



House of Commons
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 042 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, October 27, 2005

Chair

Mr. David Chatters

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• (1105)

[English]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen.

This is the Standing Committee on Access to Information, Privacy and Ethics. The order of the day for today, pursuant to Standing Order 32(5), is the report on the administration of the Lobbyists Registration Act for the fiscal year ended March 31, 2005, referred to the committee on Thursday, October 6, 2005.

We have a number of guests with us today. We have the....

Sorry, I omitted to tell you the second one. The second order of the day, pursuant to Standing Order 32(5), is the report of the Lobbyists' Code of Conduct for the fiscal year ended March 31, 2005, referred to the committee on Thursday, October 6, 2005.

Thank you very much for that.

We have four witnesses before us today. We have the registrar of lobbyists, from the lobbyists registration branch, Mr. Nelson. Good morning, sir.

We have the director of the lobbyists registration branch, Ms. Shepherd; the deputy director of the lobbyists registration branch, Monsieur Ricard-Desjardins; and a counsel from Industry Canada's legal services, Mr. Bergen. Good morning to you all.

Mr. Nelson, I trust you have a short statement to make. Then members of the committee will have some questions for you.

Mr. Michael Nelson (Registrar of Lobbyists, Lobbyists Registration Branch, Department of Industry): I do, sir. Thank you.

The Acting Chair (Mr. David Tilson): Thank you for coming.

[Translation]

Mr. Michael Nelson: I am pleased to come before you here today, Mr. Chairman and Committee Members, to discuss with you the contents of my two recent annual reports for the 2004-05 financial year, one on the administration of the Lobbyists Registration Act, and the other on the implementation of the Lobbyists' Code of Conduct.

[English]

First, let me begin by saying how productive and eventful fiscal year 2004-05 was. As you're aware, we had to begin the development of a new office and at the same time ensure that our registration capabilities remained fully operative.

The office devoted considerable energy to the regulatory approval process, which led to the entry into force of the amended Lobbyists Registration Act and concurrently the Lobbyists Registration Act regulations on June 20, 2005.

Despite the fact that we had only three permanent employees at the time, the office successfully managed to get the amended regulations through pre-publication on December 18 and final publication on June 1, 2005.

[Translation]

There may be those who will say that with time these achievements may appear relatively unimportant. However, they form the essential foundation that, I hope, will allow us to shift into higher gear and attempt to do a better job of complementing and supporting application of and compliance with the Act. In the introductory message that I included in the annual report, I explain that I see this report as a step towards an objective that I situate in the medium term and that would significantly strengthen the office's role. It is from this perspective that I would like to discuss our 2004-05 reports.

In 2004-05, the action of the office of the Registrar of Lobbyists centred on three priorities.

• (1110)

[English]

Those three priorities guided the work of the office throughout the fiscal year, and will continue to do so in the coming years.

First, the office devoted considerable efforts to testing the new registration system, which was launched last June, as well as adapting the registration procedures and the necessary documentation. This work was initiated in 2004-05 and was completed in time for the coming into force of the amended act.

A complete review of our interpretation bulletins was also initiated to reflect those legislative changes and to improve the application of the act.

[Translation]

Secondly, again in 2004-05, the office undertook to increase awareness among federal agencies and departments by taking part in information sessions for their staff. In addition, Office employees and I take part in meetings, symposiums and information sessions for lobbyists and practitioners in the field.

Thirdly, in 2004-05, the Office began a review of allegations made regarding certain lobbyists.

[English]

The review of the allegations made with regard to certain lobbyists was still ongoing at the end of last fiscal year. Since then, I have indicated that the office has initiated eight investigations under the Lobbyists' Code of Conduct. As you probably know, the act requires me and the office to conduct all investigations in private. Consequently, I will not be able to provide details regarding these investigations. However, I will be tabling reports on these investigations before both Houses of Parliament once they are completed.

I'm particularly proud of the work done so far by our staff last year. I intend to continue building on that foundation, which I know is sound and solid.

[Translation]

If you will allow me, Mr. Chairman, I will end my presentation here. I would be pleased to answer any questions from committee members.

[English]

The Acting Chair (Mr. David Tilson): With respect to your last comment, and just to anticipate things, which is probably foolish of me to do, I want to ask you, with respect to your commenting on individual investigations, whether you have available the section in the legislation. I think members would be interested in hearing that.

Perhaps it's a question to Mr. Bergen. Mr. Bergen, do you have available the section? Maybe we can solve that problem at the outset.

Mr. Bruce Bergen (Counsel, Industry Canada Legal Services, Department of Industry): Yes, I do, Mr. Tilson.

The section of the act that deals with the Lobbyists' Code of Conduct and the investigation by the registrar is section 10.4. It is subsection 10.4(3) that indicates that the investigation shall be conducted in private. Those are the words the subsection uses.

The Acting Chair (Mr. David Tilson): So you're interpreting that any questions from members of the committee involving that investigation—again Mr. Nelson, my question is to Mr. Bergen—because that investigation is continuing, would be inappropriate. Is that what your position is?

Mr. Bruce Bergen: I think Mr. Nelson would be constrained from saying anything about the registration that's under way or that has commenced. So yes.

The Acting Chair (Mr. David Tilson): Okay. Would members then govern themselves accordingly?

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, Mr. Chairman.

Good morning, Mr. Nelson. Thank you all for coming here.

I want to clarify something, if I can. My understanding is that when you last appeared before us in June of this year you were acting as the lobbyists registrar and you were also an ADM within Industry Canada. That situation has changed now, I understand. Is that correct?

Mr. Michael Nelson: Thank you for that question. It is an important and welcome change for me. I was the assistant deputy minister of comptrollership and administration at Industry Canada. Among other responsibilities, I was the senior financial officer for the department. I was responsible for security and a number of other functions as well as the registrar.

As of September 19 I am no longer the assistant deputy minister. I do the registrar duties on a full-time basis. There have been other significant changes that I could talk about in this respect if you would like.

• (1115)

Mr. Tom Lukiwski: Thank you for clarifying this. That was my understanding. The reason I opened with this is, if you recall, when we met last June my initial round of questioning was about what I considered to be, at the very least, a perceived conflict of interest that you might have been in, acting both as a representative of Industry Canada and then as the lobbyists registrar, in case there was ever a complaint about Industry Canada. Looking over the record of our conversation at that time, you didn't necessarily agree with me that there was a conflict, but you could understand where there might have been a perception of conflict.

My first question is, now that the change has been made, why did the department make the change? Was it because they were concerned about perceived conflict as well, or were there other reasons?

Mr. Michael Nelson: I'm not party to all the reasons these decisions get made.

I can tell you what my input was, though. My input was that, first of all, as the record will show, the very first time I was in front of this committee I said I spent about 20% of my time on the registrar job. Once the new act was proclaimed, and actually during the run-up to the new act, it became very clear to me that this was a full-time job for someone. If it was going to be me, then my plea was to ensure that I had the time to devote to this job on a full-time basis. It's also true that I reported back on the comments of this committee and they're a matter of public record.

I can't speculate on exactly why the decisions were made, but certainly from my perspective this was a major workload issue for me, and I'm very pleased at the outcome.

Mr. Tom Lukiwski: In other words, just for the record again, you approve certainly of the fact that the function of the lobbyists registrar be removed from Industry and be a stand-alone office right now.

Mr. Michael Nelson: I'm not removed from Industry Canada at this time. I'm still within the Industry Canada department. The office is set up separately. I personally am no longer a member of the management team at Industry Canada. I don't go to management team meetings. I don't have any dealings with the rest of the management team. Physically, my office is no longer in the Industry Canada headquarters building. In fact, I'm personally out of the building right now, but my team will be moving to a new office on Albert Street next Monday. My budget has been separated from the budget of the assistant deputy minister group; it's a separate budget now.

Under this act I think that's about as far as we can get, if you will, in terms of the perception of independence. Because the act itself says that the Registrar General of Canada, who is the Minister of Industry by virtue of the Industry Canada Act, may designate a person in the registrar's office, which is seen to mean the department, as the registrar for lobbyists. So under this act, I think the department has got me as far away as they can.

Mr. Tom Lukiwski: I don't know whether this will ever happen, but if you had your druthers, would you like to see a complete removal from Industry Canada to have a totally independent and separate office?

Mr. Michael Nelson: For the moment, I have the independence I need. I don't know, but I suspect the next time the act comes up for review that will be one of the questions Parliament will need to debate. In order to do my job, though, I'm feeling very independent, as I said last time, and as I said, very grateful that I can do this on a full-time basis. My staff may not feel the same way about that, now that I'm there all the time.

Mr. Tom Lukiwski: Let's talk about staffing just for a moment, then, if we can. When you previously appeared before the committee, I think you indicated you thought the staffing complement you had was adequate. Now you're on record as stating that because of the many issues coming before you, you need additional resources.

My first question would be, could you not have anticipated that before? What changed the scenario from when you initially said your staff complement was where it should be? Now you're saying, as we've heard from many other witnesses and many other departments, you need more staff.

