Parliament remain low.

[English]

As I have mentioned before, the Lobbying Act prescribes that investigations must be conducted in private. This should not be taken as an indication that I am not enforcing the act; in fact, the opposite is true. I am enforcing the act to the full extent provided by the current provisions of the legislation.

Since I became commissioner I have sent six files to the RCMP and I have tabled eight reports in Parliament for breaches of the code, including the one I tabled yesterday.

I continue to believe that conducting investigations in private assures their integrity and protects the reputation of those who may have been wrongly accused. This is not insignificant; however, I have started confirming to parliamentary committees that certain administrative reviews and investigations have been opened when the matter was clearly in the public domain.

As a result, I think it is important that the act be amended to include provisions that would offer the commissioner or any person acting on my behalf some degree of immunity against criminal or civil proceedings, libel, or slander.

[Translation]

I would now like to take this opportunity to address some of the criticisms of the administration of the act and the Lobbyists' Code of Conduct.

[English]

At the federal level, a lobbyists' code of conduct has been in place since 1997. Its purpose is to ensure that lobbying activities are conducted at the highest ethical level. Rule 8 of the code has received much attention. Rule 8 prohibits lobbyists from placing public office holders in a conflict of interest.

Political activities are only one way that lobbyists risk placing a public office holder in a real or potential conflict of interest. Because political activities have been the focus, I would like to address this here. Both my guidance and two of my reports to Parliament clearly indicate that helping a person to get elected advances his or her private interest. Political activities by lobbyists in support of persons who seek public office and become public office holders may place those public office holders in a position of conflict of interest when lobby activities also take place. This can result in a breach of rule 8 of the code.

My interpretation reflects the judgment of the Federal Court of Appeal, which was quite conclusive in overturning the old interpretation of rule 8 and in offering clear direction regarding how it should be interpreted.

Contrary to some reports in the media, I do not prohibit lobbyists from engaging in political activities. I believe that lobbyists are professionals and that I have provided them with sufficient information to allow them to make decisions. This enables them to exercise caution when engaging in political activities by taking into account their lobbying activities. In fact, some lobbyists have indicated that the guidance and clarifications were sufficient and they are arranging their affairs accordingly.

● (0855)

[Translation]

The issue of my decision not to provide advance rulings has also been raised in terms of which political activities lobbyists may perform without risk. First, I would like to reiterate that I do not regulate political activities. From my perspective, the issue only arises when political activities intersect with lobbying activities.

[English]

Second, I am administering and enforcing the act that Parliament enacted. Under the Lobbying Act, my decisions are judicially reviewable. It is therefore imperative that all my decisions be fair and based on all relevant facts. I must be prudent in relation to advising lobbyists regarding potential situations based on information that could easily change after the advice is given. It would not only put at risk the person to whom I would provide this ruling, but it would also put at risk my ability to look into a matter in the future should there be allegations of improper lobbying activity against this person. My neutrality and my ability to be fair would be compromised.

In conclusion, I want to assure the members of the committee that I've been administering the Lobbying Act as Parliament has enacted it. As the administrator of the act I look forward to working with the committee on the legislative review to find ways to further enhance transparency and better ensure compliance.

[Translation]

Madam Chair, this concludes my remarks.

I want to thank you for your attention and I will now be pleased to answer any questions you or the committee members may have.

[English]

The Chair: Thank you, Ms. Shepherd.

We're now going to go to the members, with a reminder that it's a seven-minute round to begin with. That includes both your questions and the commissioner's comments.

We'll start with Mr. Angus, for seven minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Madam Chair.

Thank you, Madam Shepherd, for coming. It was very interesting and very timely.

I think the issue with lobbying that is very important to us is to ensure.... We're talking about open access to government, efficiency, and making sure the people who represent various organizations or companies are able to meet and provide input on the development of government policies. That's something we don't want to limit.

Our concern is the fly-by-nighters—the people who break the rules, the people who decide to fly under the radar. We have a number of concerns about your inability to actually hold these people to account. In 23 years, nobody has been prosecuted for improperly lobbying. Over 30 have been let off the hook since 2004 for unregistered lobbying. It seems your hands are unfairly tied in terms of weeding these people out and holding them to account in any substantive way.

Given yesterday's report on Mr. Jaffer and Mr. Glémaud, it seems that a financial penalty may be one of the only ways of actually getting characters like this to abide by the law. Do you feel that if we have that administrative monetary penalty it may alleviate some of this below-the-radar lobbying?

Mrs. Karen Shepherd: Yes, that's why it's one of my recommendations. Right now what I have at my disposal is educating and monitoring, on one hand, and the gap that exists at the other extreme, of referrals to the RCMP and reports to Parliament. The ability to have administrative monetary penalties within my control, that I could exercise, would I think help in terms of timely decisions. If I'd had them in the case yesterday, it might perhaps have been a decision not to refer to the RCMP and to have issued penalties, and a decision could have been out earlier.

Mr. Charlie Angus: I want to go through your two options. One is the RCMP and one is education.

Under subsection 10.4(7), if you believe someone has engaged in unregistered lobbying you're immediately forced to suspend your investigation and hand it over to the RCMP. The RCMP have never,

ever followed up. We are in a situation where you're unable to continue your work in a timely manner and be accountable to Parliament. The RCMP then rubber-stamps or whitewashes whatever Lobbying Act activity has happened. Then it creates a public impression that it was okay. I think that's very problematic. If the RCMP is going to refuse to follow up, you're left in a position where you've sent it to them and they've said, "We didn't find a problem." The RCMP never finds a problem.

Would it be better if we change the rules with the RCMP so they have a specific function, but their role is not interfering with your legitimate work on behalf of Parliament to hold these people to account?

• (0900)

Mrs. Karen Shepherd: In terms of the RCMP... I'm not sure whether it's the intention of the committee to invite them. It might be a suggestion, if I may, to have them come to committee so they can explain the reasons why they have not pursued the different files.

But yes, while the file is over there, I'm conducting it in private, so I can't speak. When it's over there for a period of time, the act requires that I suspend. It would be better to have the administrative penalties. The question for Parliament becomes whether the administrative monetary penalties would be where it stops, or whether there would be a range, where it would actually go to referral to the RCMP for really extreme cases.

In the two models that I've put into the report, which my provincial colleagues in B.C. and Alberta have, both of them have the ability to administer penalties up to \$25,000.

Mr. Charlie Angus: I would think that sometimes the administrative monetary penalties should be much higher. In the case of Mr. Jaffer and Mr. Glémaud, they were looking at \$178 million in contracts. Flying below the radar was well worth it for them because the risks were fairly minor. The only penalty you could impose is making them write an essay.

With no disrespect to education and writing essays, when I was in primary school Sister Frances Margaret used to have me write lines on the blackboard all the time and it never actually changed my behaviour to any degree. Making Mr. Jaffer write lines on the blackboard for a contract of \$178 million I think he would have figured was well worth his time.

We had a situation with Mr. Glémaud, who was a failed Conservative candidate, and Mr. Jaffer, who knew all kinds of people in the Conservative Party, that they were buying influence. The fact that they didn't end up making money on it is neither here nor there; they probably weren't very good at it.

This is my concern. How do we ensure that people aren't able to trade on their influence, trade on who they know, open doors unfairly and get ahead of a process, when other people are playing by the rules? You talked about who this legislation should capture and you mentioned that the names of those who are engaged on behalf of a corporation should be listed. Would that help us to raise the red flags so we can weed these kinds of characters out?

Mrs. Karen Shepherd: My comment, in terms of those who should actually be named in terms of a communication report for attendance, is that right now, with the significant....

Well, there are two things. With the monthly communication reports, they only list the reporting officer; they don't actually list who was in attendance. In this particular situation the individuals didn't think they were required to register, so having the names wouldn't have made a difference. I think you're right that having the ability to issue penalties would maybe be more of a deterrent.

Mr. Charlie Angus: We have the need for penalties, but I'm also concerned about people who are making contact on behalf of companies. It does take two to tango. We've had senior bureaucrats who were passing these files on.

Is there some obligation when a guy like Mr. Jaffer comes calling, who hasn't bothered to register, who is lobbying on behalf of a company for major contracts, for the department to check whether he's on any list and whether that has been clarified to them? Do we need an obligation within the departments themselves?

Mrs. Karen Shepherd: Right now the Lobbying Act places the onus strictly on the lobbyist to ensure compliance.

