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Chair

Mr. Tom Wappel

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• (1545)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): We have quorum for the purpose of conducting business, so I will call the meeting to order.

I'd like to welcome back all my colleagues.

To our guest for today, Mr. Michael Nelson, welcome to you and your officials.

Before we get to Mr. Nelson, as I explained to him off the record, we have just a small bit of business that we must conduct. There is a seminar being conducted next week, September 25 and September 26, a Monday and Tuesday, on the subject of access to information, which of course could not be more germane to this committee. During the summer we sent around notification asking whether any members were interested in attending. Six members expressed interest, so it clearly is something that some of the members wish to do.

The difficulty is that according to House rules, as the clerk advises me, anything that occurs off the Hill, whether it happens to be at the Chateau Laurier or at some hotel 50 feet away, has to be authorized by Parliament as travel. Accordingly, we would have to pass a motion today, which I would then take to the liaison committee tomorrow. If the liaison committee were to approve it, it would then have to be brought to the House leaders. A formal order of the House would have to be made before the tickets could be purchased for something that is taking place literally a week from today.

Our clerk has been on the job, which is no surprise, and he's obtained a registration price as if we were registering well in advance. There's also a promo that if you register three, you get the fourth free.

There would be nine people going—six members, the clerk, and our two researchers.

Who are the six members, Mr. Clerk?

The Clerk of the Committee (Mr. Richard Rumas): Mr. Stanton, Mr. Van Kesteren, Mr. Dhaliwal, Madam Lavallée, and I'm waiting for—

The Chair: And me.

The Clerk: And you, Mr. Chair, of course.

Mr. Mike Wallace (Burlington, CPC): Mr. Chairman, does it mean that we would not have a committee meeting on Monday if we go to this?

The Chair: That is correct. There will be no committee meeting on Monday if this is approved and if we travel, because at least half the committee will be at this seminar.

Mr. Mike Wallace: I did not volunteer because I thought I had committee meetings. I could likely come and go from it. I have some stuff I have to do, but I could make room for it.

The Chair: Are you interested in attending the seminar in full?

Mr. Mike Wallace: I can't be there in full, I can tell you that right now.

The Chair: I'd hate to register you for full participation if you can't make it, but we could easily do the math if you wanted to add yourself in.

Mr. Mike Wallace: No, I can't make it in full.

The Chair: Okay.

Are there any other questions about what I've said?

What I'm looking for is a motion that the committee adopt a travel budget in the amount of \$4,865 to cover the cost of registration for members and staff to attend a seminar on access to information in Ottawa on September 25 and 26, 2006.

The cost of \$4,865 is the \$689 registration fee times seven. We get two free tickets, so we have nine going.

Mr. Mike Wallace: Who does that get charged to?

The Chair: That gets charged to our budget.

It's been moved by Mr. Peterson.

Is there any discussion on the motion?

(Motion agreed to)

The Chair: Thank you very much. I'll deal with that tomorrow at the liaison committee.

We have with us today the registrar of lobbyists, Mr. Michael Nelson.

Mr. Nelson, I see there are three people here; I hope you will introduce them.

Committee members, because of the nature of Mr. Nelson's presentation—it's somewhat technical—we're going to allow him to make a presentation that will be interrupted by questions at certain times. So we'll be a little less formal than the twelve minutes that we normally allow for the witness, because we'll break and give committee members an opportunity to ask questions and then proceed again. If that doesn't work, we can be more flexible. Hopefully that will give Mr. Nelson an opportunity to discuss the things that he thinks are technical.

Without further ado, welcome, Mr. Nelson, and please introduce the people you have with you.

[Translation]

Mr. Michael Nelson (Registrar of Lobbyists, Office of the Registrar of Lobbyists): Thank you, Mr. Chairman.

I am extremely happy to be here today. These meetings are very important to me. I am accompanied today by our counsel, Bruce Bergen, by Karen Shepherd, Director of Investigations, as well as by Pierre Ricard-Desjardins, Director of Operations.

[English]

I think it was interesting to hear the bit of discussion about a seminar. We're going to try to whip very quickly through this deck that we have, but for an act that is relatively simple in its intent, it's a little tricky to work your way through. Particularly if you are going to be asking some questions about what Bill C-2 might mean for this, as I've been advised you might, it's very important to budget a bit of your time to do this. So I commend the committee for the learning that needs to go on, and I apologize to those members of the committee who may have heard some of this before and possibly know more than I do about the act.

What is a senior public servant without a deck? So we have a deck to go through, and I'll start on page 3.

Why do lobbying laws exist? Of course we aren't the only jurisdiction that has lobbying laws, and I'll say a little bit about that in a second. The pretty simple reason they exist and they're being talked about in all jurisdictions, or in most jurisdictions, is to address the concern that some people have more access to government decision-makers and thus to influence government decision than other people have, and they do this by virtue of hiring people either because of who they know or what they know about government. This ends up being a concern in democracies, and so lobbying laws become enacted, I believe, to contribute to confidence in the integrity of government decision-making. This isn't about just creating a registry with names on it; this is about the outcome of confidence in government decision-making.

As I mentioned, there are laws in many jurisdictions. Most jurisdictions consider lobbying law to be part of a family of ethics legislation, so some folks in some jurisdictions may have my responsibilities, and they may also be responsible for election law, election financing. Here in Canada at the federal level currently, the Parliament has chosen to make this just a single lobbying registration function.

The emphasis in most legislation in various jurisdictions ends up being on transparency rather than regulation in most cases, especially at the beginning, and then as the legislation matures,

usually the disclosure gets more intense and some regulation starts to move in. This is what we're seeing through Bill C-2, I believe. I know the OECD is studying lobbying law. The United States have a myriad of different legislation at the federal level and the state level. I saw something from New York City the other day. Five provinces in Canada have lobbying legislation: British Columbia; Ontario; Nova Scotia; Newfoundland and Labrador; and Quebec, which is the closest to the legislative powers that we have here at the federal level. The latest trend is that you're hearing about municipal registries. In fact, the City of Toronto asked me to go down, which I did earlier this summer, and talk to them about our federal registry, because they've just enacted their own regulations for the City of Toronto, and I know a couple of other cities are talking about it. I would point out that in Quebec the provincial legislation covers municipal lobbying as well, so my colleague Pierre-André Côté has quite a lot on his hands.

As for the history, very quickly, the Lobbying Act has been around for about 17 years. In some major initiatives in 1996 there was the introduction of the lobbyists code of conduct, which Karen will speak to briefly in a second. The most recent amendments to the act came into force only last summer, with tremendous effect actually in terms of the number of registrations, and now we see that Bill C-2, the Federal Accountability Act, has major amendments proposed to the Lobbyists Registration Act.

The Office of the Registrar of Lobbyists has been around, of course, as long as the registry. In 1994 the Ethics Counsellor was made responsible for the registry as well as being Ethics Counsellor. In 2004 Parliament decided to split that function, creating the office of Mr. Shapiro—Mr. Bernard Shapiro was the Ethics Commissioner—and the residual responsibilities were given to an ADM at Industry Canada, which Mr. Tilson knows because he asked me that question the very first time I appeared. I was that ADM, and the question was very appropriately, “How can you be an ADM and also be the registrar of lobbyists?” So not long after, with the workload increasing and, I would like to say, with the encouragement of the members of that committee at the time, the Office of the Registrar of Lobbyists became a stand-alone function within Industry Canada at that time and my office was moved. Physically we moved out, and I became the registrar of lobbyists on a full-time basis and was no longer the assistant deputy minister.

● (1550)

Then in February 2006 when there were some machinery moves around the creation of the cabinet of Prime Minister Harper, one move was made that didn't get a lot of attention but was certainly very important for us and, I think, for the independence of the portfolio. As you can do in the machinery of government at the federal level, my office was made a department—all 20 of us—for the purposes of the Federal Accountability Act. I was made the deputy head of that office, and we were moved to the portfolio of the President of the Treasury Board.

I would say the registrar of lobbyists is a unique creation within government. It's a public servant—

The Chair: Excuse me, please. We have a question, if that's all right.

Mr. Michael Nelson: Absolutely.

The Chair: Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you.