Mr. Michael Nelson: I'd have to go back to review exactly what I said. What I thought I was saying was that I had enough to do the job at the time and that as the needs grew I'd have to take a look at it. That's exactly what has happened. Perhaps I could have anticipated what would happen when the new act came in. I guess you could say that because I wasn't in the job long enough, perhaps I wasn't wise enough to anticipate that.

The number of registrations alone has gone to where we're at 5,000 registrations now. The amount of activity in corporate registrations because of the new act has quadrupled. It's just an astounding explosion. As well, since the last time I was here, the environment, as we can see perhaps from the media reports more recently, has begun to change. The outcomes of the Gomery commission, the testimony of the Gomery commission—all of these things—have been telling me over the last couple of months that I need more help.

• (1120)

Mr. Tom Lukiwski: I have a complementary question here. I don't know whether I'm going to be using the right term here if I say "backlog", but what is the status of your case files right now? How much are we talking about when you say you need increased staffing complements? Are you looking at one, or two, or three, or four? In terms of dollars and cents, budget-wise, what are you looking for?

Mr. Michael Nelson: I don't have an exact number for what I'm going to be looking for. I can tell you the functions. I'll answer your first question first, though, which is, what is the backlog?

Right now, I have the eight investigations that I've initiated. I would point out that those are the first eight that have ever been initiated under the code of conduct and under the act. We have four administrative reviews under way. Because no one's done any of these investigations before, I don't have a good sense of what it's going to take to complete one, in terms of time or people. But to echo what you were suggesting a little while ago, I'm trying to be a little wiser in anticipating what my needs might be.

It's not just for investigations. I think there are three places I'd like to move the office. One is the registry itself—the on-line registry—

The Acting Chair (Mr. David Tilson): Very quickly, sir.

Mr. Michael Nelson: The on-line registry, communications and outreach, and enforcement will be the three areas. If someone else wants to ask me, I'll tell them more.

The Acting Chair (Mr. David Tilson): I'm sure that will come back.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

You told us that you had eight investigations being conducted under the Lobbyists' Code of Conduct. You also have four administrative reviews under way. If I understand correctly, the general public, the media, and members of Parliament may ask you to do reviews. Administrative reviews take place as a result of requests or complaints sent to your office. Is that correct?

Mr. Michael Nelson: I myself determined that these eight investigations were necessary. Under the law, I must open an investigation under the Lobbyists' Code of Conduct if I suspect that the Code has been contravened.

With respect to the others, pressure is not necessarily the issue. However, if I am asked to investigate a certain person or activity, I act: I do an administrative review of the question. If I read something in the newspaper, I also have the power to open an investigation.

Mr. Mario Laframboise: I don't want to know the details, but how many of these eight investigations are the result of your personal initiative?

Mr. Michael Nelson: Eight.

Mr. Mario Laframboise: All eight?

Mr. Michael Nelson: Yes.

Mr. Mario Laframboise: Perfect.

Did you set the deadlines for responding? You tell us that a report will be presented when you finish. Do you have a procedure? Does the law require you to meet a deadline, or do you have all the time you need? Are you the one who decides when it will be finished?

Mr. Michael Nelson: The Act talks about the content of this report, but since each case is different, it doesn't set specific deadlines. I do investigations as expeditiously as possible, and as soon as I complete an investigation, I write a report that I submit to Parliament.

• (1125)

Mr. Mario Laframboise: So the law doesn't force you to reply by a specific deadline.

So what is preventing you from acting more quickly? Is it lack of staff? What would you need to reply more quickly? Is it staff?

Mr. Michael Nelson: Yes, I do need more staff. Last week, I had one investigator. This morning, we managed to make a job offer to a second investigator. It is my intention to have two more soon. I would like to have more staff in order to take action as quickly as possible.

Mr. Mario Laframboise: Last June, you told us that lobbyists had 60 days to reregister.

Mr. Michael Nelson: Yes.

Mr. Mario Laframboise: You also told us that if a legal deadline were not met, sanctions would be imposed.

Has everyone reregistered? Did you have to impose sanctions? How did it work?

Mr. Michael Nelson: We began on June 20 to receive registrations and we now have more than 5000. I have the numbers relating to registrations here, if you want them.

Mr. Mario Laframboise: Yes, please.

Mr. Michael Nelson: Pierre is responsible for registrations. He has the numbers.

Mr. Mario Laframboise: Perfect.

Mr. Pierre Ricard-Desjardins (Deputy Director, Lobbyists Registration Branch, Department of Industry): I will try to answer your question.

On June 20, when the amended version of the law came into effect, the registry contained 235 business lobbyists. There are now 1330. This means that the number of registrations by business lobbyists has increased six-fold. This is a significant increase, you will agree, which explains the wage costs that this has entailed for registration staff.

With respect to lobbyists for essentially non-profit organization, there were 309 registrations as of June 20. Today, this number is 1942: here again, nearly a six-fold increase. This seems to indicate that the amendments to the Act have borne fruit.

On the other hand, the opposite is true among consultant lobbyists. The number of lobbyists registered as of June 20 was 1092, and it is now 518. At first sight, we could say that something has happened. Something did indeed happen: a purging of the registry. When the amended Act came into effect, all previous registrations were cancelled, and had to be renewed. Under the new Act, they will now have to be renewed every six months. Some registrations go back three, four or five years, and were never cancelled by the lobbyists themselves.

I think that the present registry better reflects the level of activity in the industry. The information it contains is all up to date because the 518 lobbyists who are registered at the present time have registered in the past few months.

Mr. Mario Laframboise: Were there any late registrations? Were reasons given for this? Did you have to impose sanctions?

Mr. Pierre Ricard-Desjardins: There were some delays caused by our services due to the fact that, on certain days, we had to process 200 to 250 files. From the moment the procedure started, we didn't crack down. There were also educational efforts to be made, which delayed the registration of certain people. This said, we didn't notice any unusual problems, except certain delays caused by the difficulty we were having coping with the volume. This has now been dealt with. It only lasted a few weeks. With respect to cases where there was no registration where there should have been, they are more a matter for the section responsible for compliance.

• (1130)

[English]

The Acting Chair (Mr. David Tilson): We're way over, folks. Thank you very much.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

I'd like to ask a couple of questions about your Lobbyists' Code of Conduct report. On page 6 there is a reference to two complaints outstanding from the year 2001. That's a long history. Are those complaints still in the hopper? Are they still being addressed?

Mr. Michael Nelson: With respect to those two complaints, it was a long time. They are complaints I inherited from the previous office.

I wrote to the complainant and asked, "Would you like me to carry on with those?" The complainant eventually wrote back, at the same time telling me that I was not competent to investigate those complaints. So we are in a discussion with respect to how to handle them. It's a difficult bit of logic that wants me to investigate, but says I'm not competent to do so, in the same letter.

Mr. Derek Lee: Do you accept that you would not be the right person to deal with those complaints, or do you reject the suggestion by the complainant?

Mr. Michael Nelson: I reject that suggestion.

Mr. Derek Lee: Anyway, you will make a decision at some point whether you will proceed to continue the consideration of the complaint.

Mr. Michael Nelson: Exactly right, sir.

Mr. Derek Lee: All right. That's fine.

On page 7 of the same report there is a reference to the dismissal by the Federal Court of Canada of two matters because of delay. Is that delay on the part of the applicant, or delay on the part of the respondent, or did everybody just throw in the towel? Can you give us some details there?

Mr. Bruce Bergen: I can speak to that.

That is delay on the part of the plaintiff, the applicant for those two applications for judicial review. They were dismissed by—

Mr. Derek Lee: I realize that's not your procedure; that's the Federal Court procedure.

Mr. Bruce Bergen: That's correct.

Mr. Derek Lee: The applicant appeared to walk away and didn't pursue it.

You have indicated you will be keeping your eye open for potential for legislative amendment—some of the process is new, the statute is relatively new—with a view to guiding the government and hopefully Parliament in consideration of any changes.

Have you any pet reform items now that you would want to bring to the attention of the committee to put on the record now—any portions of the existing statutes that you feel should be considered for amendment or change?

Mr. Michael Nelson: I'm sure when the act is opened there will be a lot of ideas brought forward. I could speak to a few of those ideas.

Mr. Derek Lee: I'm just offering an opportunity now in case you wanted to flag one or two. We don't have to go into great detail. If you want to wait for an appropriate time, that's okay, too.

Mr. Michael Nelson: I think I would prefer to wait, but it's pretty clear, and I'm actually pleased to see, that there's an amount of discussion around the act. It raises awareness of the act right now, so I think I'm going to be in a very good position when asked and when the act is in front of us to give my views on those things, sir.

Mr. Derek Lee: Okay. Well, for better or for worse, we have a committee that's relatively focused on the envelope. That should be a help, but one never knows, maybe it won't be. We'll see.

Last, it always irked me...I'm going back quite a few years here, almost 20 years, that lobbyists and consultants often charged success fees or commissions on successful negotiation of government contracts. While it was easy to identify what I thought the problem was, it was more difficult to find a solution.

I realize that it's not your job to police all of the government contracting, but with specific reference to the Technology Partnerships Canada program, the Department of Industry, where you used to be, has embraced the issue and has essentially prohibited payments out of TPC moneys to consultants for success fees.