What I do in terms of my education mandate is to meet with a number of public office holders. What I have done, and I'm now doing again, with the 20 most lobbied departments is to meet with the ministerial level. When I meet with public office holders—and I've gone across the country as well—I educate them about the Lobbying Act.

What a number of public office holders have started to do as a best practice is to ask any individual coming to see them whether they are aware of the Lobbying Act and whether they are in compliance—understanding that compliance may not always necessitate a registration, because right now we have that significant amount of duties test.

• (0905)

The Chair: Thanks, Mr. Angus.

Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Madam Chair.

Commissioner, thank you for being here today. We certainly appreciate this.

You know of course that the Lobbying Act came into existence in 2006 with the Federal Accountability Act, and it has gone through a few changes since then.

Could you highlight what the changes have been since the original version of the act was passed by Parliament, and any of the changes that have trickled down through your interpretation of the code? What's changed since the initial version?

Mrs. Karen Shepherd: You mentioned 2006. In 1989—

Mr. Blaine Calkins: I understand. I mean since the Federal Accountability Act was implemented and the changes subsequent to 2006.

Mrs. Karen Shepherd: Well, the Federal Accountability Act was 2006, and it came into force in July 2008. One of the key changes included making the position I am in an independent agent of Parliament.

It introduced the monthly reporting requirements so that lobbyists are required to update their registration on a monthly basis, first of all, if something changes. It introduced that meetings with designated public office holders should be reported on a monthly basis under certain conditions. The penalties were doubled. The contingency fees were banned. There were some stronger provisions that were brought in.

Mr. Blaine Calkins: And those provisions were brought to bear based on recommendations you made previously? How did those recommendations come about?

Mrs. Karen Shepherd: It was part of the platform of the research.

Mr. Blaine Calkins: I understand that, but those changes came about as a result of pressure, perceived need, and strengthening the legislation so that Canadians could be more confident in the transparency of the lobbying process. We all know the process of lobbying is a bona fide activity. Canadians should have access to the parliamentarians who set policy and make decisions on behalf of all Canadians. Do the changes add value? Is it worth the effort to make the changes? That's where I'm trying to go with this.

You said that you would capture a greater share of the lobbying activities, thus increasing transparency, and that this would enable you to enforce these activities more decisively. Your first recommendation is to remove the significant part of the duties threshold. What do you suppose that would do? Do you have any information? Is it worth the effort to go through this? How many more people do you think this would capture? How many more lobbyists would need to register? What would be the perceived value in doing this?

Mrs. Karen Shepherd: When we're looking at transparency, which is what the act is about, there are now a number of organizations and corporations that are not hitting the threshold. The monthly reporting with designated public office holders is not being captured either. To my mind, it makes sense to look at getting rid of significant amounts of duties and to figure out who should be captured. It is difficult to enforce that test, because in coming up with the percentages you're looking at the number of hours an individual spends lobbying versus the number of hours he actually spends working.

Mr. Blaine Calkins: When you look at legislation in the various parliaments around the world and in Canada, you find that most of it has some type of clause that defines the level of engagement with a parliament, parliamentarians, or public office holders. This is the first case. If we were to follow through on this recommendation, would this be the first one you're aware of without a threshold to trigger a registration with the Commissioner of Lobbying?

• (0910)

Mrs. Karen Shepherd: Yes, that would be correct for my provincial colleagues. We might want to look at replacing the significant amount of duties with a certain number of hours so that it's a little more explicit. You might spend 100 hours performing the lobbying activity, but this would have to include the preparation that goes into it.

The other issue is that a CEO's 15-minute meeting or quick phone call can be quite significant, and if you're looking at a monetary way of counting, you might not capture these events.

Mr. Blaine Calkins: I understand that. You're suggesting that changing the percentage of duties is harder to enforce, harder to capture, than prescribing a set number of hours. Is that right? Once you move from the enforcement level and you're conducting your duties, your next major complaint is that, when you decide to pursue something with the RCMP, you have to stop it. No charges have been laid under the act right now.

The next one is that you want to be able to go straight to administrative penalties as you see fit. Do you think the process of laying a charge or an administrative penalty directly through you rather than through the RCMP is going to have more of a preventative effect than simply tabling a report in Parliament? What are parliamentarians or lobbyists more afraid of, public perception or administrative penalties?

Mrs. Karen Shepherd: Well, I have been saying that tabling reports to Parliament has consequences to an individual's reputation, which I don't think is insignificant. But another reason for the administrative monetary penalty is that there's quite a gap between referrals to the RCMP.... For example, late filings don't warrant going to the RCMP. That's a case I would find...and wouldn't refer right now, because it doesn't warrant going there.

So those are the types of cases I'm looking at in terms of educating and monitoring, and we do monitor to make sure the transgression doesn't happen again. Having the administrative monetary penalty would encourage them—in those kinds of cases especially—to ensure that they register on time. I think transparency is key, and the more timely it is done, the more transparent it is.

The Chair: Thank you, Mr. Calkins.

Mr. Andrews, please go ahead.

Mr. Scott Andrews (Avalon, Lib.): Thank you, Madam Chair.

Thank you, Commissioner, and I want to thank your officials for coming in last week to give us a technical briefing. It helped.

I'm going to go on sort of the same line as my other two colleagues, talking about the 20% and how much stuff is actually flying under the radar. People are actually doing lobbying but don't think they're doing it. How do you catch that? The only reason you would catch anything is if someone reported it to you or they saw something. It's hard for you to investigate when you don't know what's going on.

Do you see that as an issue in terms of how much of this is actually flying under the radar, that people are saying no, I'm not really a lobbyist, and really they are? Could you comment on that, and is there some concern around that?

Mrs. Karen Shepherd: It's true that things get brought to my attention in terms of complaints, but we also do what I call media monitoring and we keep an eye on what's going on. If we see something, we send out what I call an advisory letter to bring things to somebody's attention, and we ask them to get back to us.

I'm also spending time, as I mentioned, educating public office holders because—and there was a comment—it takes two, right? If the public office holder understands what lobbying is about, that is another way to help with the compliance measure.

Mr. Scott Andrews: That's where I was going to go, because the onus in all lobbying is on the lobbyists themselves. I know we've asked questions about whether there should be a reverse onus on the public office holders. I know when the Conservatives promised open accountability, they promised that ministers would report who they were meeting with, and that hasn't happened.

Would it be helpful to have ministers and certain levels of office holders do some reporting to you as well, so that you could see who's meeting with who, and if something is missing you would see that, and you could cross-reference? If both parties knew they were being reported, they would be more open to telling and be more upfront about their meetings, because if one party reported it and one party didn't, then that would raise a red flag. So it's opening up a whole new area of onus. Should we be moving the onus to both parties?

● (0915)

Mrs. Karen Shepherd: Well, in terms of the onus, you're right, it's on the lobbyist. There's no responsibility on the public office holder. Having them report to me is an interesting question in terms of mandate. It changes the mandate of the act in terms of placing it on the public office holder. Having, as you say, both coming in would be problematic, first in tying it to a registration. Right now, the monthly communication reports that the lobbyist files are tied to a registration. Having the monthly communication report come in from the public office holder, who may have several meetings, would be quite the administrative challenge in trying to match that with the registration.

Mr. Scott Andrews: But is there worth in doing that? Then you would actually find out where there were gaps in perceived lobbying. I know it's outside of the act right now. We're reviewing the act, so should we review the act to include that?

Mrs. Karen Shepherd: I'm not sure how much more would be gained by putting all of the onus on the public office holder.

Mr. Scott Andrews: No, put the onus on both parties, because if one party knew that the other party might report them, they would be more apt to report more of their activities, and then you would be able to cross-reference the two.

Mrs. Karen Shepherd: This is where I've been spending the focus on the education, because I'm trying to get at that with the public office holder, so they understand those who are coming to see them—

Mr. Scott Andrews: You can educate public office holders as much as you want, and that is good as well. You can educate, but if there's no actual onus on them to report who they're meeting with, then things will fly under the radar.

Mrs. Karen Shepherd: When we're doing our verifications, we're actually reading the letters now as well to try to capture some of those additional meetings. There are public office holders who don't want to find themselves, like yesterday, in reports where they have met with unregistered lobbyists.

Those reports not only act as a deterrent to lobbyists, but they serve to educate the public office holders as well in terms of the consequences of meeting with unregistered lobbyists.