Mr. Nelson, I appreciate the issue you raised about Industry Canada. Of course, the proposal of Bill C-2 is that ultimately when that bill becomes law—if it becomes law, and I assume it will—there will be an independent commissioner of lobbying. My understanding now, and I think you alluded to it, is that your office is really responsible to the Treasury Board. I'd like you to clarify whether that is the case, and if it is the case, I assume that would continue until this new legislation takes place.

My question is, are you put in the same predicament as you were with Industry Canada? There are probably more lobbyists involved in Industry Canada than there are with the Treasury Board, but could you elaborate on that issue, because to me it's the same situation, perhaps not quite as exaggerated, but the same situation.

Mr. Michael Nelson: It is the same situation; that's exactly the way to put it. It is not the same machinery-type situation, because I'm no longer part of anyone's management team. I'm my own department, so I don't sit on anyone's management team. Here's the way it's working—

Mr. David Tilson: Except you answer to the President of the Treasury Board.

Mr. Michael Nelson: Here's the way it's working now and the reason it can work, but the reason I still think it's critically important that an independent commissioner of lobbying be created. Because of the way the Financial Administration Act works, in order for me to have financial delegations to sign contracts and things and like that, a minister needs to sign a delegation instrument, and as well, if I'm going to make a presentation or submission to Treasury Board, a minister needs to do that.

So with respect to the spending of money, and not the way I spend money but my ability to legally sign sections 34, 32, etc., a minister—and it was Minister Baird—signed off. The only question Minister Baird's staff asked—because I have never met Minister Baird, I've never met the man—with respect to my responsibilities as registrar of lobbyists.... Neither he nor his staff have ever asked me anything about what I do, why I do it, any investigation. So that doesn't mean I don't believe you still need the machinery to make the optics completely correct, but I'm being treated honourably by the current administration, as I was by the last administration.

• (1555)

Mr. David Tilson: I understand that, and you've clarified what I was wanting. To me, it's a similar situation. If there are any lobbyists toward Treasury Board—and as I said, I doubt that there are as many as there are with Industry Canada, but there may be some—you do have a conflict. But I also understand that this is on an interim basis until this legislation is passed. Hopefully it will be passed soon.

Mr. Michael Nelson: Absolutely.

Mr. David Tilson: Thank you.

Thank you, Mr. Chair.

The Chair: Are there any other questions that anyone would like to ask up to now? That doesn't mean you can't go back later.

Thank you, Mr. Nelson. You can carry on.

Mr. Michael Nelson: I will continue, but that's an important thing to clarify. Thank you for that question. The office can't operate unless you've got that independence.

Page 7 in the deck concerns the registrar of lobbyists. This is what the registrar does. Essentially, we run a registry. When we get interviewed by the press sometimes, the questions are all about how many investigations and what kind of enforcement we're doing. The bulk of our work is running a registry and running it on the Internet. We establish and maintain a registry. We issue advisory opinions and interpretation bulletins regarding various parts of the act. We develop the lobbyists code of conduct, which describes how lobbyists are to behave. We enforce the act and report to Parliament on the act and the code of conduct and on investigations carried out. I'll say a little bit about that a little later.

Page 8 looks at the act itself. There are four points that I think are terribly important. The preamble to the act doesn't get a lot of attention, but it's what a lot of the act is about, namely that free and open access to government is an important matter of public interest and that lobbying public office holders is a legitimate activity. However—it doesn't say “however”, but that's what it reads—it's desirable that public office holders and the general public know who is lobbying and know some information about them. Finally, there is what I consider a point about balance, which is that the system for registration of paid lobbyists—and that's not just the online system, it's the set of rules, and it's how I should behave—should not impede free and open access to government. In other words, the rules shouldn't be so complicated and so heavy, and the registration itself shouldn't be so difficult that they actually have an effect counter to what you're trying to achieve.

Sometimes when I give a presentation like this, and I talk about lobbying, it turns out that lobbying is not necessarily what most of us think it might be. Lobbying, under the act, is communicating—that's why I have these words on page 9 underlined—it's communicating, whether verbally, by e-mail, or in any other way, with a public office holder. And we're all public office holders in this room. It's an incredibly broad definition. It can be with members of the armed forces, members of the RCMP, or with any public servant. There are certain crown corporations that are excluded from that, but it's a very broad definition. And it's communicating for payment—another very important trigger, because volunteer lobbying isn't registerable. If I want to get a group of people together on my street and hammer at the Minister of Heritage Canada to try to get a grant for a Veterans Day parade or some other kind of parade, that's not a registerable activity if nobody is paying me for it, but it is lobbying. I try often not to talk about lobbying so much as about registerable activities under the act. And it's doing those things in respect of this list, which is right out of the act, and which essentially deals with changes to the status quo, decisions about legislation, decisions about policy, that sort of thing.

The final bullet is very important, for consultant lobbyists only, and concerns the act of arranging a meeting. If you hire somebody just to get you into someone's office because you happen to know someone or know how to do it, that is a registerable activity for consultant lobbyists.

There are certain exemptions under the act. Employees and elected members of certain governments—for instance municipal employees of the City of Toronto, and those of the provinces or territories—don't have to register in order to talk to public office holders. Members of certain aboriginal councils and institutions don't have to register. There are a number of other small exemptions concerning some international organizations, for example. There are certain communications that are exempt. Those people who come to talk to you at this committee are not required to register because it's so public. If you have communications with respect to enforcement or interpretation or application of an act, and you're not really trying to change the act, but rather you're trying to figure out what it means to you, that's not registerable. Simple requests for information—How do I fill out this form? How do I go about doing this?—are not registerable.

• (1600)

The Chair: Yes, Mr. Van Kesteren?

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): I'm curious about somebody who's hired by a firm and who would have access. Would he qualify as a lobbyist, or does he slip under that as well? Let's say a law firm were to hire somebody who had past experience in government office.

Mr. Michael Nelson: Sure. If they're hiring that person to talk on their behalf to a public office holder about any of these subjects—changing legislation, changing a policy—and they're paying that person, then that person needs to register as a consultant lobbyist.

When we go on to the next section—and I'll turn to Pierre to explain—we'll see that there are different types of lobbyists. When I do this presentation, sometimes even for departmental management committees there is one of those “ah-ha” moments, because we all think of lobbyists as individual consultants, whereas there are in fact three different types of lobbyists. That's really important to understand under the act.

Mr. Dave Van Kesteren: So we'll address that a little later. There are a few, possibly, that fall into a different category. Is that what you're talking about?

Mr. Michael Nelson: Absolutely. There are three different types. [Translation]

I am going to ask Pierre to explain the types of lobbyists and the registry.

Mr. Pierre Ricard-Desjardins (Director of Operations, Office of the Registrar of Lobbyists): As Mr. Nelson was saying, there are three types of lobbyists. There is a very legitimate reason for that: the legislator, in its wisdom, decided that it would be easier to describe the activities lobbyists are involved in by putting these lobbyists into three categories.

The most common, the one we think about the most often, is the consultant-lobbyist. These are consultants in government and public

relations who work within an office and whose services are retained by several clients at the same time.

The consultant-lobbyist may have several mandates from several clients. Each mandate has a different objective and targets very specific lobbying activities. For example, a consultant-lobbyist's clients may include a mining company, a pharmaceutical company, an environmental group, etc. Consultant-lobbyists are paid by each of their clients.

The act requires consultant-lobbyists to register for each mandate they receive, so for each of their clients. If I were a consultant-lobbyist in demand, I might have 10, 15, or 20 registrations in my name, depending on the number of clients and mandates I have accumulated. If I am a little less successful in my business, I may not have as many.

That was the first category of lobbyists.

The two other categories are essentially what we call in-house lobbyists. They are not consultants. In the first case, they are hired by a corporation, such as Alcan, Nortel, or any other one; in the other case, they are hired by a non-profit organization. An example of that is the Red Cross, or another organization of that type, but it goes farther than that. It may be a sector or an industry association, such as a mining association or a forestry products association. They are essentially non-profit entities involved in lobbying activities.

As I was saying earlier, consultant-lobbyists, which is the first category, must register for each of their mandates, each of their clients. In the case of in-house lobbyists, the legislator decided that the registrations should be done by the chief executive officer of the organization. In the case of a corporation, the chief executive officer, the chief operating officer, must register the corporation and include in the declaration the names of all of the people who are involved in lobbying activities. In the case of a non-profit organization, the chief executive officer is also responsible for the registrations. That is why there are three types of lobbyists, to recognize the different realities lobbyists face.