Are you aware of any other initiatives by other government departments, other programs, to purge the system of this success fee/consultant commission problem? I haven't even thought of all of the possibilities factually here, but are you aware of other programs where those kinds of measures have been taken or perhaps should be taken?

• (1135)

Mr. Michael Nelson: Thank you for the question, because I did want to say something on this issue. I'm not aware of any other measures that have been taken, but as I go around to different departments to talk to them about the Lobbyists Registration Act, which I will be doing, I'm quite sure they'll bring to my attention any measures they are taking.

Something I'd like to point out in response to the question—I won't take a long time, Mr. Chair—is that the guide to registration for the Lobbyists Registration Act since 1996 has pointed to the fact that Treasury Board guidelines exist on contingency fees. In my

view, that's long enough for anyone to have known that policies exist. It's the practice of my administration, of my office, when someone indicates on the registration that they'll be charging a contingency fee, a success fee, that we remind them verbally...we point them to our website, where the question is, and the link to the Treasury Board website.

I think we're certainly doing our part to make sure there is an awareness. Without going into what that might mean in terms of the Lobbyists' Code of Conduct, there may be a link to professional behaviour if someone knowingly enters into that kind of arrangement.

Mr. Derek Lee: Thank you, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Thank you. That concludes round one.

I have a brief question, perhaps to Mr. Bergen or whomever. Someone has told me there's a limitation period of two years for charges or investigations. I can't find it in the act. Is it in the code?

I guess my real question is, does that two-year period occur from when the inappropriate action took place, or does it commence from when the registrar finds out about it?

Mr. Michael Nelson: Maybe Mr. Bergen could answer, and then I'd like to make a quick comment on the code of conduct with respect to that same issue.

Mr. Bruce Bergen: It's found in section 14 of the act, and this is a provision entitled "Offences and Punishment". It sets out a summary conviction offence of, in essence, breaching any provision of the act.

In addition, there is a separate offence regarding false or misleading statements. Generally speaking, that's not all we have been speaking about. Non-compliance with the requirement to register with the act has been the focus of this issue. The limitation on proceedings is found in subsection 14(3):

Proceedings by way of summary conviction in respect of an offence under this section may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

So I think when the "subject-matter of the proceedings arose" would be when the breach occurred. In other words, it's when, for instance, somebody was required to register as a lobbyist under the act but did not do so. I think that would be the usual explanation of when that two-year time period would begin to run.

Mr. Michael Nelson: There is no statute of limitations on code of conduct investigations. That's my view, and it's supported by my legal advice. So notwithstanding the fact that I find there's been a breach of the code of conduct five or six years ago, I'm going to investigate.

The Acting Chair (Mr. David Tilson): Mr. Zed.

Mr. Paul Zed (Saint John, Lib.): Thank you.

I want to follow up on something Mr. Lukiwski spoke about.

As you know, I have had a lot of familiarity with this legislation. When we were drafting the first bill, there was a great deal of discussion—I think Mr. Epp was on my committee at the time—about splitting the office of the registrar and putting that office outside the industry department. Do you recall that, Ken?

At the time we were all relatively new; it was new legislation. We wanted to see how it was going to operate. But I think I would be more comfortable—as I was at the time, and many of us were at the time, but because the legislation was so new we were just trying to see how it would work—if you would consider splitting the office, because the perception, real or otherwise, is that you are still at the Department of Industry. I wondered if you could share some comments on that.

I have about four or five other questions about some improvement changes. On the code of conduct, I'm glad to hear you say you believe you still carry the jurisdiction to investigate. I think you need to consider broadening that investigative power to hook into the two years, so there's no cute way to get out of this.

The final point I'd like you to comment on is the issue of contingency fees. Wouldn't you do all of us a good service by starting to issue some bulletins from your office, rather than verbal communications where you write people—both those that have ticked contingency fee and those that haven't? In other words, just a broad statement that contingency fees—obviously you can't comment on whether you frown on them or not—will be evaluated and examined very carefully.

Again, Mr. Chairman, one of the things we tried to do with this legislation was achieve openness and transparency to restore and instil public confidence in those who are interfacing with government. That's why I think any improvements that would achieve that would go a long way to restore or continue public confidence in those who are interfacing with government.

Thank you, Mr. Chairman.

The Acting Chair (Mr. David Tilson): You know, I have a problem. We've just reached three minutes, which is sort of the rule, and many questions have been asked.

I'm going to let you go beyond that, but keep in mind we've exceeded the time.

Mr. Zed, you may have to raise some of your issues at another round, please.

● (1140)

Mr. Michael Nelson: I think I do need to provide more guidance on the website about contingency fees. Having a link to the Q and A is useful; it's been done for a while. I'd be happy to consider an interpretation bulletin—something that would be helpful—because obviously this is an issue that has a lot of attention. I want to be as helpful as I can.

Second—

The Acting Chair (Mr. David Tilson): Mr. Zed, I'm going to ask if you could raise those in another round. We have to try to follow the rules.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much, Mr. Chairman.

I want to talk briefly about the powers of enforcement your office has. Over the last couple of months there's been a lot of discussion in the media about individual cases regarding lobbyists. Without going into the details of the individual cases, do you think your office has the proper authority and enough teeth to penalize non-compliance with the Lobbyists' Code of Conduct? Or would you like to see a tougher, more stringent set of rules that gives you a little bit more weight, and perhaps act as more of a deterrent for those people who may purposefully want to flaunt the rules?

Mr. Michael Nelson: To clarify, are you speaking just about the code of conduct or the act itself?

Mr. Tom Lukiwski: I'm speaking of the act itself.

Mr. Michael Nelson: With the act itself, there is no body of evidence that there are any consequences—and this is one of the problems—which perhaps is your question.

Mr. Tom Lukiwski: Exactly.

Mr. Michael Nelson: In the past year, since I've been registrar, I have referred a case to the RCMP. I can't speak about that case, but it's within the two-year limit. I will continue to do so, because in terms of contraventions to the act, I think one of the ways to deal with enforcement, other than the nice ways like communication and outreach, which are very important and will bring more people into the registry, is to have demonstrable consequences.

I intend to write to the Commissioner of the RCMP to ask to meet with him to discuss process, given the fact that it is a two-year limitation and we have to act quickly in these cases.

On the other side, if I could, because I think it's also part of your question, the code of conduct is the same thing. There has never been an investigation. Now there will be eight reports, because I've initiated eight, to help demonstrate that there are consequences. What Parliament will do when I table the reports is not yet known. Perhaps Parliament will refer them to this committee, and perhaps you will call people to account, or you will call me to account for what I've written.

I think those kinds of consequences are terribly important. And we wouldn't be looking for any more powers, if you will, until we see whether those work. Now, the next time the act is opened there may well be more penalties. We haven't seen these work at all yet, and that's kind of where I'm moving to, better enforcement.

● (1145)

Mr. Tom Lukiwski: I think Mr. Lee raised a question about amendments to the act itself and decided to defer that question for some other time, but would it be fair to say that if you could propose amendments to the act, you would like to see the increased authority to penalize and to bring consequences to the aggrieved party or the non-compliant party built into the act?

Mr. Michael Nelson: I would like to see Parliament have a discussion around the possibility that the registrar could levy fines rather than send something to the RCMP.

Again, I'm not saying where I'm going to come down on that, but I'd like to see discussion around it, because I think I could do that more quickly than referring to the RCMP.

[Translation]

The Acting Chair (Mr. David Tilson): Mr. Desrochers.

Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ): Thank you, Mr. Chairman.

Mr. Nelson, it appears that the Minister of Industry is reorganizing the Technology Partnerships Canada program, that he has experienced certain difficulties with unregistered lobbyists and other consultants who have violated the government's contracting rules by asking for success fees for obtaining PTC loans on behalf of their customers. In fact, the name of David Dingwall has surfaced in this connection.

Were you informed of this? Did you take action in this regard?

[English]

The Acting Chair (Mr. David Tilson): No, I don't know whether that investigation is under way. I just remember what Mr. Bergen has told us, and I hope the members will remember that.

Is there an investigation under way with Mr. Dingwall?

Mr. Michael Nelson: I think my safest answer under the law, sir, is that I can neither confirm nor deny whether there is an investigation.

The Acting Chair (Mr. David Tilson): Now, what am I going to do about that?

I'm going to allow the question, then, if that's the case. If you're not confirming there's an investigation under way, I think Mr. Desrochers or other members are free to ask any questions they wish with respect to Mr. Dingwall.

Mr. Desrochers.

[Translation]

Mr. Odina Desrochers: I didn't understand your comment. Anyway, I am able to do my work on my own.

[English]

The Acting Chair (Mr. David Tilson): My position is that it's appropriate to proceed with questions on Mr. Dingwall, if that's where you're going.

[Translation]

Mr. Odina Desrochers: Yes, I hope to get an answer, Sir.

Mr. Michael Nelson: Sir, I cannot comment on the events of the last few months.

Mr. Odina Desrochers: Was there an investigation?

[English]

Mr. Derek Lee: Mr. Chairman, I have a point of order.

The Acting Chair (Mr. David Tilson): Please.