Mr. Scott Andrews: Would it help you if ministers submitted a list to you of who they have met with?

Mrs. Karen Shepherd: In terms of the staff I have now, to be honest with you, I would be looking at the addition of resources. That would be quite an amount of work in terms of trying to match that up with the registrations.

Mr. Scott Andrews: Would the work be worth the reward of tightening it up, so we don't have these things? We talk about penalties, and there is no penalty on this at all. It's just a slap on the wrist and public embarrassment and perception. I think there's an area here, and I don't know if you'd like to explore it.

Mrs. Karen Shepherd: I guess the question is, if we do that, where does it stop? With the public office holders I would ask Parliament, because the public office holder doesn't just mean ministers; it's everyone in the bureaucracy. So it's quite a lot.

I'm not sure, for the percentage I would capture, that it would be worth all of the resources and the time and effort.

I mean, most lobbyists do want to comply with the Lobbying Act and the lobbyists' code of conduct.

Mr. Scott Andrews: Most do, but we're looking for the ones who are rogue.

Obviously, Mr. Jaffer and his partner felt they were above this. I'm just curious about that—that's all. I think there might be something there.

Let me ask another question. I know I asked your colleague in our briefing about a lobbyist as a lobbyist, a government relations firm versus another lobbying firm—

• (0920)

The Chair: Excuse me, Mr. Andrews. It's just to remind you that the briefing was in camera, so we cannot refer to the in camera parts of the meeting.

You can ask a broad general question without reference to the in camera meeting.

Mr. Scott Andrews: Okay. My apologies. Sorry.

No matter what the activity is, whether it's a lobbyist or—

The Chair: I'll allow you a brief question on this.

Mr. Scott Andrews: Do we need to look beyond just the lobbying firms to the government relations firms and other firms that do government relations work with lobbyists?

Is there anything we can do to tighten that up as well?

Mrs. Karen Shepherd: Well, with government relations firms, lobbying firms, legal offices—I mean, even with the report I tabled yesterday—it's not the firm or what its occupation is. When they start communicating with the government on registrable activities, they need to register.

A government relations firm could be, as I understand it, doing quite a lot of different things in terms of strategic advice and so on that isn't lobbying. Lawyers who provide legal counsel are not lobbyists until they perform registrable activity under payment.

The Chair: Thank you, Mr. Andrews.

Mr. Carmichael.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Madam Chair.

Good morning, Commissioner.

I appreciate your comments. You noted previously that the bulk of the lobbyists today generally want to comply with the regulation, want to play by the rules. Clearly, we're trying to find a way to deal with those who, as you say, fly below the radar or willingly flaunt the law and work to circumvent it.

When you talk about the monetary penalties—and we want to avoid the Sister Frances Margaret penalties here as well—you mention the fact that you've had some serious difficulties with the existing remedies that are available to you. I'm wondering if you could quantify that for us.

When you talk about those who you take to education or those you meet privately with, where they have in fact disregarded or unknowingly circumvented the rules and the laws as they exist, what would the monetary penalty be? How many infractions—I'm looking for a ballpark figure here—would you have captured as a rule, if these rules were available to you, as you suggest? Is it significant?

Mrs. Karen Shepherd: Where I would like to go with the administrative monetary penalties is to look at perhaps two things, and I don't have all the numbers with me.

The first one might be an automatic thing for those who file late communication reports, for example, where it's almost like a library charge, where you charge something up to a certain amount and their names would be posted. If I looked at the six reports that I filed with unregistered lobbying, those are clear examples where I might have used monetary penalties rather than referring them to the RCMP. It would be someone who had forgotten, for example, to register when they arranged meetings, which is a registrable activity for a consultant lobbyist. For the two where I found them to be in breach of the lobbyists' code of conduct, that would be something that I can't send to the RCMP, but if I had monetary penalties, I could have issued something there as well.

In terms of talking about the 30, some of those were voluntary disclosures, late filings. As I mentioned in my opening remarks, these lesser transgressions are things that don't warrant going to the RCMP. Those would be examples of where I would have used monetary penalties. One of the things with the B.C. model—it's not in the legislation, but they came up with principles and criteria—is that there's a range of different options depending on the type of transgression and whether this is a first offence or a second offence.

Mr. John Carmichael: Are those publicly available? Do we know how many infractions have been actually charged on that basis?

Mrs. Karen Shepherd: Alberta has it as well. Neither province, to date, has charged... Alberta has just finished their legislative review of the act. For B.C., it was quite new for them in terms of a lot of the changes to the act. What they did a lot this year was to educate people the first time around. To date, they have not used the penalties yet.

• (0925)

Mr. John Carmichael: That's interesting. Certainly when you talk about the DPOH—the designated public office holder—component, and how we bring them into the loop on this and whether they should be registering or providing a register of everybody who visits, it sounds to me like the bulk of lobbyists and office holders all want to play by the rules. It's the exception we're trying to catch here. The concern I have is that we certainly have to put penalties or some sorts of remedies in place that ensure we capture those who truly flaunt the law and flagrantly disregard it. My concern is that we not put in another layer of bureaucracy that in fact buries your office, buries every office holder's office, and does it in the interest of the honest ones to capture those few. Obviously, we want to ensure that the rules are played by.

With that, this act was included in our government's Federal Accountability Act to prevent certain types of behaviour that could be offensive or considered offensive to our democracy. I wonder if you could just outline for the committee the types of activities the Lobbying Act is trying to prevent specifically? Could you go a little deeper on that? Can you offer your opinion on whether we're achieving that outcome?

Mrs. Karen Shepherd: It's the types of activities to ensure that lobbying is properly registered for the different communications, whether it's the making or developing of a policy or program. The monthly communication reports, as I understand, were to get at the number of meetings that were happening with these designated public office holders, so that the public would know who was actually meeting with the decision-makers. This is why I was suggesting a couple of changes there. You don't see who actually attends the meetings, for example. That's something that could be changed easily through regulation.

Mr. John Carmichael: You're only seeing the registered lobbyists.

Mrs. Karen Shepherd: You see the person responsible for reporting, which I would still keep because I think there should be a notice on the reporting officer. But in terms of transparency, it would be listing all of those. That's what the act was trying to get at.

I say this to public office holders as well. Lobbying is legitimate. As decision-makers, you want access to the best advice out there. It just needs to be transparent. Having the name go into a monthly communication report shows you're doing your job. But as some of them say, with the current rules they may be meeting all sides of an issue, but you don't see it because those who are not hitting the significant amount of duties test do not file what we call the initial registration, which has all of the comprehensive detail in it. Therefore, since they do not file that, they do not file a monthly report. That's where I'm saying the act could be strengthened.

At the same time, as I mentioned in my paper, there need to be some exemptions to that. I don't think you want to put the chill in that citizens don't want to see their members of Parliament or the small organizations that might meet with you once a year. This is where it really does need some thought. There are a lot of organizations that are doing enough lobbying that you'd want to capture them.

The Chair: Your time is up, Mr. Carmichael. Thank you.

We'll now move to the five-minute round. The first speaker is Monsieur Boulerice.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Madam Chair. Thank you, Commissioner, for being with us this morning. We appreciate it.

I will start by saying that your report, which came out yesterday, was quite telling. Some people were concerned and were wondering what happens to defeated Conservative members of Parliament or candidates that are not appointed to the Senate or to UNESCO. Now we find out that they can become non-registered—in other words, illegal—lobbyists on Parliament Hill. Two were caught yesterday and there are others. We're looking forward to the investigations into Mr. Bruce Carson who was a lobbyist and the Prime Minister's advisor. We're waiting to hear more about that.

Allow me to mention Mr. Rahim Jaffer, who was a member of Parliament, and Mr. Patrick Glémaud, who was a Conservative candidate in 2008 for Ottawa-Centre, I believe. We know that these individuals were familiar with the law. Mr. Jaffer could not have been unaware of it. We know this for certain. Yet they still attempted to influence senior civil servants in order to obtain contracts worth \$178 million, knowing full well that, if they were caught, there would really be no consequences. You have stated as much and you have made recommendations that are a move in the right direction: the act has no teeth and does not provide for particularly serious penalties. So, in that case, why not try? If the field is wide open, then why not attempt to influence decision-makers and obtain contracts, even though one doesn't have the right to do so?