On page 12, we have attempted to give you an idea of the kind of information that must be included in the lobbyist declaration. Generally speaking, regardless of the category, the information must include the identity, in other words the name of the lobbyist, the lobbyist's business address — if the lobbyist has another address, it must be indicated — the purpose of the activities, in other words the field, as well as the government organizations that will be targeted by the lobbying activities.

In the case of consultant-lobbyists, a little bit more information about the client may be requested. For each registration that consultant-lobbyists must complete, for each of their mandates, they must indicate who the client is, the purpose of the lobbying activities, and if there are subsidiaries and parent companies that will also benefit from the activities.

In the case of in-house lobbyists, whether they work for a corporation or for a non-profit organization, a description of the activities in which the organization is involved is requested.

Generally speaking, this is to give the public as much information as possible, not only about the activities, but also so that the public can know who is benefiting from these lobbying activities.

Are there any questions?

• (1605)

[English]

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair.

First of all, Mr. Nelson, I would like to welcome you and your team and thank you for coming to give us this briefing.

You've explained about the employees in the public sector who go and work in the private sector. How about the other way around? Let's say lobbyists working in the private sector get elected as members of Parliament. A previous lobbyist becomes Minister of Defence, for example.

How would you treat people like us, who are the elected representatives?

Mr. Michael Nelson: The act is silent on that matter. The act talks about the registration of a lobbyist, not about the lobbyist's previous career. When they stop being a lobbyist, there is nothing to stop them from carrying on a different type of career.

There are other conflict of interest codes that the Ethics Commissioner looks after that may talk about some circumstances, but the Lobbyists Registration Act, which is my area of responsibility, doesn't speak to the point that you just raised.

Mr. Sukh Dhaliwal: If that is the case, which category would the firm that this lobbyist was working for be under—conflict, or your jurisdiction?

Mr. Michael Nelson: I'm sorry, the firm...?

Mr. Sukh Dhaliwal: The firm that this lobbyist was working for.

Mr. Michael Nelson: So the employer.

Mr. Sukh Dhaliwal: Because that firm will now have access to that office bureau, right?

Mr. Michael Nelson: The lobbyists code of conduct speaks to a potential situation. That's why they have a registrar who looks into the facts of each individual situation.

Under the lobbyists code of conduct, which Karen will talk about in a few minutes, one part says that you're not supposed to exercise improper influence. So if you had a firm who now had special access into government, and that firm, in some meeting, for some purpose, said, "Look, you used to work for us, and we have some information about you that we don't think you want to get out while you're working for us," and that came to my attention, I investigated it, and found it to be true, then the employing firm, the previous firm, could be in violation of the lobbyists code of conduct. That's the type of situation.

You really have to look at the facts of each individual situation. The mere existence of a possibility is not enough to convict or to say that anyone has breached anything.

• (1610)

Mr. Sukh Dhaliwal: Thank you, Mr. Nelson.

The Chair: Mr. Tilson.

Mr. David Tilson: Sir, you were talking about the availability of information to the public. Presumably registrations are registered and then put online, or that's how I understand the process works.

I would like you to clarify this. My understanding is that for some reason your office is late in putting some of that information online, late by as much as a month. Is that true? And if it is true, why is that?

Mr. Michael Nelson: From time to time we have a tremendous number of renewals come in. That's one possibility. I'm not sure whether it's a month—

Mr. David Tilson: Well, I don't know—

Mr. Michael Nelson: —but let me speak to your question.

Last year, with the amendments that came in under the act, there was a new requirement that everyone had to re-register every six months. The first time that happened, which was around December or January, the flood that came in and the questions from people who were re-registering did cause us to get behind in that first six-month period. We had people working overtime at that. Anyone who needed to register desperately, if you will, was able to say to us, "Can you get mine through? I have to have a meeting with someone, and the business of government has to go on." We did our best to work with those situations.

Mr. David Tilson: Is that still happening, or has that ceased?

Mr. Michael Nelson: Pierre, do you want to speak to that?

Mr. Pierre Ricard-Desjardins: I would say that right now we're running on time. We passed the peak of renewals about a month ago.

Mr. Nelson mentioned that renewals tended to peak because they were all synchronized when the modified act came into force. That is slowly changing over time. They're being dispersed over time.

Also, with the new rules, people did not always register as required under the act. When people do that we have to go back and ensure completeness. That increases the time. They then have another 30 days to come back with final answers. It's not necessarily a question of the office being late. There is a learning curve here on the part of lobbyists. I'd say overall we're doing much better than last June, which is encouraging.

That being said, if you will allow me, going back to the presentation, for each category of lobbyist, the delay, the time to register, is not the same. For consultant lobbyists it's only ten days, but for a lobbyist who works for a non-profit organization, they have 60 days to register. This is how the legislator has set it, to recognize the various situations. There may sometimes be an impression that an in-house lobbyist is late registering, but it's just that the act allows for a different period for registration, depending on the category.

The Chair: I have two questions.

The theme of the material on page 11 is that the person must be paid. Mr. Nelson mentioned that you don't go after volunteers.

If a corporation that operates for profit, for example, were able to convince a volunteer to lobby in a volunteer capacity for the corporation, that person would not have to register. Is that correct?

Mr. Michael Nelson: There does have to be payment, but payment doesn't have to be money. If they were convincing the person to volunteer in the expectation of maybe getting a job with the corporation....

The Chair: Hard to prove.

• (1615)

Mr. Michael Nelson: It is extremely hard to prove. This is a very difficult area to get into, and it's difficult to get to the intention of people or what might happen in the future.

The Chair: I could see it even more so in a non-profit entity where this would clearly attract people who are very zealous about the particular thing they're interested in and would be very happy to volunteer to speak to members of Parliament or senior bureaucrats, but there's no way of catching those people. Perhaps there's no reason to catch them, but there is no way to catch them because they're not being paid. I'm wondering what the theory is. Is the idea that the whole thing is the exchange of money, otherwise everything goes?

Mr. Michael Nelson: For the two types of in-house lobbyists, the idea was that they were employees of the corporation. We have a situation that could be considered as similar for outside directors of associations or companies like this, because sometimes they're only compensated by their travel or meal costs. In that case they are not required to register. However, if they're paid—and we do have some instances where they are paid more than those basic travel and food types of costs—Revenue Canada considers that as income and so do we. We require those people to register as consultant lobbyists for that company.

You're absolutely right, the idea, as far as I understand it, when the act was put together—and a lot of lobbying legislation in the world is like this—was that the exchange of money or the idea of some kind of compensation was going to happen a lot more often than being able to convince somebody to lobby for you on a volunteer basis. I guess they were just looking at the general case as opposed to what was perhaps considered the exception.

The Chair: My second question, before I go to Mr. Peterson, has to do with the re-registration. I'm new to this committee. What was the rationale for requiring renewals—not re-registration—every six months when, for example, any modification to the information must be done within a month anyway? If I were to register my name, all of my information, all of my clients—and I've got ten of them and that's

all I do—and my address remains the same, my name remains the same, my clients remain the same, my contacts remain the same, why do I have to re-register every six months? What's the point? If I have a positive obligation to register if there's any change, that makes sense.

Mr. Michael Nelson: There is some variation among the categories about what they have to declare when they do the re-registration. Part of it was just to make sure that the data has some integrity.

Along with the renewal is the idea of telling us when you quit, if you're no longer on the assignment. If we look at the statistics and we graph them from the period 1996 to around 2004, there's a very suspicious straight line of consultant lobbyists. We terminated everyone when we started the new amendments to the act last year, and the lobbyists that were sort of here on the graph, if you will, were the same as they were here. What this delta was underneath this curve was all the lobbyists that didn't bother to de-register.

Part of the reason for keeping it at every six months that people have to check in is just to make sure that the registry is up to date and accurate, because the evidence has shown an awful lot of lobbyists that just said, well, I'm done—and this was in the hundreds—and they weren't, so they looked like they were active.

The Chair: But they already would have had a positive obligation to notify you that they were done because that's clearly a modification to the information that's on file.