•(1150)

Mr. Derek Lee: It's possible Mr. Desrochers was not here at the precise time when Mr. Nelson described the provisions of the statute that prevented him from publicly discussing current investigations. So if Mr. Desrochers actually wasn't here at that point in the meeting —

[Translation]

Mr. Odina Desrochers: I am not asking for the contents of the investigation, I am asking whether or not there was an investigation. This is not a complicated question. Has David Dingwall's case been investigated or is an investigation under way?

[English]

Mr. Michael Nelson: Mr. Chairman, I neither confirm nor deny, because of the provision of the act.

The Acting Chair (Mr. David Tilson): I'm in the hands of the committee on this one. My understanding from Mr. Bergen was that this is why—

Mr. Paul Zed: A point of order, Mr. Chair.

The Acting Chair (Mr. David Tilson): Just give me a second, Mr. Zed. We'll have all the—

[Translation]

Mr. Odina Desrochers: Mr. Chairman...

[English]

The Acting Chair (Mr. David Tilson): You're going to get your time, Mr. Desrochers. Don't worry.

This is why I asked the question at the outset, anticipating these sorts of issues. My recollection from Mr. Bergen was that if investigations were under way, it would be inappropriate for the registrar to comment on those issues. The registrar has now told the committee he will not confirm or deny that there's an investigation under way.

Mr. Zed.

Mr. Paul Zed: Thank you, Mr. Chairman. I don't see what's inappropriate about letting members ask a question. If the witnesses don't wish to answer or aren't able to answer, they'll tell us that. So while I respect the chair's interest in trying to anticipate where a question might be, these ladies and gentlemen are more than adequately capable of deciding what is and isn't appropriate, whether because of privacy or legal concerns.

I would respectfully suggest we just let questions continue, and if they can't answer, they'll tell us.

The Acting Chair (Mr. David Tilson): I don't hear any objections to what you're saying, Mr. Zed, so we'll proceed in that fashion.

Mr. Desrochers.

[Translation]

Mr. Odina Desrochers: I come back to my question. You are unable to tell me whether Mr. Dingwall has been investigated or whether an investigation on his case is taking place. Is this correct?

Mr. Michael Nelson: Yes, that is correct.

Mr. Odina Desrochers: You cannot tell us today, even though his name has been in the media and even though there have been questions about this in the House of Commons, whether or not this case has been referred to you. Is this correct?

Mr. Michael Nelson: I am aware of what is going on and what the media say, but I won't comment on any investigation

Mr. Odina Desrochers: I'm not asking you to comment, I merely want to know whether he is being investigated.

[English]

Mr. Michael Nelson: Mr. Chair, I respectfully cannot answer that question. I believe the law prevents me.

The Acting Chair (Mr. David Tilson): We're going to proceed with Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): Thank you. I'd like to talk about other jurisdictions, in other words, cooperation and relationships. You've referred to the relationship that at times you have to have with the RCMP, but what about other jurisdictions, whether it's provincial or territorial or things such as that?

Mr. Michael Nelson: The way I look at it, there is not an overlap, if you will, in the legislation. But together, the five—there used to be four, until the beginning of this month, but Newfoundland and Labrador has recently created a registry of lobbyists, and I see in the news that Alberta appears interested—are a body of practice, if you will. There are not a lot of lobbyists registrars around. What we do—I have met with the provincial registrars—is talk about mutual issues, because much of the provincial legislation, as members here would possibly know, is modelled on the federal model. So we end up having a lot to talk about.

They don't, except for Quebec, have the powers of investigation I have, so that makes a bit of a difference; some of them are literally just registries. But it still makes a good body of practice, and as a result of my speaking with one of them recently, we intend to get together to exchange best practices and views on future legislation and on the work we do.

Mr. Russ Powers: Could you put me on for the next round so I can ask more questions?

The Acting Chair (Mr. David Tilson): Okay.

Mr. Epp.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): Thank you.

First of all, my apologies for not being here at the beginning. I was attending to House duties and I didn't get your opening statements.

I have a couple of questions. One is indirectly involved with the previous questions, and perhaps Mr. Bergen could answer this. Exactly what is the wording of the legislation that prevents you from answering the question?

• (1155)

Mr. Michael Nelson: Mr. Bergen could answer that.

Mr. Bruce Bergen: The wording in subsection 10.4(3) reads: "The investigation shall be conducted in private."

Mr. Ken Epp: So the investigation would be conducted in private, but under what grounds would you say, then, it cannot be disclosed that the investigation is happening?

To me, those are two different things. You could say there is an investigation or there is not, but any details beyond that would be in private, which I would agree with from this regulation.

Mr. Bruce Bergen: I think Mr. Nelson has taken the approach that you'll sometimes see police forces take, where they might say, upon being asked whether a person is being investigated, that the person is a person of interest, and neither confirm nor deny that there is an investigation.

I think Mr. Nelson has indicated that certainly Mr. Dingwall has been before another committee of the House and there have been public statements made about Mr. Dingwall. So I think you can say he's a person of interest to the registrar of lobbyists.

I agree that the legislation does not say that the registrar may not disclose, but I think there's an inference, if the investigation is to be clearly conducted in private, that to say, "Yes, there's an investigation ongoing," might cross over that line. I think that's what Mr. Nelson is trying not to do.

The Acting Chair (Mr. David Tilson): Okay, your time is up.

Mr. Ken Epp: I got only two minutes.

Mr. Tom Lukiwski: He knows how to run his clock better than you know how to run yours.

The Acting Chair (Mr. David Tilson): I'm really in trouble now that you guys are bringing your own clocks.

Just wait one second and I will give you two minutes.

Mr. Zed made a point of order. No one objected to what he said—unless people have changed their minds.

I would like to read a section from *House of Commons Procedure and Practice* on this issue, and we may get into more debate.

On page 863, it says:

There are no specific rules governing the nature of questions which may be put to witnesses appearing before committees, beyond the general requirement of relevance to the issue before the committee. Witnesses must answer all questions which the committee puts to them. A witness may object to a question asked by an individual committee member. However, if the committee agrees that the question be put to the witness, he or she is obliged to reply. Members have been urged to display the "appropriate courtesy and fairness" when questioning witnesses. Nevertheless, a witness who refuses to answer questions may be reported to the House.

Unless someone stands on another point of order—I don't want to invite you—I'm taking the position that the chair agrees with Mr. Zed.

Mr. Paul Zed: I don't want to disagree with the chair on this—and not to play lawyer here—but I think the witnesses are answering the questions. Some of the members here might not like the answers to the questions, but if you read the order carefully, they're not refusing to answer; they're saying at law they're not able to.

So I don't think they're not answering. I think they're not giving an answer that the committee might wish to hear—but I don't want to start practising law today.

The Acting Chair (Mr. David Tilson): That's great.

Proceed, Mr. Epp. You have two minutes.

Mr. Ken Epp: I think I have one minute, sir, because I used up two minutes and I have one left.

The Acting Chair (Mr. David Tilson): Okay, let's go.

Mr. Ken Epp: I think in your report you indicated there had been no complaints in the last year on the code of conduct. Do you have any outstanding investigations now on the code of conduct, or are they all done?

Mr. Michael Nelson: There are a number of outstanding complaints that I inherited from the previous administration. One of those was referred back to me by the courts to look into, which I am doing. On two, I've written to the complainant to ask whether they would like me to carry on with those. As I had mentioned earlier, before you were able to attend, the complainant wrote back and said, "Yes, I'd like you to carry on with those, but I don't think you're competent to do so." So I'm going to be proceeding with those.

• (1200)

Mr. Ken Epp: Okay. Thank you.

I have more questions for the next round, Mr. Chairman.

The Acting Chair (Mr. David Tilson): I don't know whose clock is right, but we're going to move to Monsieur Laframboise.

Mr. Ken Epp: Mine is. I'm done.

The Acting Chair (Mr. David Tilson): Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you, Mr. Chairman.

If I understand correctly, you yourself decided to open the eight investigations.

My question is not about individuals. We are aware, through the media, that there were problems with the activities of certain lobbyists at Technology Partnerships Canada. Did you closely observe what happened at Technology Partnerships Canada?

[English]

Mr. Michael Nelson: Yes, I have been following what's been going on in the Technology Partnerships Canada program very, very closely. As was testified to at another committee recently, some of the allegations where the department finds what they believe has been unregistered lobbying have been referred to me.

[Translation]

Mr. Mario Laframboise: Did you make recommendations to the department so that it would change its procedures? If not, is the department changing its way of doing things?

[English]

Mr. Michael Nelson: The department had already, at the time of the referrals, changed their procedures quite dramatically with respect to lobbyists.

[Translation]

Normally, I don't comment on departments' practices. If I make certain recommendations and later have to carry out another investigation, I might find myself in a conflict of interest. In the

case of Industry Canada, I know that the department has taken action to ensure that the problems with lobbyists aren't repeated.

Mr. Mario Laframboise: When you were a deputy minister at Industry Canada, did you work on the Technology Partnerships Canada program?

Mr. Michael Nelson: Yes, in connection with financing and, from time to time, auditing.