I have children. When they are told not to do something, and they do it anyway and there are no consequences, there is generally no incentive to listen and obey the rules. In fact, grade schools refer to “consequences”. That is the term they use when they are punished.

How can we put more teeth into the act? You stated that you would like to see monetary penalties. You referred earlier to penalties of up to \$25,000. Would that be enough? Would that be enough depending on the seriousness of the case? Would it be an idea to ban someone from being a lobbyist? Would it be an idea to order community service? What kinds of tools could be used to prevent these kinds of illegal activities?

• (0930)

Mrs. Karen Shepherd: Yes, in fact there are no consequences like monetary penalties or prison sentences. I feel that administrative penalties could be useful in similar situations. My reason for asking about the \$25,000 figure is that penalties have to be corrective—as opposed to punitive—if you want to change someone's behaviour. If our measures are punitive, we will be getting into criminal matters that would be referred to the RCMP.

In terms of preventing someone from lobbying, that is not in my jurisdiction, unless an individual is—

Mr. Alexandre Boulerice: —found guilty.

Mrs. Karen Shepherd: When individuals are engaged in lobbying without intending to communicate with public office holders, that prohibition does nothing. So monetary penalties are used. However, I think that in situations that fall under the Lobbyists' Code of Conduct, if there is a breach, then perhaps it would be appropriate to use a prohibition. Take, for example, the McSweeney and Stewart case that I tabled before Parliament. That could be an example of that kind of situation.

Mr. Alexandre Boulerice: If the RCMP has never been able to find anything on anyone, if it found nothing on Rahim Jaffer, one can only wonder how to describe the RCMP's work. How would you describe it? It is as if they can never find anything, however clear the facts are.

Mrs. Karen Shepherd: That is what I stated in the report that came out yesterday. They told me that they were [*Inaudible—Editor*] an investigation. That is why I strongly urge the committee to invite the RCMP to come and speak about the review of the act.

[*English*]

The Chair: Thank you, Monsieur Boulerice.

I have a note of information for the committee. On Mr. Carmichael's question, I failed to mention that the commissioner from British Columbia is confirmed to appear before the committee and will probably be able to answer some of those questions more directly. The commissioner has tabled a number of reports now, and the committee at some point may wish to ask the commissioner to come back to deal with some of those lobbying reports that have been tabled in Parliament.

Mr. Butt.

• (0935)

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you, Madam Chair, and my thanks to the commissioner for being here. I appreciate it.

I'm looking forward to this review, as a new member of Parliament. I agree with you that lobbying is part of what goes on. It's legitimate advocacy. I know many of the groups I meet with, and I know they register those meetings. I appreciate meeting with them, and as a parliamentarian I appreciate looking at issues in a different way. Part of our responsibility as public office holders is to do that.

Unions are required to register if they're lobbying. Is that correct?

Mrs. Karen Shepherd: If they are lobbying, yes. The other test for them is hitting that threshold, the test for a significant part of their duties.

Mr. Brad Butt: So if a union sponsors a convention, as we know the unions did with the NDP convention in June, and I would assume that union members are attending that convention for the whole weekend and interacting with public office holders, are they required to register those meetings, those discussions? Maybe they're making a presentation in one of the learning sessions that take place in these conventions. If they're there for an entire weekend and meeting with a whole bunch of public office holders, that would be considered lobbying and would have to be registered, would it not?

Mrs. Karen Shepherd: The act has two things on whether an initial registration needs to be filed. But they also need to be communicating on registerable subject matters. This is the whole

thing with oral communications and the actual nature of chance encounters at a convention.

Mr. Brad Butt: Do you feel the current act has enough disclosure requirements on interaction for members of political parties attending events? There could be registered lobbyists that are delegates to conventions, where there's some sponsorship, as in the case of the NDP, or some other involvement such as the hosting of a hospitality suite. Is the Lobbying Act strong enough right now to make sure that we're getting proper disclosure on those kinds of encounters with public office holders?

Mrs. Karen Shepherd: Prior to the changes made in September 2010, members of Parliament were not considered designated public office holders. While initial registration had to be there, those encounters didn't necessarily have to be reported, unless the member was a designated public office holder. Prior to September 2010, it affected only ministers and their staff.

The advice changed with lobbyists and public office holders. Now, if you go to a lobby day, you're basically agreeing that you may be lobbied at that event. You may end up communicating with someone, but it's not about a registrable activity. You would not need to register that encounter.

Mr. Brad Butt: I know you've made some recommendations for possible improvements to the act. Are there other jurisdictions that you've looked at, either around the world or within Canada? I know there are some provinces that have lobbyist registration systems. There are a few municipalities that have these systems as well. Do any of those jurisdictions have best practices that you think would improve or strengthen the federal Lobbying Act?

Mrs. Karen Shepherd: Yes. I look at what my colleagues have at their disposal in B.C. and Alberta. They do have the ability to issue the administrative monetary penalties in-house. Quebec has it, but they have to use their—what is it called?—attorney general to issue the penalties on their behalf.

[*Translation*]

A voice: It is the attorney general.

[*English*]

Mrs. Karen Shepherd: *Merci.*

I think there is something for the administrators of the act to have that within their control. This is one of the things, when I'm looking at B.C. and Alberta, that I think is key as a model.

In terms of the United States, to be honest, I think the changes that came into force with the Lobbying Act were actually asking for greater transparency in terms of the monthly reporting with designated public office holders. The one difference with the Americans is in putting in financial information. It makes sense in the States, where election and campaign laws are quite different from those of Canada. I'm not sure what that would add in Canada in terms of transparency.

• (0940)

The Chair: Your time is up.

Mr. Brad Butt: Okay. Thank you, Madam Chair.

The Chair: Thanks.

Monsieur Dusseault, for five minutes.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Madam Chair.

Before I begin, I would like to make a motion.

The commissioner, whom I would like to thank for coming, twice mentioned that the RCMP would be an important witness for this study. The role played by the RCMP in connection with this legislation has also been raised several times. I would therefore like to present this motion, which reads as follows:

That the Standing Committee on Access to Information, Privacy and Ethics request that officials from the Royal Canadian Mounted Police appear before this Committee in order to testify about the RCMP's investigative role pursuant to the Lobbying Act.

I feel that it would be quite reasonable to ask RCMP officials to appear before us. I'm hoping that I will therefore obtain support from all committee members.

[*English*]

The Chair: Thank you.

Does everybody understand the motion as presented? Are there any questions or comments on the motion?

Then I'll move to a vote on the motion.

(Motion negatived)

The Chair: Thank you, Monsieur Dusseault.

Do you want to come back to your questions to the commissioner?

[*Translation*]

Mr. Pierre-Luc Dusseault: I find that somewhat surprising. On two occasions the commissioner said that it would be important to have RCMP officials appear before the committee. But I guess there are reasons that I am not aware of. So I will ask some questions that I feel are important.

I was quite surprised to find out that you have so little authority. Yesterday, you tabled a report that clearly indicated that Mr. Jaffer had broken the law. Could you explain what is going to occur after the report is tabled, what action could you take under this legislation?

Mrs. Karen Shepherd: As I mentioned, I believe, no monetary penalties or prison terms are provided for. I tabled my report and, under the current legislation, that is all I can do.

Mr. Pierre-Luc Dusseault: If I understand correctly, the only action you can take is to table a report in Parliament. Will the matter then be referred to the RCMP? At what point and under which circumstances will the RCMP intervene?

Mrs. Karen Shepherd: In this situation, when I believe that an offence was committed under the act, I have to suspend my report, as I did in the case of GPG-Green Power Generation Corp. When the RCMP decided not to pursue the matter further, I decided to continue myself and to investigate under the Lobbyists' Code of Conduct.

Mr. Pierre-Luc Dusseault: It will not be possible for us to hear RCMP officials explain their organization's role, but you may be able to provide me with a few details on the matter.

When a file is referred to the RCMP, it has to investigate. However, it did not really do so in every case. I would like to know how, in your opinion, we could deal with this shortcoming in the RCMP, which does not appear to be doing the job it should be.

How do you see your role with respect to the RCMP? How can we establish a procedure which would suit everyone better?

Mrs. Karen Shepherd: When I refer a file to the RCMP, there is nothing more that I can do. I can submit a complete file, containing all of the information, but that is all I can do at that time. I do not have the authority to request that an investigation be conducted. Even if I were to ask for an investigation, I cannot sit down with them and the prosecutor afterwards to determine the monetary penalty, as an example, that should be imposed.