Mr. Michael Nelson: Exactly, and they just didn't do it.

The Chair: So rather than prosecute them, you make everybody else renew every six months.

Mr. Michael Nelson: Well, with respect, it's Parliament that decided this, and it is a feature of many legislative regimes.

The way I would look at it, the argument that you're making seems to make more sense for the in-house lobbyist, because when they do the renewal they do a six-month prospectus to say that for the next six months here are the lobbying assignments. Shell Canada, for example, has quite a long registration that says that over the next six months here is where we're going to be talking to government, and here is who we talked to for the last six months. What you've got every six months is sort of a forecast and a verification of where they're going to be lobbying.

The Chair: I just comment that to me, you don't want to impede free and open access to government. When you have to start forecasting six months in advance what the heck you're going to be talking about with whom, to me, that's beginning to impede free and open access to government. But that's just a new member talking.

Mr. Peterson.

• (1620)

Hon. Jim Peterson (Willowdale, Lib.): Mr. Chairman, I tend to agree with you on your point about the six months.

As you pointed out, sir, if your assignment is finished there is the obligation to notify. An educational program could certainly do that, and maybe even some fines for not showing that the assignment has been completed. I think this would be a simpler system. I think there's merit in looking further into this.

If I'm a director of a corporation and I'm paid to attend five or six board meetings a year, say, and that's all I get, but I undertake then to go and lobby Ottawa on behalf of that corporation, I'm not being paid for that lobbying, and it was in addition to what I was paid for, so I would not be a lobbyist that would have to register.

Mr. Michael Nelson: I just want to make sure I get the facts of the situation. Are you an inside or an outside director?

Hon. Jim Peterson: I'm an outside director and I get paid say \$25,000 a year to go to five board meetings.

Mr. Michael Nelson: Okay, so that would be more than your regular travel and that sort of thing. We would consider that to be a consultant lobbyist if part of your duties were communicating with the government.

Hon. Jim Peterson: No, my duties are only to go to the board meetings for the \$25,000, say, but then I see an issue where I feel it's important that Ottawa hears my view, so I volunteer to go down to Ottawa.

Mr. Michael Nelson: Are you talking to Ottawa about what's good for the company?

Hon. Jim Peterson: Yes, but I'm not being paid by the company to do it.

Mr. Michael Nelson: Would you be doing it if you weren't a director of the company?

Hon. Jim Peterson: That could be.

Mr. Michael Nelson: I would have to say that's a grey zone. If somebody complained to us about that, we would look into the matter to see how likely it was that there was a connection—you can see why this is a dicey business—between your...

I would like to point out something that we may not get to in this presentation, with respect to the current law and what Bill C-2 provides, because this has not been given very much press anywhere. One of the things that Bill C-2 does is expand the investigative powers of the commissioner of lobbying so that people can be compelled to provide documents and can be subpoenaed when there is no investigation taking place under the lobbyists code of conduct.

Right now, I rely on everyone concerned to voluntarily provide information, which is not a very good way of doing things. In the case you're talking about, simply determining exactly what the facts of the matter are could take up an awful lot of time. It's a dicey business.

Hon. Jim Peterson: I seek your views on the five-year lobbying ban on senior public office holders. Are there any other jurisdictions that impose that type of five-year ban?

Mr. Michael Nelson: I think we looked into that.

Do you know, Bruce?

Mr. Bruce Bergen (Counsel, Office of the Registrar of Lobbyists): There are none that I'm aware of.

Mr. Michael Nelson: I don't think I'm aware of any other jurisdictions that have imposed that kind of ban.

There are other ways it's implemented—through conflict of interest codes and things like that—much as we have here in the conflict of interest code. But as I pointed out at the beginning, the amount of lobbying legislation that's out there is pretty astounding, and it's being changed because recently lobbying has received a lot of attention worldwide. It's being changed a lot, so what I'm telling you could be wrong as I tell you. There could be somebody bringing some in somewhere, but the simple answer is that I'm not explicitly aware of any.

Hon. Jim Peterson: I just want to say that as an MP, I've benefited a great deal from lobbyists coming and teaching me about issues. I feel it's my obligation as an MP to get both sides of the argument, however. But often lobbyists are very fine teachers on very complex issues. We recognize that there is self-interest, but I don't think lobbying is a dirty business—necessarily.

• (1625)

The Chair: You stopped just before “necessarily”. Are there any other questions, Mr. Peterson?

Monsieur Laframboise is going to ask questions.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): I would like to add that this may be a necessary evil. If there are so many laws, it's to provide a framework for everything.

I understand that you are now independent, and will be completely autonomous in your management and investigation procedures.

I'll come back to the example Mr. Peterson gave a few moments ago: we cannot do indirectly what we are not permitted to do directly. So if someone is appointed to a board of directors and paid as a director because he or she has worked with the federal government in the past, and then leaves without being paid, that person is doing indirectly what he or she could not have done directly. In my view, the intent of the legislation is to give you the power to examine that kind of thing.

Do people often call you to ask whether they are in fact lobbyists? Do some people take the time to call you to discuss the issue with you, or does that happen only rarely?

Mr. Michael Nelson: Yes, it often happens. I will ask our Director of Operations, Pierre Richard-Desjardins, to answer your question. His people are the ones who respond to such queries.

Mr. Pierre Ricard-Desjardins: Every day, members of our staff receive some 20 calls from people who set out their individual situation and ask us to help them define it. We do provide answers, but we have to be cautious. On the whole, our approach is to explain the content of the legislation, as well as the requirements in the regulations, without necessarily issuing an opinion on their individual situations.

The Office of the Registrar of Lobbyists is a quasi-judicial organization. Let's say that we tell a lobbyist he or she can go ahead without having to register, and a few months later, we have to investigate that case. To avoid that kind of situation, we spend a great deal of time explaining the legislative requirements to people, so that they can see whether they are lobbyists or not within the meaning of the legislation. In the end, the decision is up to the individual. Where things are unclear, people can seek advice, or ask a legal advisor to provide some clarification.

We also need to consider the fact that we are guided by the spirit of the legislation. The system is based on self-declaration, somewhat like the Income Tax Act. A declaration, or statement is made, and all parties certify it. We consider a statement true until such time as there is evidence to the contrary. The only means we have to determine whether a statement is indeed true is to conduct an investigation pursuant to the powers at our disposal. Since lobbyists are themselves responsible for self-declaring, when potential lobbyists ask us for advice as to whether or not they should register, we make no decisions. However, we do explain the situation as clearly as possible.

[English]

The Chair: Mr. Van Kesteren, please.

Mr. Dave Van Kesteren: I want to understand something, and I'm glad Mr. Peterson brought it up. That was the point I was trying to make. I want to understand this clearly. Mr. Peterson mentioned somebody on the board. Let's just say somebody is hired by a firm, a large firm, and there's no way of knowing what his function or what his job is. You have nothing in place at this point if he's hired by a firm, be it as a chairperson or as somebody in an administrative position, and yet his sole function is to influence politicians. There's really nothing that protects us. Is that correct?

Mr. Michael Nelson: No, I don't think so. As I said, for something that has a relatively simple intent, this act has twists and turns.

If somebody is hired by a firm and is an employee of the firm, not under contract but an employee of the firm—and here's another trigger under the act. If it's a commercial corporation and the entire lobbying effort of the firm is more than 20% of one person's time, even if that's accumulated—if they have 20 people who are doing this activity and each one of them is doing it 1% of their time—that triggers the requirement for that company to register. The CEO or the senior person in the organization has to register everyone; he registers, and then on his or her registration they list everyone in the organization who is doing more than 20% of their time lobbying.

• (1630)

Mr. Dave Van Kesteren: I understand that, and I understand the rules, if everybody complies with the rules...but are there a few areas where a corporation could duck under?

I read an article once and I was actually quite shocked to see the lists of people who once served in government working for a large firm, and they weren't registered as lobbyists. Most of those people, or at least those who were listed, came directly from government as elected officials. We can draw our own conclusions, but obviously these people would have an enormous amount of influence just by the people they know. If that firm were to hire them and to give them

a job description, there really is no way of knowing, if they have a job description, that the overall intent is to influence those in government. Am I correct in thinking that. Is there a danger there?