Mr. Mario Laframboise: Thank you.

[English]

The Acting Chair (Mr. David Tilson): Thank you, sir.

Mr. Zed.

Mr. Paul Zed: Thank you, Mr. Chairman.

In my last round we left you with some questions. I think it would be helpful for the committee's work for the future if you would share some of that information that I previously asked you questions on.

Mr. Michael Nelson: Sure. First I spoke to the contingency fee issue and agreed with you that it would be helpful if I could put something helpful on the web.

On the second thing, with respect to a link between the code of conduct and the two years, my view is that not to register is a contravention of the code of conduct. That's how I make that link. So notwithstanding the fact that someone who has not registered can't be convicted, if you will, under the parts of the act that Bruce was reading out earlier, I believe I can still find that they have breached the code of conduct, depending on the circumstances of each case. I certainly believe I can investigate those.

Mr. Paul Zed: I think, Mr. Chairman, it's significant that the information was not well understood.

I think your view, Mr. Registrar, will certainly put a chill into the lobby community when they appreciate the fact that if there's a breach of the code of conduct, you continue to contain jurisdiction to monitor and police inappropriate activity that would occur months and years beyond.

I want to go to the Government Relations Institute of Canada. When Mr. Epp and I were on the original committee, we were very anxious to try to introduce some standard of appropriate guidelines. I wondered whether or not you could share with the committee where you might see your regime going as it's related to the Government Relations Institute of Canada. I wondered whether or not there was a way to ensure that this industry continued with education, professional development, that kind of thing.

Mr. Michael Nelson: Well, earlier I said there are three kinds of thrusts that I'm interested in with respect to the office. One is better enforcement. Another one is a better online registry for more transparency. The third is education and outreach. I tend to believe that the act, well-explained, will bring more people into the registry.

The Government Relations Institute of Canada is one of the "partners" that I would like to approach in order to help me with the task of better educating not just the lobbyists but those who deal with them.

• (1205)

Mr. Paul Zed: Mr. Chairman, I wonder whether it would be appropriate to invite the Government Relations Institute of Canada to come—they represent, as you may know, all the lobbyists—to react to the kinds of things that are going on at this committee and to react to some of the changes that have occurred. There may even be some interest in bringing them together with the registrar himself as co-panellists so our committee could have a fulsome exchange and appreciate some of the areas where we might want to see some changes start to occur to improve legislation. It's just a suggestion, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Zed. We're having a steering committee meeting on Tuesday, and perhaps we could discuss that then.

Mr. Rajotte.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you very much, Mr. Chairman.

Thank you for coming in, Mr. Nelson. I just wanted to clarify some matters, particularly with respect to lobbyists and Technology Partnerships Canada.

It's my understanding that there are currently eight investigations. These are the first investigations ever. Can you identify how many of these investigations have to do with lobbyists accepting success or contingency fees under Technology Partnerships Canada?

Mr. Michael Nelson: No, I can't answer that question, sir, because I'm prevented by the act from talking about investigations I have under way. We can read to you the section of the act that prevents that. With respect, I must decline to answer that question.

Mr. James Rajotte: May I just then ask about a problem with Technology Partnerships Canada and success fees. There was one case—a notable case—in which a lobbyist actually checked the box for a success fee back in the year 2000. Can you just explain why an investigation would not have started at that point?

Mr. Michael Nelson: I wasn't the registrar at that time, so I wouldn't want to speculate on that. I guess it's important for me to point out that under the Lobbyists Registration Act, contingency fees are not illegal. The act only requires that they be identified if they're going to be charged.

I had mentioned earlier that in response to that, and recognizing that, since 1996 *A Guide to Registration, Lobbyists Registration Act* has pointed out that there are Treasury Board guidelines with respect to contingency fees.

Mr. James Rajotte: And there are TPC guidelines.

Mr. Michael Nelson: Since 1996 it has pointed out the Treasury Board guidelines.

Mr. James Rajotte: But this is one issue that's been raised time and again. I mean, do you see a problem, then, with the act in that you cannot accept a success or contingency fee under TPC guidelines or Treasury Board guidelines, but there is no corresponding section under the Lobbyists Registration Act about actually not accepting one? You're saying that under the Lobbyists Registration Act there is actually nothing that deals with accepting one, and yet it's absolutely forbidden to do so under TPC or Treasury Board guidelines.

Mr. Michael Nelson: I'll share with you my thinking on that. Again, the act requires that you tick off the box, as you put it. The way the act is constructed, it has strict compliance measures like that, and it has a code of conduct, which is how lobbyists behave.

Where my thinking is going is that if a lobbyist knowingly entered into an arrangement, part of which was contrary to a federal government policy, I would have to be thinking about whether the Lobbyists' Code of Conduct would cover something of that nature.

The Lobbyists' Code of Conduct talks about acting with integrity, openness, professionalism, and high ethical standards, and I think the code of conduct—there are those in this room who know more about it than I do because they were part of the legislative debates—was meant to cover not just strict compliance but how one behaves.

So not having come to any conclusions yet, I wanted to share with you that that's where my thinking is going.

Mr. James Rajotte: That there has to be a corresponding—

Mr. Michael Nelson: That there is that kind of—

• (1210)

The Acting Chair (Mr. David Tilson): We're out of time, I'm afraid. You'll have to wait for another round, Mr. Rajotte.

Mr. Powers.

Mr. Russ Powers: I'm just carrying on with my questions.

With respect to the two pieces of legislation we have before us, when will be the next time we'll have the automatic, mandatory review for that legislation?

Mr. Bruce Bergen: It's five years from the coming into force of the amendments, so it's five years from June of 2005. I would take it, then, that 2010 would be the statutorily mandated time for further review of the entire act.

Mr. Russ Powers: Is there the ability within the act to entertain amendments in advance of that time period?

Mr. Bruce Bergen: I would think that if a recommendation were to come from this committee or if the government were to decide to propose legislation, that is something that could be done. There's nothing stopping that, I don't think, in the act.

Mr. Russ Powers: I'm a firm believer in administrative monetary penalties to preclude having to move into arbitration or mediation or even involving the police, the civil courts, or the criminal courts. If they are of substantial value—in other words, sufficiently punitive for doing it—then I find there's a lot more willingness to abide by the rules.

My suggestion is, if that's being considered, then that's something we should consider sooner rather than later. Maybe that will help you.

Thank you.

The Acting Chair (Mr. David Tilson): Monsieur Desrochers, please.

[Translation]

Mr. Odina Desrochers: Thank you, Mr. Chairman.

Mr. Nelson, I would like to come back to your work while you were a deputy minister. You said you carried out duties relating to finance. When you had to audit projects related to the Technology Partnerships Canada program, did you do a breakdown of costs? Did you check whether the costs were related to lobbyists or other businesses?

[English]

Mr. Derek Lee: I have a point of order. Mr. Desrochers is asking questions of Mr. Nelson related to his previous responsibilities. The subject matter of today's meeting is the reports of Mr. Nelson in his capacity in relation to the Lobbyists Registration Act. I doubt very much whether, if I'm correct about Mr. Desrochers' line of questioning, it's at all relevant to these matters. He may want to adapt his question to make it relevant to the subject matter of the meeting, but otherwise I'd ask the chair to rule on whether or not these questions are in order, if Mr. Desrochers is going where I think he's going.

[Translation]

Mr. Odina Desrochers: Mr. Chairman, I want to know whether his duties when he was a deputy minister might influence the decisions Mr. Nelson will have to make while carrying out his investigations. I suspect there may be a conflict of interests and I want to clarify this, Mr. Chairman. I am waiting for Mr. Nelson's answer.

[English]

The Acting Chair (Mr. David Tilson): Are there any other comments on this point of order?

I'm going to agree with Mr. Desrochers.

Proceed, sir.

Mr. Michael Nelson: If you're speaking of the ongoing audits of Technology Partnerships Canada, what I've seen is what has been put into the public domain, which was the actual report that was released by the minister in September. I haven't seen any of the actual audits that were done. Those were within the audit branch, and as assistant deputy minister I didn't see those. I have many other responsibilities as assistant deputy minister, and I didn't see those audits themselves. I haven't seen the working papers; I haven't seen the audits.

• (1215)

[Translation]

Mr. Odina Desrochers: Mr. Nelson, to your knowledge, did they ensure that people were lobbyists and that they were properly registered when sums of money were being paid for projects carried out? Were there directives to this effect?

[English]

Mr. Michael Nelson: In answering your question, let me clarify. There have been two sets of audits, and Mr. Chairman, I'm going to be careful to keep to those matters that are relevant to this proceeding.

As to the original forensic audit—which was recently released through access to information, I believe—when I was the assistant deputy minister, I was aware of that audit and I did see what was in it. With respect to the current audits, I have not seen those.

The Acting Chair (Mr. David Tilson): Mr. Lee, please.

Mr. Derek Lee: Thank you.

Can I just go back over this issue of the Treasury Board guidelines that relate to contingency fees to make sure we've got it right on the record? The Lobbyists Registration Act and the associated legislation don't prohibit contingency or success fees.

Mr. Michael Nelson: It does not, sir.