● (0945)

Mr. Pierre-Luc Dusseault: Do you think that you should be given greater authority in this regard? Do you think that you are able to handle it?

Mrs. Karen Shepherd: Yes. That is why I would like the authority to set monetary penalties. If I had that authority, I would no longer always have this requirement, when I see that an offence has been committed, to suspend my investigation and refer the matter to the RCMP.

Mr. Pierre-Luc Dusseault: I think that would be the best way to proceed. I hope we will be able to find a solution.

How much time do I have left?

[*English*]

The Chair: You have 45 seconds.

[*Translation*]

Mr. Pierre-Luc Dusseault: I would also like to talk about the 20% rule. You mentioned that some people, with a single phone call lasting 10 minutes or so, could change a major part of a decision, or something very important. I would like to know how to reconcile all of that. It has to be 20% of the duties. When it is less than that, it flies under the radar, as my colleague said. With a single phone call, some very influential people can change a lot of things.

Mrs. Karen Shepherd: That is why I suggest that the "significant part of the duties" provision be removed. An important person can make just one call or go to a meeting that may only last 15 minutes.

The Chair: Thank you, Mr. Dusseault.

[*English*]

Go ahead, Mr. Dreeshen.

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

It's nice to see you again, Ms. Shepherd.

I wanted to go through a couple of things. I read through your summary of recommendations, the nine you indicated in the report that was presented, and there are a couple I had some concerns about.

First, you talked about communication for registered activities. It's sort of the only part that needs to be captured in the act. You talked about recommendations 3, 4, and 5, which more or less talk about a change from "oral and arranged" to simply "oral" communications. Also, in recommendation 4, you talk about disclosure on particular subject matters for DPOHs, regardless of who initiates them. You also spoke in recommendation 5 about disclosing the "ultimate client of the undertaking".

I'm just wondering if you could expand upon where you're going with those recommendations.

Mrs. Karen Shepherd: In terms of recommendation 4, regardless of who initiates them, right now if a designated public office holder initiates a request for a meeting with a lobbyist to discuss the introduction of a policy or program or the changing of a bill, those particular encounters do not need to be filed in terms of a monthly communication report. The only ones that do are the ones that deal with a financial benefit.

When you're looking at one way those transparencies...certain meetings are likely not being captured because a public office holder is initiating the meeting. This is one way of ensuring that all those key meetings, which is what the act is about, would be captured that way, so that's this particular one.

In terms of recommendation 5, the ultimate undertaking, what we have started to find is that lobbying firms are hiring a consultant lobbyist who is doing work on behalf of a company. So the act requires them to list their client, the person benefiting. Some were initially putting the lobbying firm, but the lobbying firm is not the ultimate beneficiary; it's the gas company or something behind them that hired the lobbying firm. What we have done with those now registering, when we see that, is to put who the ultimate beneficiary is, the firm. So that is showing now on the registration.

To make it clearer in the legislation, my suggestion is that the requirement be there, so that it's the ultimate beneficiary. It avoids the situation whereby somebody may be hiring a middleman and the middleman is using the lobbying firm as their client.

• (0950)

Mr. Earl Dreeshen: To take this back more to the local level, if you have a group coming to meet with you in your constituency office—they are part of some major organization and they want to talk to you about an issue—and they've brought along three or four local representatives and so on...you talked again about the chill of having to have your name on a list. I wonder if you could give a little advice as to what one should be thinking about under those circumstances.

Mrs. Karen Shepherd: In terms of the group coming to see you, if they're all lobbying and communicating in the meeting, then I think their names should be on a list.

Are you asking if it's government initiated, if the meeting is transparent? Some of the things that come up—and I have an interpretation bulletin on government-initiated consultations—if they are transparent... For example, appearances before the committee are quite transparent. Minutes of the meeting are being taken. Anyone can figure out who attended the meeting and what was said.

The issue with private meetings is this: are they now behind closed doors and should there be more information? Those individuals who are coming to see you would participate and communicate in the meeting and would then show up on the list.

This is the whole thing of getting out there. Lobbying is legitimate. It's just that it needs to be done in a transparent manner.

Mr. Earl Dreeshen: Do I have some time?

The Chair: No, your time is up. Thank you very much.

Monsieur Boulerice.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Madam Chair.

In front of everyone, I want to emphasize my view that something absolutely incredible, pathetic and totally lacking in seriousness has just happened at this committee.

The commissioner has told us twice that it would be a good idea to bring in representatives of the RCMP as witnesses in order for us to be enlightened and well-informed about the changes and improvements to the act. However, Conservative members have voted unanimously against the NDP's motion that would have allowed us to ask questions to RCMP representatives.

It is as if they took out a card saying: "Get out of jail, pass Go and collect \$200." It makes no sense. I find it deplorable that the Conservatives defeated that motion. It's as if they aren't serious and have no intention of hearing all about this act. We aren't able to hear from the key witnesses in order to find out why, in 23 years, no one has ever been found guilty and why the RCMP is never able to conclude an investigation that leads to any consequences. So I denounce and deplore the Conservatives' vote in this committee, and I want to say that loud and clear.

With that said, Commissioner, I want to come back to the fact that you want to eliminate the words "significant part of the duties" from the definition of a lobbyist, someone who lobbies on Parliament Hill.

It could actually be problematic to eliminate the 20% provision. Although we do not want every community group in our ridings to have to register as a lobbyist in order to come to talk to us, there must also be a clear definition.

The 20% rule may not be the right solution. People who spend 18% of their time lobbying would not have to be registered. So it would not be transparent. Someone spending only 5% of his time lobbying could influence the public service excessively. Think, for example, of former ministers who are retired from politics. Imagine they have been away from politics for five years; they still have a tremendous number of contacts. Even if they spend only 5% of their time lobbying, they would be able to influence decisions.

In your opinion, how do we balance the desire for transparency and for knowing who the players are without penalizing the smaller players acting in good faith?

Mr. René Leblanc (Deputy Commissioner, Office of the Commissioner of Lobbying): That is one of the difficulties with regard to the act as it stands at the moment, as is the concept of influence. The quality or quantity of influence is absolutely impossible to quantify with any precision. So we must make an interpretation and, as it now stands, the interpretation the commissioner has made is the figure of 20%.

But in the act, there is no mention of 20%.

Mr. Alexandre Boulerice: It uses the words significant part.

Mr. René Leblanc: The act says “significant part of the duties”. So, in order to enforce the act, if you want to find a guilty person and charge them, you have to be able to prove with certainty that this person has violated the act.

From an enforcement point of view, we go by what the act says, because that is our role.

• (0955)

Mr. Alexandre Boulerice: In your recommendations—

Mr. René Leblanc: In our recommendations, the easiest way we found—and I do not want to oversimplify—is to completely eliminate this provision, these provisions, because they apply to several areas, and to create exemptions for specific groups, which we really do not want to overload. However, we do not have a miracle solution.

Mr. Alexandre Boulerice: So the exemptions will let you avoid a list, which would be nearly endless.

Mr. René Leblanc: We can establish classes of exemptions, that is, classes of businesses. We could discuss this at length. In fact, we would like to do so.

[English]

The Chair: You have 25 seconds.

[Translation]

Mr. Alexandre Boulerice: I would also like to talk about removing the word “arranged” from the expression “oral and arranged communications”. I understand the intent; however, in the daily application of the act, how do you apply it with regard to chance communications between two people who happen to be in the same place to buy a coffee and have a conversation?

Does that have to be reported? Does it depend on the content of the conversation? How do you see that?

Mrs. Karen Shepherd: It depends, everything depends on the way you go and buy coffee. Is the communication unacceptable? Because it's very likely that you would talk about the hockey game the night before, but that's not an unacceptable activity.

In terms of transparency, if you are talking about an activity where there is really a lot of lobbying, which might change your opinion about a program, or which is about getting money, I believe that this would be an “encounter” under the act. Because we are talking about “oral and arranged communications”.

The way I would explain it to someone... There are so many different examples. In the current situation, under the act, if somebody engages in lobbying right away, that person should indeed register right away.

However, the meeting you described should not really be registered. However, if there is a long line-up in front of you at Bridgehead, and someone suggests leaving the coffee shop, at that point, you have agreed to a meeting and it becomes an organized communication.

So it would be easier if the provision were removed.

[English]

The Chair: Thank you, Monsieur Boulerice.

Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Madam Chair, and thank you to the witnesses for being here today.

Commissioner, in your presentation this morning you talked about the registry of lobbyists and expanding the capture to include organizations and corporations that do not meet the significant part of duties. I agree with that. I think we're really looking at the access to influence.

As far as the intent or purpose of the lobbying, as members of Parliament we have people who come to lobby to provide information. Somebody who comes to try to unduly influence a vote or have a benefit is a little different. For instance, if somebody came in and lobbied me and said that if I gave them an ad contract they would give hundreds of thousands of dollars to my party, that is something that should be reported and is undue influence.

There would be a penalty for someone who failed to report—or a late registry. But what if somebody makes an offer or something and I don't report it? For instance, somebody comes in and says that if I do something for them they'll give so much money for my campaign, or whatever. Do I have a duty to report that I have been approached and asked for undue influence? Can you see where the penalties would be at different levels?

• (1000)

Mrs. Karen Shepherd: Yes. I might ask my legal counsel to intercede as well on that case. It's an example that is not lobbying per se. Lobbying is to change a policy or program or to obtain a financial benefit. The situation you're describing would fall under the Conflict of Interest Act, or it might even be criminal.

Mr. Bruce Bergen (Senior Counsel, Office of the Commissioner of Lobbying): There is a part in the Criminal Code that deals with fraud on the government. There's a provision regarding undue influence, or influence peddling, as it's commonly known. The scenario you sketched out might be a criminal offence, as opposed to an offence under the Lobbying Act or other legislation.

Mr. Colin Mayes: So you're saying there's a transition from lobbying to conflict of interest.

Mrs. Karen Shepherd: Or influence certainly.

Mr. Colin Mayes: In your recommendation you say there should be a community provision in the Lobbying Act. Can you expand on that? Is that correct? It's recommendation number 9.

Mrs. Karen Shepherd: Do you mean the provision on immunity?

Mr. Bruce Bergen: I'll say a few words about that.

When our office was looking at the Lobbying Act and preparing this paper to make some recommendations, we looked at provisions in relation to administrative monetary penalties and what they were doing in other jurisdictions. We looked at some of the federal legislation for what we considered to be our counterparts—the other agents or officers of Parliament. We noted that in essentially each and every one—the Auditor General Act, the Conflict of Interest Act, the Privacy Act, the Access to Information Act, and so on—there was an immunity provision, and that was lacking in the Lobbying Act. I don't know exactly why; perhaps it was simply an oversight. That's why this was added as a recommendation.

Mr. Colin Mayes: Commissioner, do you have any thoughts regarding the level of penalties for those who violate the act and whether it's for not reporting? There must be a level you think would be a deterrent for those to ensure that they comply.

Mrs. Karen Shepherd: What I'm looking at right now is the fact that having the ability to issue administrative monetary penalties would be corrective in nature, as opposed to punitive. When I look at my counterparts in B.C. and Alberta, they have up to \$25,000, which seems pretty substantial when you're looking at correcting behaviour. Also, I think it's important to have the ability to post the names, not only just the amounts, so that it's not just sending a fine and no one's aware of it. There would be something on my website that would state that a particular fine had been issued for the following reasons, and the amount.

The Chair: Your time's up, thank you.

Mr. Andrews, please go ahead.

Mr. Scott Andrews: Thank you, Madam Chair.

I have a question. In your report yesterday on the two individuals involved, there were 10 allegations, four of which you found in breach of the Lobbying Act. If any of your nine recommendations were to be adopted, would they have been found in breach of more? Which one of those recommendations would have found them in breach of the other six?

•(1005)

Mrs. Karen Shepherd: There were four that I found were unfounded. The reason they were unfounded was because not all of the elements for registerable activity were there. They were either not formed for payment or expectation of payment, or it was not a registerable communication. I think there was a comment about strictly speaking for information. If you're really just trying to get information on the eligibility criteria of a program, that's not a registerable activity.

In terms of those where I did find that they had breached the lobbyists' code of conduct by not registering...the nine recommendations, those that deal more with the Lobbying Act, wouldn't have prevented, I believe, the situation that happened in this particular case, because the individuals clearly felt they were not lobbying. So removing the significant amount of duties test wouldn't have done anything because they did not believe they were lobbying and needed to register.

The one recommendation that I think would have made a difference is having the ability to issue administrative monitoring penalties, like the option of not sending it to the RCMP. There would have been a decision out sooner, because I could have used the

opportunity to present views. My intent would still be to fine them and give them so many days to respond. With that, then, I could have had a penalty out and a fine, and something on the website probably a lot sooner.

Mr. Scott Andrews: Let me ask you about the RCMP. Overall, what is your impression of your communications with the RCMP? Do they know the act fairly well? Is the Lobbying Act something that maybe the RCMP are not too familiar with? Do they come back to you with questions? How do they involve you, just in your experience? My question is, basically, do you think there are some issues with the RCMP knowing the act? Maybe, when something is referred to them, they don't really know what to do with it because it's not something they normally deal with.

Mrs. Karen Shepherd: My office experience with the RCMP has actually been positive. Yes, they have called us, and they've had questions on either the act or the file going forward to them. In all cases where they've come back, they have commended the office in terms of the well-documented files they're receiving. So for other reasons they're deciding with the prosecutor's office not to go further in terms of laying charges. The relationship that I have with them, in terms of what I'm sending over, is positive.

Mr. Scott Andrews: What division of the RCMP do you deal with?

Mrs. Karen Shepherd: It's A Division, I believe, commercial crimes.

Mr. Scott Andrews: Commercial crimes, okay, that's the section.

Looking again at the nine recommendations, are there any priority recommendations here, ones that you would say need to be done, or are they all equal?

Mrs. Karen Shepherd: If I had to choose, it would be the significant amount of duties test and the ability to issue administrative monetary penalties.

Mr. Scott Andrews: I want to ask about recommendation number 1. We talked about it a little bit. I think Mr. Leblanc was talking about the aspect of "given to allowing limited exemptions". Get rid of the duties and then give us the power to have some limited exceptions.

Do you want to give us a little bit more detail about what these exemptions would be and how you would handle it? Is there going to be a list? Let's talk about the exemptions part.

Mrs. Karen Shepherd: I'd like to explore this with Parliament in terms of who Parliament really thinks should be captured by the legislation who maybe is not being captured because of the "significant part of duties" test. Again, we're looking at transparency, on the one hand, so that others—Canadians and so on—know who's lobbying. At the same time, there is a balance. The barriers shouldn't be undue so that people can't actually get to their members of Parliament.

From an administration point of view, the reason I'm saying there should be limited exemptions is that if it's too long a list, that becomes problematic. For example, in Alberta, if it's a non-profit organization that has charitable status, they do not need to register. The City of Toronto has something similar to that for community groups. A gas station owner that maybe wants to come to speak to you in your local riding is probably somebody Parliament doesn't want to capture as a lobbyist. How do we get out one-time encounters with certain firms. Is it using the Canada Revenue Agency, in terms of their limit on charitable organizations?

•(1010)

Mr. Scott Andrews: Did you say Alberta?

The Chair: Mr. Andrews, I've allowed the commissioner to respond, but your time is well up. Thank you.

Mrs. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Madam Chair, and thanks very much, Commissioner, for being with us. It's been an interesting discussion this morning.

You have talked a little bit about the differences in some of the provincial legislation. What about internationally? How do we compare with other countries, such as the U.K., the U.S., or Australia?

Mrs. Karen Shepherd: The U.K. has actually come to us in terms of making some of their changes. I was mentioning earlier that when I look even at the U.S., I think Canada, at the federal level, has quite a strong regime. The suggestions I have put forward are only for strengthening the act and making it more transparent. I think we are one of the leading models out there.

Mrs. Patricia Davidson: Will the suggestions you have put forward align us more closely with most of the provinces?

Mrs. Karen Shepherd: The provinces don't have the requirement to issue monthly communication reports. That is something that exists only at the federal level. Again, the changes are more to strengthen it for those lobbying at the federal level in terms of making it more transparent.

The one thing, as I mentioned, the provinces have that we don't have, or that I don't have at the federal level, is the ability to issue administrative monetary penalties. B.C. and Alberta have it. That is something that I think is important.

Mr. René Leblanc: In terms of a significant amount of duties or a significant part of duties, some provinces have recognized the limitations in terms of applying that provision and have gone to an hours model rather than our own interpretation, which is based on percentages.