Mr. Michael Nelson: To move to something I could talk about at the very end, what is terribly important in this act, because of the types of situations you've talked about, is that public office holders know what lobbying is and what the obligations are of lobbyists. When somebody is talking to them, they have the reaction of saying—and more and more are, by the way, because they call my office about this—"I can't find you on the registry. Have you considered whether you should be registered or not?"

Without being cute, it takes two to lobby: it takes somebody who is willing to be lobbied and it takes the lobbyist. The education part.... When I go before the Senate I'll be talking about this, if they choose to invite me. Another critical power or obligation that's given by Bill C-2 to the commissioner of lobbying is the explicit mandate to go and tell public office holders what lobbyists are supposed to be doing.

You're right: unless there's a sensitivity on the public office holder's part, I may never find out about that. So it's very important that we and public office holders know what the obligations are. It would take a hundred people like me in an office to ever sort that out, so I need to use leverage, and education is the way to get that leverage.

The Chair: Thank you.

Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I would follow along the line of questioning that you made, as well as Mr. Peterson.

You responded particularly to Mr. Peterson by saying there are some grey areas, which is rather troubling. With the existing law, and indeed the proposed Bill C-2 legislation, are you given discretion to set forward policies and rules and structures as to how you're going to operate? I guess I'm looking ahead to Bill C-2, if that's passed. In other words, if it's not mentioned in the legislation, and there are about eight or nine amendments that have been made, I think, with respect to Bill C-2, you get into the details—to use your words, the grey areas.

Are you able to assist lobbyists, politicians, or anyone with respect to the types of questions that were asked by Mr. Peterson?

Mr. Michael Nelson: I believe in many cases I am.

The power that the existing law gives the registrar, and this is continued with the commissioner of lobbying, is to issue interpretation bulletins. When you run into something that nobody thought of—because you can't think of all of these situations, there are so many situations—interpretation bulletins allow the registrar to say, look, when we run into this type of situation, here's the way I'm going to look at that. For instance, for the word "communication" that's in the current act, I created an interpretation bulletin that said here's what I mean by communication. Communication is one of these words that is difficult to communicate, I would say, from time to time. What you do is come up—

• (1635)

The Chair: It's like entitlements.

Mr. David Tilson: Don't go there.

Mr. Michael Nelson: To answer your question simply, yes, I think the registrar and the commissioner of lobbying can be helpful by using these instruments. They're not statutory, which means that if somebody chooses to challenge them in court, they could be overturned. What that means is you have to think about them in the first place.

Mr. David Tilson: Taking that interpretation, the example that Mr. Peterson gave, your office makes an interpretation. Is that appealable?

Mr. Michael Nelson: Bruce?

This is why my lawyer is here with me.

Mr. Bruce Bergen: With respect to a decision of the registrar, the short answer would be that it could be an administrative decision that could be subject to judicial review. We have found that there have been cases that have been judicially reviewed in the courts.

A decision with respect to simply advice given to a lobbyist may not be of that nature. It may not be a decision subject to judicial review.

Mr. David Tilson: I'd like to stick to the example that Mr. Peterson gave, and I think it's a wonderful example. Your response is, "Well, there are grey areas". So your office prepares a bulletin or an interpretation, and the person who's working as the director says, "I don't agree with that". Can you go to court for that?

I guess what I'm getting to is what you do now and what Bill C-2 is going to do, and the structure you're going to develop—I assume you're going to develop a structure for Bill C-2 to cover this whole bunch of new areas, the areas that aren't mentioned specifically, whether they're in regulations or whether they're rules, or whatever they are. That's where I'm going on this.

The question Mr. Peterson asked is a good one, but it's an example of how the office plans to deal with issues such as that. If someone doesn't agree with you, what are they going to do? Do they have recourse?

Mr. Michael Nelson: To answer the question directly, to my knowledge Bill C-2 doesn't change the structure of the interpretation bulletins or the outcomes. What will change is that a registrar's office that we can speak to, if there is interest, that is structured to have a function that will actually look into these grey areas, create interpretation bulletins, and have them tested by the courts if necessary by having a decision made...that type of registration, that type of office, is not what has existed in the past. I now have an investigations directorate and a research function. I'll be asking Parliament for money through the supplementary estimates this year to fund those functions in the future.

So the bill itself doesn't change anything, but you have a much more enthusiastic, activist, and well-resourced function through, I would say, what Bill C-2 is proposing, with a mandate to go out and find out what these grey areas are and get them sorted out. I agree with you, grey areas are the death of any kind of system, because as soon as you find one grey area, people move into it and you can't get at them.

Mr. David Tilson: Mr. Chairman, I don't know whether there's time for the registrar to talk about the proposed structure under Bill C-2 of this and other areas.

The Chair: Well, he wants to finish his deck, and we do have one more questioner—actually, now I have two.

Mr. Mike Wallace: I want him to finish the deck.

The Chair: Okay. If the committee wishes, we're here till 5:30. If there's time we can go there.

By the way, on the interpretation bulletin, I presume, Mr. Bergen, that that is an interpretation of the registrar. If someone reading it doesn't like it, they don't follow it; if the registrar then enforces that interpretation bulletin on the person who hasn't followed it, that person would have recourse to a judicial review as to whether or not the registrar's interpretation was correct. Wouldn't that be the way it would go?

Mr. Bruce Bergen: Yes, I'd agree with you, Mr. Wappel. That's exactly the case.

The Chair: All right, thank you.

Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): I'm looking at page 12 in your deck where it talks about the registry information. Under every category it talks about lobbying methods. Does that information also include some detail? For instance, "lobbying methods" means taking people for dinner or taking people on trips?

• (1640)

Mr. Michael Nelson: It does. In fact, it goes right down to...that would be called informal lobbying. People can, if they wish, describe exactly what they're going to be doing, or even grassroots lobbying, even if you're just going to exhort people to contact someone.

Mr. Borys Wrzesnewskyj: Then when the six months are up and they provide you with documentation as to what they've done, are they required to also show the costs involved in those types of lobbying?

Mr. Michael Nelson: Not in our legislation. There are other pieces of legislation, in the United States, for example, where that idea has crept in, but no, it's not a requirement.

Mr. Borys Wrzesnewskyj: Do you think that would be a good idea?

Mr. Michael Nelson: It may, in the extreme, add something. If someone were spending \$10 million on a given lobbying campaign—I'm just making these numbers up—that might be important public knowledge, but just to know how much lobbyists make....

I know that parliamentarians had this debate—

Mr. Borys Wrzesnewskyj: No, I'm not referring to how much the lobbyist makes, I'm talking about lobbying methods.

Mr. Michael Nelson: Oh, how much money they've spent on a campaign or things like that.

Mr. Borys Wrzesnewskyj: Exactly.

Mr. Michael Nelson: As I said, in the extreme, that might be of interest to the public. In the normal run of spending—a thousand dollars here, a thousand dollars there—I'm not sure it would be of interest. But I don't have an informed view on that, I must say.

Mr. Borys Wrzesnewskyj: Okay.

We have more than 300 members of Parliament. The ethics regulations require that members of Parliament, when they receive benefits, beyond the benefits that Mr. Peterson was referring to in terms of better informing us.... Let's say we are taken for dinner on a number of occasions, but those dinners are never quite \$500. Let's say you take every member of Parliament to dinner. What if you take them for a trip as well, or golfing?

A voice: Now we're talking.

Mr. Borys Wrzesnewskyj: As we've just heard, now we're talking.

I think there would be some public unease knowing that this loophole exists. I personally think it should be a requirement that if money is expended on an actual lobbyist, that gets registered. But if money gets expended into grey areas to help people see the wisdom of a particular point of view, I think it's critical that these types of grey areas be addressed.

Mr. Michael Nelson: I can say that the Americans are much more seized with that notion than we are, and the amounts. Not every one of their legislatures, as I said, has exactly the same rules, but they are much more seized with how much money you are allowed to spend and the types of gifts while lobbying in particular. Parliament has not chosen to do that so far, but the act gets reviewed every five years.

Mr. Borys Wrzesnewskyj: Finally, to lobby it takes two parties. All of this looks at one side, or one party—the lobbyists. We're not looking at the people being lobbied—the government officials, or elected officials. Have you ever contemplated putting together suggestions about rules of engagement?