Mr. Derek Lee: Of course, the Treasury Board guidelines do not have the force of law, but do they prohibit or proscribe contingency or success fees?

Mr. Michael Nelson: I'm not an expert on the Treasury Board guidelines. I can ask Bruce if he's aware of these, but my understanding is that what they prohibit is with respect to the transfer payments policy. They do prohibit departments from entering into contracts with companies that have employed lobbyists who either are unregistered or charge a contingency fee.

Mr. Derek Lee: So it's pretty clear, but it's subject to what Mr. Bergen may say.

Mr. Bruce Bergen: No, I think Mr. Nelson has stated it; that's my understanding as well.

Mr. Derek Lee: The Treasury Board guidelines are really pretty clear that lobbyists engaged online here can't charge success or contingency fees. They can charge an hourly rate. They can send their bills. There are lots of bills to be paid and they can do the work quite legitimately, but they can't charge a success fee or a contingency fee.

Mr. Michael Nelson: That's for those contracts. Again, there's no prohibition I'm aware of against charging contingency fees if you're trying to change a policy or if you're trying to influence legislation, that sort of thing. In Canada we don't have those—

Mr. Derek Lee: So there are certain envelopes where a contingency fee or a success fee could be charged, depending on the contract between the lobbyist and the group lobbying.

Mr. Michael Nelson: Not if there's a contract involved, no, but I will admit that I'm getting into an area here that is beyond my area of expertise.

Mr. Derek Lee: I appreciate that.

Then individual government departments or programs may also adopt rules that may not have the force of law but would be contractually enforceable, that would prohibit the payment out by a contracting party of a contingency or a success fee. That has apparently occurred in the TPC program. Is that right?

Mr. Michael Nelson: Again, I'm out of my area of expertise, but with respect to the TPC program, from what I've seen in the media and from what I'm aware of, yes.

Mr. Derek Lee: That's fairly helpful.

Now, this is on the issue of doing investigations that reach back more than two years. You may actually have thought of this. What if somebody walks in the door and says, "I've got a problem with what Prime Minister Chrétien or Mulroney did 20 years ago"? I understand why you feel free to investigate or do a review of something that happened more than two years ago, even though you won't be able to prosecute, and that's fair enough, but how far back should you go on a public policy basis? Does the statute address this?

If it doesn't, shouldn't we or you do so simply for the sake of providing some certainty in rule of law, so you're not making arbitrary decisions about whether you will or will not investigate something that happened eight years ago? Shouldn't we be looking for some closure, some limitation on when you will investigate?

• (1220)

Mr. Michael Nelson: There would be a natural limitation I think according to exactly when the code of conduct came into play. It would be unreasonable I think to expect anyone to have adhered to the code of conduct before it was published. March 1, 1997, is the current limitation date, I would say.

The Acting Chair (Mr. David Tilson): Okay. We'll have to carry on, Mr. Lee.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

Mr. Nelson, I'm going to ask you a couple of questions about Mr. Dingwall. I'm not going to be asking whether you have an investigation going on him or not, but just confirming a few things and asking you your opinion on another.

It's my understanding—and I think it has been fairly widely reported—that Mr. Dingwall did some lobbying on behalf of a firm and under the provisions of a contingency fee or success fee, which is strictly prohibited. He received approximately \$350,000. Now, it's my understanding as well—again, I'm just going after your opinion on this—that the government recovered that money, which is great, but there were no provisions to go after Mr. Dingwall for the \$350,000, which to me is a little absurd. Perhaps there are a whole bunch of absurdities going on within the act, because it's rather as if—to take it to the extreme—a bank robber walked out of the bank with \$350,000 and got caught, but there's no penalty; he can't be charged.

In your position, what would you like to see done about that? Would you like to see significant changes to the act to allow your office, or at least some arm of government, to recover that money?

Mr. Michael Nelson: I think that's going to be debated the next time the act is opened.

Mr. Tom Lukiwski: I'm just asking for your opinion.

Mr. Michael Nelson: My current position on that type of activity, broadly speaking—not talking about Mr. Dingwall or anyone else in particular—is that I'm interested in seeing whether the code of conduct is applicable to that type of activity.

Mr. Tom Lukiwski: If it were not, would you recommend changes to the code of conduct? You're in a position right now of some influence, obviously, as the registrar, and I think others—

parliamentarians and others—would be looking for some guidance from someone who's in your position. I'm looking to get an answer from you: do you think it would be appropriate under these circumstances, in the future—perhaps there's nothing that could be done about Mr. Dingwall's case—to have some provisions or some authority granted to your office to go after that money from the lobbyist? I understand the department paid the money back, but from the lobbyist...?

Mr. Michael Nelson: I just haven't thought about the money aspect of it. But with respect to the code of conduct, it's within my power—I have to consult, it says in the act—to change the code of conduct. If, as I think through whether or not there's an appropriate link between, as I said before, knowingly entering into arrangements, not just for contingency fees but any type of arrangement that is contrary to a federal government policy...and I find the code of conduct is too limiting to censure that type of activity, then I would be changing the code of conduct.

Mr. Tom Lukiwski: Thank you.

The Acting Chair (Mr. David Tilson): Mr. Zed.

Mr. Paul Zed: I want to follow up on Mr. Lukiwski's comments, because I think he has a good point.

On the code of conduct, if there isn't a limitation, as you say—in other words, if you don't feel, as I've heard you testify this morning, that you're governed by the two years Mr. Bergen has suggested—how far or wide do you cast the net? You have charter arguments to deal with, and what have you, but it seems to me you want to be able to capture all of the activity but may be limited. Would it be a statute of limitations that would take over at that point?

• (1225)

Mr. Michael Nelson: My reading of the code right now is that the code sets out principles. There are four that are mentioned: integrity, openness, honesty, and—

Mr. Paul Zed: Transparency.

Mr. Michael Nelson: —professionalism, actually. I think transparency is read into a lot of those.

Then it goes into eight rules, and the rules constrain—I wouldn't say too narrowly, but they certainly do constrain—those four principles. If you break a rule, that triggers the investigation.

Where my thinking is going is to asking: do they necessarily have to be constrained by those eight rules? To go back to the previous question in answering yours, if they do constrain me too much from censuring behaviour that everyone including me seems to agree would be...any type of behaviour, then I would want to change the rules—again through consultation, as I'm required by the act.

Mr. Paul Zed: But Mr. Epp and I are the last of the Mohicans here, as we remember the whole discussion on the code of conduct. It was the publication, once you were to finish your investigation....

If you got sanctioned by the ethics counsellor, colleagues, then the theory behind it was that, well, then you wouldn't be in business very long and wouldn't be out selling your wares as a government relations consultant because you'd been sanctioned by the ethics counsellor.

Mr. Michael Nelson: Right.

Mr. Paul Zed: I would still think there has to be some integrity associated with your office, so that if you started an investigation and you reported on that investigation, then someone would be out of business if they got a bad mark, if you will, by the ethics counsellor—or now, by the registrar.

Is that still your view?

Mr. Michael Nelson: Right, that is my strongly held view, and these are some of the consequences that need to be put into the public domain.

There will be eight reports. I've initiated eight investigations and there will be eight reports.

If shame were.... That's probably the wrong word, and you'd know a better word, but let's see if it works. That's what I'm interested in.

The Acting Chair (Mr. David Tilson): Thank you, sir.

Before we proceed with Mr. Rajotte, it seems to me, in listening to these comments going around, that I should ask, can we afford to wait for five years before someone suggests that the legislation...?

Mr. Bergen has answered this somewhat, by saying the committee can make recommendations and that the government could come along and make recommendations. But can we really afford to wait five years? I know the legislation says that—

Mr. Michael Nelson: Right.

The Acting Chair (Mr. David Tilson): But there has been whole bunch of things said here, it seems to me, telling us that the legislation is crying out to be amended in order to make things clearer, not only to members of Parliament but also to the public and indeed to your own office.

Mr. Michael Nelson: The committee will, of course, act as it chooses to.

The Acting Chair (Mr. David Tilson): I was hoping I'd get something out of you.

Mr. Michael Nelson: My role in this game is to continue to act as diligently and in as determined a way as possible—which I hope I've been demonstrating—under what I've got.

The Acting Chair (Mr. David Tilson): Mr. Rajotte.

Mr. James Rajotte: Thank you, Mr. Chairman.

I appreciate your help here, Mr. Nelson, and I don't want you to reveal anything specific, but you mentioned eight investigations. Could you identify for us, are these eight individuals or are they eight investigations of, for instance, four individuals—say, two investigations per individual? Can you identify that for us?

Mr. Michael Nelson: I can go as far as saying there are eight investigations of four individuals.

Mr. James Rajotte: Four individuals, okay.

Can you say if those investigations were referred to you by the industry minister or another minister, or were they initiated by yourself because of your own action or at your own discretion?

Mr. Michael Nelson: All investigations are initiated by me, at my own discretion. In fact, the act doesn't give me any choice; the act says that if I believe there has been a breach of the code of conduct

that comes to my attention in any way, then I'm required to carry out an investigation.

Mr. James Rajotte: Were they referred to you by a minister, or did you, for instance, read it in the newspaper—which I think you mentioned you read—and therefore do it yourself?