Mrs. Patricia Davidson: I find the 20% rather confusing. If you went to number of hours, would that be based on a weekly amount, a monthly amount, or...?

Mrs. Karen Shepherd: That would be something to consider. I don't have the exact formula in my head. I know that some of them actually have 100 hours. One of the provinces includes preparation and so on, and it is explicitly in the act. When are they hitting the 100 hours? Is it hitting the 100 hours within a month or six months? My concern, maybe, with going strictly with hours is looking at what time period those hours are going to occur in. If you say 100 hours

over six months, then you may not get certain groups registering. I think, again, when you're looking at the purpose of the Lobbying Act in terms of giving Canadians confidence in the integrity of government decision-making, things that are actually occurring need to be transparent.

If the suggestion by Parliament is to replace significant amount of duties with hours, then I would want to discuss limiting the hours and maybe the period of time during which they occur.

Mrs. Patricia Davidson: When you speak about monetary penalties, I'm not quite clear. Are you speaking of monetary penalties versus referring to the RCMP, or as well as referring? Where does the differentiation come in? How do you determine what would be a monetary penalty issue and what would be a referral?

Mrs. Karen Shepherd: This is an area in which I'm asking Parliament: is there a need or a desire to keep the criminal aspect in?

Right now, an infraction of the act is considered criminal, which is why I'm required, if I see a breach of the act, to suspend my file and send it over to the RCMP. There's quite a gap between education and those two extreme measures, referrals to the RCMP and reports to Parliament.

It could be that all of the powers of issuing administrative penalties rest with the Office of the Commissioner of Lobbying; that's one matter. Then there was a comment that we might want to go higher than \$25,000.

Right now there's no option at my disposal. If I were looking at some of the unregistered lobbying, especially for not registering a meeting that was arranged, that's a breach of the act. If it's done when the individual is unregistered as a consultant lobbyist, I'm referring it to the RCMP. That's something for which I would, for sure, issue an administrative monetary penalty.

The situation yesterday was severe, so the question is, do we keep it criminal or do we give me the ability to issue an administrative monetary penalty that is fairly substantial?

•(1015)

The Chair: Ms. Davidson, your time is up. Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

This has been a fascinating discussion.

I think it's been clear that we all agree we don't want to change the act to interfere with legitimate organizations, businesses, and groups meeting with parliamentarians. What we are obviously disagreeing on is what happens in a case such as you just referred to, of severe breaches by people who decide to break the rules and undermine the process and who basically are given a "get out of jail free" card.

You've made, at least twice, clear recommendations that we should hear from the RCMP. We've heard that over the last 23 years there has never been a prosecution; the RCMP rubber stamps whatever act anybody has ever done and says they're not going to investigate. And yet you're forced to suspend your work while this goes on, which I believe then interferes with Parliament's ability to actually get to the bottom of a situation. It allows government, for example, in the case of Mr. Jaffer, to put off the day of reckoning down the road.

Yet when we bring forward support for your recommendation to have the RCMP come before us, the Conservatives don't want to have anything to do with examining what role the RCMP is playing, whether they do any investigation whatsoever, and why they've never bothered to consider a case that, as you say, was severe and that merits any follow-up.

I have a question I'd like to ask you. Given that my colleagues across the table obviously are doing whatever they can to keep the RCMP out of this investigation, we are led back to either asking Mr. Jaffer to write an essay on the theme "I will not be bad anymore" or to invoking an administrative monetary penalty.

Do you believe this is the only other recourse we have at this point?

Mrs. Karen Shepherd: In terms of my ability to do something, having the administrative monetary penalty system would make a big difference, yes.

Mr. Charlie Angus: Okay.

I'm interested, because, again, we're not talking about the people who come and fill out the forms and who are there on a weekly basis or a monthly basis, or maybe just once a year. We're talking about people who are peddling their influence.

Mr. Jaffer was not an expert in green energy, but he knew people. He knew people very well. He had been in the caucus for 10 or 13 years. He kept his MP's card. He had his wife's BlackBerry. He had access to a cabinet minister's office. So clearly it would have been in the interest of someone looking to get on the inside track to ask him to make phone calls. That's what we're trying to deal with here in terms of making sure people aren't breaking the rules.

You said this case was severe, and in your recommendations you stated the obligation to register. You had four basic issues. One was that the requests for government funding are considered to be communication in respect of "the awarding of a grant, contribution or other financial benefit", even if the requests are not lengthy in detailed proposals.

I guess what I'm asking and thinking of here is that you have someone who's a prime insider who knows everybody, who's been buddies with people in key elements of government, and you bring him in on a project and ask him to make some phone calls that open doors.... Are you saying that if they bring in another former Conservative MP or insider and ask him to make some calls on behalf of a company, the calls themselves are what is opening the doors to the contract, not necessarily big detailed proposals? At what level do we need to be aware of this so we can flag this behaviour and decide whether or not this is actually lobbying or some kind of influence peddling?

• (1020)

Mrs. Karen Shepherd: In terms of communicating on a registerable activity, that falls within the Lobbying Act. I think, as my legal counsel was explaining earlier, if you get into an influence peddling situation, that's different: that's a criminal charge in terms of I guess the situation that was described earlier.

Mr. Charlie Angus: But the RCMP never seem to step in, so you're our only line of defence here. So would it not be important that we make sure we have some provisions? And what would you recommend so that we can flag these issues before they become criminal?

Someone might not know, someone might not realize they're making a mistake, but if it was flagged early, you could phone them and say, if you're making calls on behalf of this company, you might have only made two or three calls, but you're making them to key people and you should register. The person may not realize that they're actually skirting the rules here, but you're our only line of defence, because obviously the RCMP is not going to do anything.

Mrs. Karen Shepherd: This is one of the reasons I'm suggesting taking out "be arranged" and just keeping things to be oral. That's one way of helping to simplify things, and also removing.... If that same public office holder initiates the particular conversation as well, unless it's about a financial benefit...those encounters aren't being captured at all.

Again, it's a significant amount of duties test. There could be corporations that are doing a fair amount of lobbying that do not need to be registered under the current act.

The Chair: Your time's up, Mr. Angus. Thank you.

Mr. Leblanc, I'll allow you a brief comment before I go to Mr. Dykstra.

Mr. René Leblanc: The member mentioned picking up the phone and calling somebody. Arranging a meeting is a registerable activity under the act for a consultant lobbyist if they are paid to do so. So if you're considering eliminating the requirement for payment, that opens a big door. I just wanted to make sure you were aware of that.

The Chair: Thank you, Monsieur Leblanc.

Mr. Dykstra, welcome to the committee. You have five minutes.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Madam Chair.

I don't know if I'll take five, but I'll do my best.

I know you face a lot of challenges; it's not an easy job. You seem to fall down on both sides of the sword in terms of being criticized and being complimented.

I've had this discussion with the ethics commissioner, and she does have a concern about this, and that is the apparent use of your office and her office for frivolous political applications. By that I mean that someone from the opposition party, for example, files an application with you for an investigation on what they believe to be and know is frivolous, but from a media perspective or a political perspective it gives some appearance of wrongdoing. That wrongdoing may actually not be the case.

But I wondered about the whole aspect of an application being filed with you by someone from any of the political parties in this regard, which would be kept confidential until at least you've had a chance to do a preliminary review as to whether there is any credence to the allegations being made.

Mrs. Karen Shepherd: Well, the act states that I must conduct investigations in private. I've actually built into my process what I call the administrative review, which is my fact-finding exercise. In the administrative review I can get sufficient information to make a determination as to whether it's unfounded—for example, not for payment, or not a registerable activity—or, if it's founded, whether I would be referring it to the RCMP, if I had reasonable grounds, or opening up an investigation perhaps because I thought doing so would be necessary to ensuring compliance with the act or the code.

Once I open an investigation, then I am required to table it in both Houses of Parliament, although there is an ability under the act to cease doing an investigation if I have good reasons to do so. At that fact-finding stage, as you described—something whereby they come in.... If I determine that it's unfounded, it stays within the office. I will write back to both parties: to the person alleged to have breached the act and to the member of Parliament. The results of the administrative review are not made public.