For instance, in my office we have rules whereby if someone wants to come and discuss an issue with me, someone has to be present and take minutes. For greater clarity and verification, it would not be an onerous task to submit, every six months, those types of reports to your offices from the offices of elected officials, informing them of the details of those meetings.

What do you think of those suggestions?

Mr. Michael Nelson: The current act is totally silent on the obligations of public office holders. When I speak to public office holders—and I've been to various deputy management teams—the first question after I make this presentation is almost always, “So what does this mean for us? What are our obligations? There's nothing in the act.”

What I explain to them...and I like your ideas on some ways to develop this. Again, I think the education mandate under Bill C-2 mandates the commissioner to develop those sorts of educational tools.

What I tell public servants is that this is for them; if they can't find any other reason to do it, it's a matter of risk management. Risk for the optics is one thing. Do you really want to be developing a proposal for your minister for six months, and then, just as you're

about to make the announcement, somebody says that you've been dealing with an unregistered lobbyist, or with someone who's taken a contingency fee and hasn't declared it? Or you work with someone for three years to decide to give a company a repayable contribution, and then, just when you're at the point where you say, “This is a great company, and we're going to give them that contribution,” you find out that they've been dealing with an unregistered lobbyist and the company can't sign the contract with you; they can't say that they've been dealing with an unregistered lobbyist.

So I tell people that this is about risk management. I think a very important thing for us to do is to help, just as you're saying.

• (1645)

The Chair: Thank you.

Madame Lavallée.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Good afternoon, Mr. Nelson. I have two questions for you, to make things clearer.

Did you say a few moments ago that lobbyists whose lobbying activities made up over 20% of their regular activities were required to register?

Mr. Michael Nelson: Yes. This applies to lobbyists working for both commercial and non-commercial organizations.

Mrs. Carole Lavallée: For example, the communications director of a non-profit organization whose lobbying activities amount to less than 20% of his or her overall activities is not required to register.

Mr. Michael Nelson: However, if someone else in that company is also engaged in lobbying, we would have to look at the total number of hours of lobbying done by the company.

Mrs. Carole Lavallée: My second question is also a request for clarification. I went through these pages rather quickly. I don't know whether that was the right thing to do, but I do see time moving on.

There are examples where the statute and Code of Ethics were violated.

At present, are you considering complaints or negative comments submitted to you? Are any prosecutions under way? If so, what are the grounds on which they are based and what exactly is the issue?

Mr. Michael Nelson: Yes. We don't exactly receive a flood of complaints, but we do receive letters from time to time. In some cases, the letters are anonymous, but a number are signed and indicate that a given person or a given company is engaged in lobbying but is not registered. From time to time, we receive complaints about the behaviour of lobbyists who are former public employees. We note that they might be in violation of the Code of Ethics.

So there are indeed complaints, and Karen is responsible for following up with respect to the current legislation and Bill C-2.

In cases where the Code of Ethics has been violated, I am obliged to conduct an investigation and report to Parliament. There are 10 such cases under way at this time.

Mrs. Carole Lavallée: There are currently 10 legal actions under way?

Mr. Michael Nelson: There are 10 investigations currently under way.

Mrs. Carole Lavallée: Over a given year, how many might you have?

Mr. Michael Nelson: Previously, before the current system was put in place, there were no investigations under the legislation. So, we had none last year.

Mrs. Carole Lavallée: Thank you.

[English]

The Chair: Not to drag this on, but you were talking about your information campaign and informing people of the act, etc. Have you been invited, for example, to address newly elected members of Parliament after an election? Have you thought of that? We were talking about it taking two to lobby and that this is complex legislation. For the vast majority of people, I would say it's not one of the top things on their agenda to know the Lobbyists Registration Act when they're trying to get elected.

Could I recommend to you that you think about inquiring with the people who arrange the orientation sessions for new members of Parliament to perhaps make a presentation or have your office make a presentation so that at least they're aware of it?

Similarly, have you spoken with senior deputy ministers and assistant deputy ministers? Do you have little seminars with them? You mentioned the RCMP. Through the course they take in order to become RCMP officers, perhaps there'd be an opportunity for you to make some comments to them and bring the legislation to their attention as well.

• (1650)

Mr. Michael Nelson: I agree completely.

The current act is totally silent on any obligations whatsoever for the registrar to do this, so it's sort of volunteer work that we've been doing. It's very hard to get money from Treasury Board if you don't have something explicit in your legislation that says you're supposed to do it.

That's one of the reasons I find the Bill C-2 wording is helpful, because when you go to the Treasury Board folks, they say, "So, Michael, are you supposed to be doing this? It doesn't say anywhere in your act you're supposed to be doing this. Why aren't you just in your office taking registrations?" It will be very helpful to have language that says explicitly that the commissioner has to go out and do this. I agree with you completely.

Although those types of audiences are drinking out of a fire hydrant at the time—there's a lot to learn—it at least exposes them to this idea, and if we can leave some print publications behind or links to our website, I think those are absolutely the right things to do, Mr. Chair.

The Chair: Excellent.

Sorry to hold us up, but let's try to get through the deck. I think we were on page 14.

[Translation]

Mr. Pierre Ricard-Desjardins: Thank you, Mr. Chairman.

If you are interested in figures, you can turn to page 14, where you will find a breakdown, by category, of currently registered lobbyists. I should tell you at the outset that the Office of the Registrar of Lobbyists keeps two kinds of statistics: the number of registrations and the number of lobbyists.

As we explained a few moments ago, a single registration entry from a corporation or a non-profit organization may contain a number of names. We might have a company registered with the name of 15 lobbyists. The converse holds too: a consultant-lobbyist may have 20 clients—in other words, there might be 20 different registration entries for a given lobbyist. To add to the confusion, we should bear in mind that a lobbyist can, depending on his or her category, have more or fewer registration entries.

I think we should also know that we now have over 5,000 lobbyists. In fact, 5,100 lobbyists are registered. That is a high number. For comparison's sake, there are some 500 in Quebec. So there are ten times more lobbyists registered at the federal level. To be precise, there are 6,950 registry entries, a very high number as well. This is because a single lobbyist may register a number of times.

I have provided these details for your information. If you have no further questions, I will give Karen the floor.

[English]

Mr. Michael Nelson: Before passing over to Karen Shepherd, I would like to mention one of the factors that have contributed to the delay in getting registrations. One year ago we had fewer than 2,000 registrations and lobbyists. Now in some categories we have ten times that number of lobbyists.

Go ahead, Karen.

Mrs. Karen Shepherd (Director of Investigations, Office of the Registrar of Lobbyists): The purpose of the lobbyists code of conduct is to assure the Canadian public that, as we've talked about, lobbying is done ethically and with the highest of standards, with a view to conserving and enhancing public confidence in the integrity and impartiality of government decision-making.

As Michael mentioned, the code came into force in 1997 and complements the registration requirements of the act. It is developed and enforced by the registrar. The code establishes the mandatory conduct for all the lobbyists communicating with federal public office holders. The principles of the code set out in positive terms the goals and objectives to be obtained without establishing precise standards.

The rules, on the other hand, set out specific obligations and requirements. As you can see from the slide, there are three categories. Under the rule of transparency—and we've been talking about that a little bit this afternoon—there's an obligation on the lobbyist to provide accurate information to the public office holder, to disclose the identity of the person or organization on whose behalf the representation is being made, as well as the purpose of the representation.

They must also disclose to their clients, employers, or organizations their requirements under the Lobbyists Registration Act and under the code itself. Under the rule of confidentiality, lobbyists can neither divulge information nor use insider information to the disadvantage of their clients, their employers, or their organizations.

And finally, under the rule of conflict of interest, lobbyists are not to use improper influence nor to represent conflicting or competing interests without the consent of their clients.

There are two series of penalties under the act. The first relates to breaches of registration and disclosure requirements, and we've been talking about that again this afternoon in terms of disclosing complete and timely information or false declarations. If the registrar concludes that there are sufficient grounds within the two-year period, the registrar would refer the file to the RCMP.