• (1230)

Mr. Michael Nelson: Mr. Chair, I believe that answering that question would lead towards the area of confidentiality that I'm not comfortable talking about under my obligations under the act.

Mr. James Rajotte: Well, if I could, Mr. Chairman, I'll refer to a specific case.

You can answer generally, just following up on the chair's comments and other comments. We do have a big problem here. David Dingwall and Bioniche is an example of a big problem, not only with the government program, which you obviously are not responsible for.... But when a company gets approved for \$17 million in contributions, provides a lobbyist with a success or contingency fee of \$350,000, thereby breaking Treasury Board guidelines and TPC guidelines, and the company then repays \$460,000.... We're not quite sure why there is the difference of \$100,000. Then the government says, well, we're done with this because we've dealt with the company; our contract is with the company, and if a lobbyist walked away with \$350,000, that's fine. But on the first audit, which you are familiar with, you know that it could have been up to \$3.7 million, or that one lobbyist could have walked away with \$3.7 million, and the company would still have received 90% of their contract.

That is a major public policy problem. I guess I would just like you to comment on—

Mr. Russ Powers: *[Editor's Note: Inaudible]*

The Acting Chair (Mr. David Tilson): No, Mr. Powers, please.

Mr. James Rajotte: Are you a witness here, Mr. Powers?

Mr. Russ Powers: At least I'm a regular.

The Acting Chair (Mr. David Tilson): Through the chair, ladies and gentlemen. Let's not get into a squabble here.

Proceed, Mr. Rajotte.

Mr. James Rajotte: Mr. Nelson, perhaps you could just follow up. I appreciated some of your earlier comments about ways to perhaps rectify this, but this is a problem that needs to be dealt with in changing the code of conduct. Can you comment generally on the situation?

If the government is limited only in that it can deal with companies, it falls to you and to your office to deal with the lobbyists, and it seems we're not providing you with the tools to do so.

Mr. Michael Nelson: First, let me agree with you. It falls to me to deal with the lobbyists, unregistered or not, as I was mentioning earlier, and whether it was two years ago or not—within, again, Mr. Lee's question—back to about 1997. And the way the act has given me the powers—I don't know whether you've ever had a chance to look at the act, and maybe Bruce could help us here. There are substantial powers, including subpoenas and things of that nature, when I'm in investigation mode. Once I've determined that on reasonable grounds there has been a contravention of the act, for any reason whatsoever, that triggers a whole series of powers that are quite significant in terms of getting to the bottom of whatever it is, which are then required to lead to the report that Mr. Zed was talking about. This is intended to put in the public domain my conclusions about what happened and what I think about it with respect to the code of conduct, and then to be dealt with by Parliament in whatever way Parliament chooses. So I think that's a pretty good tool; it's just never been used before.

Mr. James Rajotte: But it is correct—

The Acting Chair (Mr. David Tilson): No, I'm sorry, we're well over time.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you.

Mr. Nelson, please reassure me. When I told you that there had been complaints in the media and all that, you confirmed to us that there was an investigation dealing with Technology Partnerships Canada. I'm talking about Technology Partnerships Canada, and not about individuals.

So there has been an investigation relating to Technology Partnerships Canada.

[English]

Mr. Michael Nelson: The department carried out an investigation of that program. I'm aware of the investigation the department carried out. Under that investigation, under those audits that are going on, where the department finds that they believe there's been unregistered lobbying going on, they refer those cases to me, as registrar. So yes, there is the ongoing audit.

[Translation]

Mr. Mario Laframboise: Therefore, if I believe everything that is being written, I have to assume that some day you will have to investigate this case.

What bothers me is that you were a deputy minister at Industry Canada. You told us earlier that as ADM, you supervised numbers only. You made sure that the moneys were spent in the right places. Was this indeed your job?

[English]

Mr. Michael Nelson: That's a lot of the work I did. I didn't know where every number in the department was, but that is generally the work. I was the senior financial officer.

[Translation]

Mr. Mario Laframboise: All right.

I've seen forms, and every project submitted, as you know, includes a breakdown. Consultants' fees or commissions are already set out. Or am I wrong in saying this?

It is legal, as you said. The commissions were not illegal, I understand. Did you ensure that everything had been paid out in accordance with what had been filed?

• (1235)

[English]

Mr. Michael Nelson: As the assistant deputy minister I would not have seen that level of detail on individual projects. It's my understanding that what started the initial auditing process in Technology Partnerships Canada—and Mr. Chair, I'll be very careful not to get out of my area of expertise here, with respect to this appearance. What started the investigation and the audits at Industry Canada, was a routine audit of some of the contribution programs. So my take on that is that the audit system was working as it should. It caught irregularities, it triggered other audits, and it has led us to where we are now.

[Translation]

Mr. Mario Laframboise: To your knowledge, have there been instructions to the department since the Code came into force to ensure that, when there were commissions or fees, the lobbyists were properly registered?

[English]

Mr. Michael Nelson: For some years there have been requirements in the government contract regulations that companies that enter into contracts with the government, or contributions of that type, not use unregistered lobbyists or lobbyists who are using contingency fees. What happened through the audits was that it was determined that certain companies were, and appropriate actions were taken by the department to ensure that moneys were recovered by the government.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Powers.

Mr. Russ Powers: Mine is a simple question. Do you have any limitations at all with regard to investigations? Is it all government departments, all crown corporations, or whatever? Are there any limitations at all, such that you're not permitted, either through legislation or whatever, to involve yourself if you deem it inappropriate?

Mr. Michael Nelson: What I would consider to be the boundary—and Mr. Bergen might be able to help me out here—would be any lobbying of a public office holder. And “public officer holder” has a pretty broad definition under the act: members of the RCMP, members of the military, folks like you and me. For any lobbying of a public office holder that took place, I would be empowered to investigate.

Mr. Russ Powers: Are crown corporations defined under that or not?

Mr. Bruce Bergen: No. Certain individuals, like Governor in Council appointees on the boards of crown corporations, would be caught in the definition of “public office holder”, but that's the extent of it.

Mr. Paul Zed: Excuse me, but if I could just ask for a quick point of clarification, Mr. Powers, Mr. Nelson can investigate—

The Acting Chair (Mr. David Tilson): No. If I let you do it, everybody will do it. It's chaotic enough in here as it is.

Mr. Powers.

Mr. Russ Powers: No.

The Acting Chair (Mr. David Tilson): Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you again.

Without asking you to confirm whether or not you have any investigation going on, in the news very recently we've had media reports about a candidate—in this case it would be from the Liberal Party—about a gentleman by the name of Richard Mahoney, who apparently did some lobbying while not registered. His rebuttal, I guess, was that he thought he had registered, that he had filed the paperwork. However, he actually wasn't registered.

Whether it is Mr. Mahoney you're investigating or not is irrelevant, but what can you do in a case like this? What powers do you have or what consequences will there be?

Mr. Michael Nelson: In cases where there has been unregistered lobbying that comes to my attention, the first thing we do is open a file and look into what the facts are in any given case. If we were to find that there was in fact unregistered lobbying in a given case and it was within two years, then I'd be consulting with my legal counsel as to whether or not that was something that should be handed over to the RCMP.

Mr. Tom Lukiwski: I need a little clarification here then. If someone had lobbied and was unregistered at the time, regardless of whether it was an administrative or paper flow problem, you would first seek legal counsel, and if legal counsel did in fact say this person actually did lobby a government department and was unregistered at the time, then it would automatically be referred to the RCMP.

• (1240)

Mr. Michael Nelson: It's not automatic. The act is actually silent. It would be up to my discretion, but that would be the normal course of events, yes.

Mr. Tom Lukiwski: How far do your discretionary powers extend? For example, let's assume there was an honest mistake, that the person put it in the mail and whatever. There are probably a number of examples, but the bottom line is he was not registered at the time lobbying took place. After your investigation, if you did one, what discretionary powers do you have and does your office have? It was clear. It was black and white. He was not registered at the time. Are there extenuating circumstances?

Mr. Michael Nelson: I haven't had that sort of thing come to my desk yet in terms of a review with those types of circumstances. The act, as I said, is totally silent on what should happen. The act talks about what the penalties are when there is unregistered lobbying, but the act is silent on...I think "discretion" is the wrong word; I shouldn't have said discretion, but judgment. However, the act is silent on that.

I would have to consider the facts of the case. Certainly, if it was something that was our fault in the registry, then that would be a

different story. I can't speculate without knowing exactly the facts of the case, but the law does say unregistered lobbying is against the law.

The Acting Chair (Mr. David Tilson): You have 30 seconds if you want to say your name.

Voices: Oh, oh!

Mr. Tom Lukiwski: This is for the record?

The point I was trying to get at is that there are laws, black and white, and then there are shades of grey. If an individual was proven to have in fact lobbied, would it automatically be referred to the RCMP? Or let's put it this way. With a normal course of action, it would be referred to the RCMP, and only an intervention by your office would prevent that from happening.

Mr. Michael Nelson: Perhaps I'll let Bruce help me with that.

I would be the person doing the referring. So if it was going to the RCMP, my office would be doing the referring.