● (1025)

Mr. Rick Dykstra: I guess my question, further to that, is if an individual files an application, is it not in the best interest of your office and of the individual who files the application that it remain confidential until you at least have a chance to do a preliminary review as to whether the charges or the allegation should be further investigated? Would that not be helpful? The ethics commissioner seems to say, in the conversations we've had around this issue, that she would appreciate it not being made public beforehand, because that puts her in a very awkward and difficult position in terms of trying to make a determination of whether the allegations that have been submitted to her, or to you, are in fact at least serious enough to warrant further investigation.

Mrs. Karen Shepherd: Given that the act requires me to look into investigations in private, and for the integrity of things, it would be preferable that things be not made public, especially before I've even had a chance to look into the matter.

Mr. Rick Dykstra: Is that potentially one of the recommendations that you could make?

Mrs. Karen Shepherd: It is not something that I have put forward, but yes, I can consider that.

Mr. Rick Dykstra: Thank you for that. I appreciate the honesty of the answer.

The other area of concern I have is this. It seems that overall, while we always have examples in which people have crossed the line, and you've made your rulings as such, we also have a large percentage of individuals and companies who fall under the act but are fulfilling their obligations, as you've noted. In fact, to some extent, when they've made a mistake they come running over to make sure they try to find a way to correct it. Through your report I see that rather than turning everything over to the RCMP immediately, you are trying to find some latitude here to find room for that.

It's a general question. Then I wanted to ask, if I have the time, a very specific one.

The Chair: You are out of time. Make it a brief question and I'll allow the commissioner's response.

Mr. Rick Dykstra: The general question is this. For the most part, you've seen improvements with respect to those using the act and filing with you. Overall, would you say that it's a much better system today than it was six years ago?

Mrs. Karen Shepherd: I would say that the changes made to the act have strengthened the act and that having the educational mandate and these reports to Parliament is a positive sign, in that people are coming forward and wanting to disclose when they're being late—making what we call voluntary disclosure.

The Chair: Thank you, Mr. Dykstra.

Mr. Andrews.

Mr. Scott Andrews: Thank you, Madam Chair.

I just have a follow-up on my last line of questioning, when I ran out of time. We talked about exemptions. You mentioned Alberta and Toronto. Do they have specific lists of exemptions that we should look at?

Mrs. Karen Shepherd: They are definitely examples. I think the City of Toronto has quite a long list of exemptions that they are currently reviewing, if I'm correct. They should be really limited, as opposed to very lengthy in nature.

Mr. Scott Andrews: Are there any other witnesses that you think this committee should bring forward to ask questions of, such as the City of Toronto or Alberta? I know the commissioner of B.C. is coming. Is there anyone we're missing whom we should ask to come as witnesses?

Mrs. Karen Shepherd: B.C. is definitely good because they do have the monetary penalty. Alberta has it as well.

I believe the Province of Quebec or the commissioner from Quebec is coming as a witness. Is that right?

The Chair: Yes.

Mrs. Karen Shepherd: They have something comparable in terms of the size of the office. They're different in that their registry is actually outside of the actual office.

I think that's a pretty good witness list.

Mr. Scott Andrews: I have one final question going back to recommendation number 1, taking away the significant part of duties. Would that cover people who own these companies, who have people working for them but they actually own the lobbying firm or the government relations firm themselves and don't actually do it? Would that bring them into this as well, if they make a phone call or they direct one of their staff to do some lobbying? Does that include them?

I'm thinking of people who have fallen into the five-year exemption. They may own a company. They don't actually do the lobbying, but they actually have staff who do it.

How do we catch them? How do we make sure they get encompassed in this?

•(1030)

Mrs. Karen Shepherd: The “significant amount of duties” is about those who are actually communicating with public office holders on a registerable activity. The firm itself might be captured if the firm was doing a certain amount of...but it has to be lobbying with federal public office holders.

Mr. René Leblanc: May I just add something? If I understand your question properly, you're referring to a lobbying firm or a firm that's in the government relations business, as opposed to a firm that's in the manufacturing industry, in which case these are considered consultant lobbyists. The 20% rule, the significant part of duties, does not apply to consultant lobbyists. It only applies to firms that have in-house lobbyists for their firm, like a manufacturing company that has a government relations unit within it, as opposed to hiring a consultant from outside.

Mr. Scott Andrews: Okay, thank you.

The Chair: Thank you, Mr. Andrews. You have time.

Mr. Scott Andrews: That's okay.

The Chair: Okay.

Mr. Butt, for the final question.

Mr. Brad Butt: Thank you very much, Madam Chair.

I was interested and I wrote some notes from some of your testimony earlier, Madam Commissioner. Is any violation of the act right now considered a criminal offence? I think that was the line you used. Is it considered a criminal offence, any violation of the act?

Mrs. Karen Shepherd: If there is a breach of the act, I am required to suspend or refer it to the RCMP. What I've said is that in some cases lesser transgressions, such as late filings or where they forgot to list a beneficiary, are breaches of the act, but they do not warrant going to the RCMP, which is why I've been educating and monitoring them. And we have been monitoring, following up.

Mr. Brad Butt: Right now, are you and your staff already making a predetermined judgment on what you believe is a significant criminal offence under the act, versus something that would be more administrative, i.e. a late filing of this monthly report?

I'm trying to come to terms with criminal versus administrative and whether the act currently defines those, or whether everything is lumped into being a criminal offence, even if it is extremely minor.

Mrs. Karen Shepherd: Right now all breaches of the act would be referrals to the RCMP. What I am looking at are some of these late filings or lesser transgressions. Anything where they have not registered, those are filed, for whatever reason, because they were for a consultant organizing a meeting, communicating, arranging activities. It's the same thing where I found with the in-house... they were clearly lobbying to get a financial benefit. And that took place yesterday.

Those are examples of where I am referring those to the RCMP. There's a range of transgressions, which is why the administrative monitoring penalty would help bridge the gap and have different penalties for different options along the continuum.

Mr. Brad Butt: If the act was amended and it provided for these levels of violations or charges under the act for non-compliance or

for doing something inappropriate, do you really think that your department internally is the right place to be the judge, jury, and executioner, for lack of a better way of putting it? I know that sounds a little harsh, but rather than you making a recommendation, perhaps having an independent third party, a tribunal or some other monitor that could look at all of the evidence that's being presented...?

One would assume the accused would want their day in court, so to speak, to say this is exactly what happened, this is the situation, rather than you—and I'm not questioning your judgment, or your staff, as I think you're all very professional people. But I am concerned about due process to some degree and people being falsely accused or falsely charged, or information not being fully accurate.

Would an independent body to which, other than the RCMP, you may refer a significant criminal charge to...? Would it not be helpful to have some independent tribunal that you could refer cases to, that they could properly adjudicate in a neutral, unbiased kind of way?

•(1035)

Mrs. Karen Shepherd: Right now, when I'm looking at the act, and due process is part of my concern as well in terms of putting a mechanism in place, I do feel that, as you said, the expertise or the professional...the best one to understand what's going on in terms of the act and whether a breach has occurred. I would not see anything changing from what happens in my office now, where a thorough process would be fulfilled. There would be sufficient information to look at, to see whether all of the facts are there in order to determine whether there was a breach of the act or perhaps the code, depending on whether the penalties were given.

So that concern for me would be taken care of in that way. As with the reports to Parliament, the act requires that I give them reasonable opportunity to present their views. What I have done in that process, which I think is the best method, is to actually give them the investigation directorate's report that I received. So they have full information and they have 30 days to respond. Those who have asked for it have been granted exceptions. So they would see where I'm going and have the ability to comment on...maybe it's a first-time offence and the fine should be lower. I could see that working that way.

All of my decisions are judicially reviewable. So there is a body, without creating more bureaucracy, in terms of where this would go.

Mr. Brad Butt: There's an appeal mechanism, in essence.

The Chair: Mr. Butt, you're well out of time.

Mr. Brad Butt: Thank you.

The Chair: Thank you.

Just on that note, it would be an interesting question to pose to some of the other jurisdictions that are coming before us. In places like Alberta, where the commissioner does have an administrative remedy, there is a judicial process that can be invoked.

I want to thank all of the committee members and especially the commissioner and her staff. I think this was a very useful discussion and I want to thank everybody for their participation today.

This is our last meeting until we come back at the end of January. The clerk is well on the way to scheduling the witnesses the committee had approved, so I think we'll continue this very interesting discussion.

I just want to wish everybody the best of the season and safe travels to your respective homes.

Thank you very much. The meeting is adjourned.

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