The second relates to breaches of the code of conduct dealing, as I've just mentioned, with integrity, honesty, openness, and professionalism. There are no fines or jail terms for breaches of the code. However, the results of investigations must be concluded by the registrar and must be tabled before both houses of Parliament. Investigations as per section 10.4 of the act are to be conducted in private. Once the registrar concludes the investigation, that's when the results would be put into a report and tabled. As Michael mentioned, there are currently ten investigations under way.

The Office of the Registrar of Lobbyists provides the registrar with the authority to issue the advisory and interpretation bulletins. While they're not legally binding, they do indicate how the registrar intends to enforce the act. What's interesting is that we've all been using the 20% this afternoon. The 20% is not in the act but is rather in an interpretation bulletin and has been gradually accepted over time by the lobbying community as the customary definition of significant part of duties.

There are no specific requirements to issue x number of bulletins in a year, but as the registrar determines that there is a need, either from the number of questions we're receiving in the office or because of clarification issues, we will issue bulletins to address those sections of the act.

The registrar must submit a report for both the LRA and the code within three months of the end of the fiscal year to the President of the Treasury Board, who must then table them in both houses on any of the first fifteen days in which the House is sitting. The contents of the report vary each year but generally contain the same sorts of items, such as a message from the registrar, a description of the activities related to the act and the code respectively, statistics, and a summary of the enforcement activity.

• (1655)

Mr. David Tilson: Ms. Shepherd, we were told a year ago there were eight investigations under way. Is that part of the ten, or are these ten more?

Mrs. Karen Shepherd: Those are part of the ten.

Mr. David Tilson: Can you tell us the status of those investigations?

Mrs. Karen Shepherd: Four investigative reports have been submitted to the registrar.

The act requires that the person who is alleged to have breached be provided with sufficient opportunity. We are currently at that stage.

• (1700)

Mr. David Tilson: Those investigations were under way about a year ago. When do you expect that they will be reported to Parliament? I think it was October. I don't know how long the investigations have been under way, but we were told when you saw us—I think it was October of 2005—that there were eight.

Mrs. Karen Shepherd: On those four, we are currently in the process of waiting for the person in question to have the reasonable opportunity to present their views on the allegations. Once that is done, the registrar will take that into consideration and the report will be finalized.

Mr. David Tilson: I guess all I'm looking at is that this all took place over a year ago. Is that going to be the practice, that it will take a year to process these investigations?

The Chair: At least a year, since it's not finished.

Mr. Michael Nelson: I could speak to that.

I initiated eight of them in October. We actually managed to hire our first investigator. As you recall, the office was at about three people last year. We managed to hire our first investigator in January, so it did take us a while to get rolling. We now have three investigators, and my hope is that we'll be able to move the investigations a lot faster. That's for sure.

With respect to the four that are under way, they are done in private. You know we can't talk about the details, but I can certainly tell you that we had given the lobbyist in question—because it's one lobbyist for four investigations—until the end of September to get back to us. If the lobbyist doesn't get back to us with what I am obligated to ask him about, then I'll be tabling my report shortly after that. It's important for me to get some evidence out there that something is going on.

Mr. David Tilson: You know the expression, Mr. Nelson, justice delayed is justice denied.

Mr. Michael Nelson: Absolutely.

The Chair: Thank you, Mr. Tilson.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Chair.

I have a question for Karen. It was useful dealing with an example like Jim did, with his analogy of the board member, etc. I have an example that I'd like to ask on which of these categories of breaches that would fall under, under penalties.

We have information, and I think it's filed as a complaint with your office, that a former minister, within three months of ceasing to be an MP, was in fact lobbying on behalf of Indian reserves in northern Ontario and northern Manitoba, a former minister of Indian affairs. Were that proven to be true, and if the allegations proved to be borne out, which of the breaches would that be? Would that be a breach of the Lobbyists Registration Act or the lobbyists code of conduct?

Mrs. Karen Shepherd: The lobbyist has breached the code? I'm not clear about that.

Mr. Pat Martin: Which would they be in violation of? A former minister, within three months, not years, of being a minister, was lobbying his own area that he was minister of within that time period. Which are they in violation of, the act itself or the lobbyists code of conduct—or anything?

Mrs. Karen Shepherd: It's my understanding it would be in violation of the conflict of interest, which is not part of this particular legislation.

Mr. Pat Martin: So they're not doing anything wrong as a lobbyist; it's only about the ethics code, essentially.

Mr. Bruce Bergen: If I may say a few words, I would think that in a situation like that, that individual, if they are engaged in lobbying activities on behalf of somebody for payment, would have a duty to register as a lobbyist, which is where this might become public knowledge. There may be one of the rules in the code of conduct that is being breached if there is some conflict among the clients, perhaps.

I think that what Ms. Shepherd was saying earlier about this.... You mention a time period, Mr. Martin, of three months following the individual ceasing to be a minister of the crown. I think that's where the issue of the post-employment regime for that individual would be in question, where it would be outside of the lobbying area and it would be a matter of that question.

• (1705)

Mr. Pat Martin: It certainly would be. It would be within the cooling-off period, under the conflict of interest guidelines. But is there no enforcement from the lobbyists' end of things? Are they not in breach of, if not the Lobbyists Registration Act, at least the lobbyists code of conduct, by influence-peddling to their own previous department within that short a period of time?

Mr. Michael Nelson: Mr. Chair, may I try to take that on?

Just to be clear, we're talking in the abstract here, without talking about any case.

Mr. Pat Martin: We're not mentioning any names.

Mr. Michael Nelson: First of all, as Mr. Bergen has pointed out, if the person hasn't registered and somebody is paying them, then there is a big problem there. That's covered in the act.

The code of conduct applies to people who should have registered, even if they didn't. That's my interpretation of it. The way I'm running the shop is that if someone should have registered and they didn't, that doesn't excuse them from the code of conduct, because that's what the act says. That doesn't get them out of it.

Once again, one always needs to look at the facts, and I know you appreciate that. If someone showed, for example, that a lobbyist was exercising—and this is a pretty high bar—improper influence, or causing someone to act some way perhaps because of information they had, or using some kind of very heavy persuasion because of their previous employment, then that would certainly be worth looking into, because that person would not be dealing professionally. They might be using improper influence. It's very difficult to get to the bottom of these things. At the administrative review, we do our investigation by triangulating. We talk to the lobbyist, we talk to the

client, and we talk to the public office holder. It's the only way to really get at the truth in these situations.

I'm sorry if that's an oblique response.

Mr. Pat Martin: I don't understand any of this, frankly. I find the whole lobbyist registration regime a mystery. It seems pretty straightforward that this is wrong. But you're telling me that it wouldn't be corrected through your avenue of recourse. It would have to be addressed under the very loosey-goosey ethics and conflict of interest guidelines. So there is not much satisfaction from the other end, either.

Actually, when this individual was interviewed by the media and asked whether he thought it was wrong to now be a lobbyist for the very department he had just left three months earlier and used to run, he said, "A guy has to make a living." So, in other words, he knew that nobody could get him from your end or from the other end. So that's not very satisfactory.

Mr. Michael Nelson: I do want to provide some hope in this scenario. While there are aspects that are outside my reach, there are those that are within it.

The Chair: By the way, the Ethics Commissioner is coming here on Wednesday, so your example might be put to the Ethics Commissioner at that time.

Mr. Stanton, go ahead, please.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chair.

I apologize for getting to this question before you get to the wrap-up on your summary page, but I'm watching the clock here, and we're winding down.

As I prepared for today's meeting, I referred to our original briefings on this topic, going back to our early days when this committee was established for this Parliament. I read there that in the 38th Parliament and towards the end of November or October of 2005, this committee actually raised a number of issues regarding lobbyist registration, and admittedly was unable to follow up on those items. These briefing notes don't really lay out specifically what those items were.

I wonder if you could comment in general on what those areas might be, and to what extent Bill C-2 will address them. I assume they're covered in the areas that you've already touched on, about enforcement and the independence of the office. Are there any outstanding issues if we look back to November of 2005?

Mr. Michael Nelson: My recollection of what members were interested in pursuing with some vigour, and you've hit on a couple of them I think already—and I believe Mr. Tilson was in the chair at the time—one was the independence. There was no question about that, and Bill C-2 addresses that completely, I think.