Mr. Tom Lukiwski: But there's no automatic provision that you would turn it over to the RCMP—

The Acting Chair (Mr. David Tilson): That's a long name.

Monsieur Desrochers, please.

[Translation]

Mr. Odina Desrochers: Mr. Nelson, I come back to this question because I want to be reassured about certain aspects of the work you did before you took on your present position. You told my colleague just now that every contract included obligations, directives and clauses to properly protect you. So how can we explain that a public figure — here we are referring more particularly to Mr. David Dingwall, but perhaps there are others — could have done work without having authorization to do so. Who committed this mistake? Who didn't do a proper audit?

[English]

Mr. Michael Nelson: Mr. Chair, I can't see how that question is relevant to the code of conduct or the act, as I'm currently testifying, with respect.

[Translation]

Mr. Odina Desrochers: I am trying to understand, Mr. Chairman. Mr. Nelson replied to my colleague just now that the guarantees against such mistakes as occurred in Mr. Dingwall's case were related to the obligations, directives and clauses in the contract. We know very well that certain people have not complied with their contracts and that they were able to infiltrate and obtain money.

Who in your organization should have warned you about certain irregularities in a contract that had been awarded?

[English]

Mr. Michael Nelson: First, I wasn't there at the time, but let me talk to the general case. If a department discovers that there has been unregistered lobbying at any time, my advice to the department is that they refer that case to me.

The Acting Chair (Mr. David Tilson): What if they don't?

Mr. Michael Nelson: What if the department doesn't refer it to me? Then I'm not aware.

• (1245)

The Acting Chair (Mr. David Tilson): You're still on the air, Monsieur Desrochers.

[Translation]

Mr. Odina Desrochers: In another connection, how long must members of parliament or ministers who leave politics wait before being authorized to take up lobbying? Does the government machinery force them to do their time?

[English]

Mr. Michael Nelson: The Lobbyists Registration Act

[Translation]

is silent on this subject. There is another system, but it is not included in the law.

Mr. Odina Desrochers: Is it the same for a minister?

Mr. Michael Nelson: There are no requirements in this connection in the Lobbyists Registration Act.

Mr. Odina Desrochers: Excuse me, Mr. Chairman, but that means that if a Minister of Public Works were defeated or left his job, the next morning he would be able to lobby the people he knows within the department he was responsible for the day before.

Is this what you are telling me, Mr. Nelson?

[English]

Mr. Michael Nelson: Mr. Chairman, there is another regime, which the Ethics Commissioner speaks to, with respect to that type of activity. The law itself, the law that I'm responsible for, does not speak to that issue.

The Acting Chair (Mr. David Tilson): Sorry, we're over; you may continue later, but we're over now.

Mr. Epp.

Mr. Ken Epp: Thank you, Mr. Chairman.

I'm curious about this contingency fee thing. Without referring to any individual, just in the general case, it looks to me like there is a substantial loophole here.

Let's say a corporation has a lobbyist and says, sort of under the table, you know, if we win this contract, we'll give you a million bucks, because it's a big one, 49 helicopters or whatever it is. The lobbyist says, okay, I'm going to work hard for you and get you that. Now, he's registered and everything, but he may or may not click off on his form that he's working for a contingency; sometimes I think we over-anticipate how much honesty people have if they are about to break the law.

At any rate, the person goes there, and the corporation says, if we win this and the government finds out, and we have to repay the contingency part, we'll gladly do that on your behalf, but you get to keep your money.

So it would be under the table, and neither you nor the RCMP, nor anybody else, can go after this individual after the fact. Am I

correctly interpreting the rules here? If so, I think we have identified a huge loophole, which legislatively we need to close.

Your opinion.

Mr. Michael Nelson: You've cited two cases here, one where the individual does tick off the box, if you will, and one where the individual doesn't. If a lobbyist accepts a contingency fee and has not indicated that he or she is doing so, for any type of work, then they're in contravention of the act. If we catch them within two years, then that's a matter for the RCMP. The act says that you have to fill in the forms, you have to disclose. It's very clear in the act that you have to disclose whether you're getting a success fee.

So if the individual does as you've described, and carries on and collects a contingency fee, even if it's not for something that's prevented by the government contract regulations, even if it's for changing a policy or something of that nature, then they've contravened the act, and that's a matter for the RCMP.

Mr. Ken Epp: And the penalty is, like, \$2,000, which means they get \$998,000, or whatever it is, left over.

Mr. Michael Nelson: Those are the penalties—

Mr. Ken Epp: That's a loophole.

Mr. Michael Nelson: —that Parliament has agreed to. I would agree that the next time the act comes up for review, the magnitude of the penalties will probably be one of the things discussed.

Mr. Ken Epp: Thank you.

I have 12 seconds, Mr. Chair; I'll cede.

The Acting Chair (Mr. David Tilson): That's great. I was wondering whether your clock was different from my clock.

Mr. Powers.

Mr. Russ Powers: Just going further on Mr. Epp's line, very clearly there do appear to be some loopholes, shall we say, or slippages within such things as contingency fees, success fees, and that. This is probably not a question for you but perhaps a direction to the chair, who prefaced this earlier. Maybe there's something we need to have the Library of Parliament take a look at for us, and it's something we can look at ourselves, which you may very well be involved in.

I'm interested as well—and this might be for the Library of Parliament—in the ability to become a lobbyist. In other words, in some cases there's a loophole that you can be one tomorrow; in other cases, you can't be one tomorrow. It would be interesting to see just what various pieces of legislation do that.

Finally, I think you have some suggested changes to the legislation even though it's already come into place. I would think that this committee would consider these in a very active and aggressive manner. I would encourage you, if you think it's better to move ahead sooner rather than later.... I can only speak for myself, but I would certainly be prepared to listen to them sooner rather than later.

• (1250)

Mr. Michael Nelson: Thank you, sir.

The Acting Chair (Mr. David Tilson): If the committee comes to that conclusion, would you be prepared to work with us and give us some suggestions?

Mr. Michael Nelson: Of course I would, sir.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Rajotte.

Mr. James Rajotte: Thank you, Mr. Chairman.

I just want to follow up on Mr. Epp's point. The situation you described was if they did not check the box for a success fee. But if in fact they did check it for a success fee...and you're right, you do have a fair amount of investigatory powers, but you're sort of tied in the sense that if someone said they were getting a contingency fee, even though it was against TPC or Treasury Board guidelines, and you investigated it and found that they received it, you actually don't have any authority or mandate then to prosecute or refer that person to the RCMP. Because what they've done is against TPC guidelines, but it's not against the Lobbyists Registration Act

Mr. Michael Nelson: That's correct. As I described earlier, the way my thinking is proceeding is that if I were able to make a link with the code of conduct, then the penalty would be the tabling of reports in the House of Commons. The end of that road is the tabling of the reports. So you're quite correct.

Mr. James Rajotte: In the one example that people refer to, of Dingwall in the year 2000—this was before your time, so it has nothing to do with you—he did check the box for a success fee. Now, I don't know whether it would fall to you or to whoever, but it seems to me that someone should be overseeing what lobbyists are doing. If they're checking a success fee for a program like TPC, where it's explicitly written in the contract that you cannot hire a lobbyist and pay that lobbyist a contingency fee, it seems to me there should be someone overseeing that, saying, “You've checked this box and you simply cannot do that; you cannot accept a success fee”.

Are you reviewing how lobbyists are registering now, flagging the ones that are saying success fee, seeing if it's for Treasury Board or TPC, and saying to them, “You simply cannot do that”?

Mr. Michael Nelson: I think the answer to your question is yes.

I'll tell you what we're doing now. When somebody ticks off that box when they're registering, first we ask them did they mean to, because maybe they're sort of running through the registration and so on. But when they say “Yes, we are”, we point out to them that there are Treasury Board guidelines. We point them to our website that has a link to the transfer payments policy and the Treasury Board guidelines, and although we're doing that in real time, we actually talk to them and tell them that. I was asked earlier should I put out more of a guideline on that. I think perhaps I should.

The guide to registration for lobbyists has pointed that out since 1996, so yes, we do that in real time.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Michael Nelson: And I think it's important that we do. I think that's an important link.

The Acting Chair (Mr. David Tilson): I have good news for you. It's over.

Mr. Michael Nelson: Thank you very much, Mr. Chair.

The Acting Chair (Mr. David Tilson): You did very well. I think there are more questions that needed to be asked, and perhaps another time...but thank you and your colleagues for coming to speak with us today. You are now excused from the committee.

Thank you very much.

• (1255)

Mr. Michael Nelson: It's our pleasure. Thank you, Mr. Chair.

The Acting Chair (Mr. David Tilson): Ladies and gentlemen, before I declare the meeting adjourned, I did indicate in an aside that the steering committee will meet on Tuesday at 1 p.m. to discuss future business.

Next week our Tuesday and Thursday is booked. We will be meeting on Tuesday at 11 a.m. with representatives from the Department of Human Resources, Correctional Service, and Revenue Canada.

This meeting is adjourned until 11 o'clock on Tuesday, November 1, 2005.

Thank you very much.

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

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

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