One issue was contingency fees. At pretty well every appearance I've made, the issue of contingency fees arose, whether you should have them or whether you shouldn't and what does the current act say. Just to recall that, the current act only says you have to say whether you're receiving them; it doesn't say whether they're good or bad. The proposals in Bill C-2 completely eliminate the possibility. In fact, they go further, in my estimation, than the current regime does that forbids them with respect to government contracts and contribution regimes by forbidding them entirely in Bill C-2.

There was definitely the question of resources—I say this without being self-serving—for the registrar because it was a long-neglected function. I think it lived in the shadow of the ethics regime for quite some time, and then there is just the fact that it was sort of handed off to an ADM as something else to do. It took us a while to get there, but it eventually broke out. This is a full-time job—the creation of the offices.

Those are things I think Bill C-2 is addressing.

The education mandate—“Mr. Nelson, why don't you get out there and talk to more people?”—just as Mr. Wappel was suggesting, was also a theme that came out.

● (1710)

Mr. Bruce Stanton: So in a way what we hope will soon be the third incarnation of this office in about the last three or four years, the Office of the Commissioner of Lobbying, will actually be a separate office reporting to Parliament.

In terms of issues around budget approvals, that will go to whom then? Will that be to the Speaker, or what is the likelihood...?

Mr. Michael Nelson: The way I understand the machinery aspect of it is that it will be treated more like a department of government. It won't be like Mr. Shapiro's office, for example. It will go through the supplementary estimates and to Treasury Board for submissions.

However, I guess what I'm very encouraged with so far is that because this whole notion.... Looking at the election platforms as we did, there wasn't a party that wasn't behind an independent, resourced commissioner. So I'm hopeful, as I look forward to supplementary estimates and that sort of thing, that Parliament will continue to resource. It's up to me to make good arguments for these things, as it always is, and it's up to Treasury Board officials to challenge those, which I assure you they have, because that's their job, but I'm quite hopeful that the office of the commissioner that I see portrayed in Bill C-2 is going to be able to make a significant difference.

Mr. Bruce Stanton: Thank you.

Thank you, Mr. Chair.

The Chair: As we wrap up here, I have just two points, if I may.

I was stunned to hear that the 20% rule that you've been talking about is from an interpretation bulletin. From what I understood, or

from what I assumed, it was in the statute. So I merely ask the question, because I don't say it's right or wrong; I'm just surprised. When you developed your interpretation bulletin and pulled up the 20% figure.... Are there other jurisdictions around the world that have that figure as part of the definition?

Mr. Michael Nelson: Just to be clear, and to make sure that this is not an accountability issue, because I did inherit that interpretation bulletin—it's been around for quite some time—but I also didn't get rid of it, so this is my baby, I know there are others who have adopted it. So if it's a bad idea, it has proliferated because some of the other jurisdictions in Canada that have the word “significant” have also adopted the 20%.

I'll just look to my colleagues to see if there are any other jurisdictions that we're aware of where this idea has migrated. I mean outside of Canada.

Mr. Bruce Bergen: I'm not aware of others outside of Canada.

Mr. Michael Nelson: Not that we're aware of. They may not have used the word “significant”, but that's kind of the way it happened. The others, for want of a way to describe this, I guess, said, “Well, the feds are doing it with 20%. I guess we'll do that too and see how it works out.”

The Chair: So here's an example of an interpretation bulletin that some aggressive person might want to challenge some time.

Mr. Michael Nelson: And that some aggressive commissioner might want to review the next time the act comes around.

The Chair: Indeed, because if it's in the act, it's a different matter.

Mr. Michael Nelson: Yes.

The Chair: The last question I'd like to ask comes directly from my briefing notes. I'd like to read it:

In your 27 October 2005 appearance before this Committee you indicated that you would like Parliament to study the possibility of having the registrar impose fines under the Act rather than sending all suspected breaches to the RCMP for prosecution.

That was in your slide. Justice Gomery in his 1 February 2006 report also recommended that the Registrar have the ability to both investigate and prosecute....

What do you say now?

● (1715)

Mr. Michael Nelson: What was behind my thinking at the time, to refer to what Mr. Tilson said just a while ago, was justice denied. It's the lack of immediacy that was in the act at the time, the ability to actually see something and not send it into some investigative process—as you know, the RCMP have their procedures and their processes—that would take an awfully long time. So if one were going to make one small move forward, that would be one of the ideas.

There are problems with administrative fine regimes as well. How do you decide who gets the \$1,000 fine and who gets the \$40,000 fine? Will these just be passed on to the client, and thus on to the taxpayer? These things went through my mind.

You know, it's not about the money. I would be just as happy in the future, the next time the act comes around...because I think there's already enough in it. Having seen what happened with the last set of amendments, that they caused in some cases—these are the ones that came in during 2005—an tenfold increase in some of the registrations, I'm wary of making too many changes at the same time.

It's the ability to just name people who have been bad actors, who are on the edge of infractions, who aren't saying, "I'm never going to register," but who are messing around for two months. I'm not saying a lot of people do this, but you can obscure justice by just not registering, or not providing complete information. It's what Pierre was talking about earlier, where people say, "Well, I'll just fill in these parts." We say that it's not good enough to just say "procurement". If you're going after procurement of the new replacement for such-and-such piece of equipment—and this is not a real case—that's what we want on the registry. The game begins, and it takes another month or so before the registration goes up.

I'd like to be able to name those people, because sending them to the RCMP.... The RCMP, with all of the important things that we know the RCMP has to pursue, will say, "Come on; you're after us because somebody has messed around for a couple of months with the registry?"

So that's what was in my mind. I was thinking, isn't there some more immediate way? Maybe fines is one way to do that, but it's not about the money. At this time, having now seen everything that is in Bill C-2, and knowing what will be required to implement those regulations, I wouldn't want to slow down the process of whatever Parliament decides by adding an administrative fines regime right now.

That's what was behind my thinking. It is very frustrating to me to not have any evidence out there that there are consequences for not paying attention to this act.

The Chair: Thank you.

We'll go to Mr. Wallace, and then we'll give you an opportunity to draw your remarks to a conclusion.

Mr. Mike Wallace: I'll be very quick.

One, just on your last comment, I like the concept that you're able to deregister somebody, to kick them out of here. I don't know if you have that ability, but maybe in the future you will.

I ask this question as a backbencher, as a new member of Parliament. You alluded to it earlier, but could you tell me, what is my actual responsibility when the president of a local pharmaceutical company comes to see me in my office in the summertime?

Mr. Michael Nelson: There is no responsibility in the act, but my advice to all public office holders—to you, of course, because you've asked—is that there is a risk in dealing with an unregistered lobbyist. If someone is coming to you and they are clearly representing someone else's interests, or even if they're working for a company

and they're the director of communications, perhaps you could have your assistant check on the registry before they come over. See if you can find them on the registry. See if they're registered to talk to you about what they're coming to talk to you about. If they aren't, there may be consequences with that.

Again, as I was saying earlier, it's a risk management issue for public office holders.

Mr. Mike Wallace: That registry is on your website?

Mr. Michael Nelson: Yes, and we're trying to make it as friendly as possible. Just last week we had some journalists in, doing a session to try to make it more searchable, more "Google-able", if you will, because right now it's not as good as it should be. But yes, it's on the website.

That's my advice.

Mr. Mike Wallace: Okay, I appreciate that advice.

Thank you, Mr. Chairman.

The Chair: Thank you.

The floor is yours, Mr. Nelson.

Mr. Michael Nelson: First of all, let me thank you once again. As I said to Mr. Peterson earlier, in the rather odd situation I'm in of being a public servant who never talks to his minister, coming to these meetings is as close to being with my boss as I get. So I really appreciate the ability to come here and I appreciate the comments and the constructive criticism about the operation of the office, because it's very important to me and it's important to my staff.

In terms of moving forward, as you'll see in my RPP, which will be the very first and perhaps the last, because the next could be a different office, strategically there are three pillars I think this office and this function needs to move forward on.

First, the registry is our outreach. It's in an era when you can Google just about anything and get any information. To deal with an ancient system as we're dealing with, our registry system is very frustrating for clients and it's frustrating for staff. So we're making strides to make it much more searchable and much more user-friendly. So updating the registry and enhancing its transparency is very important.

The second pillar is increasing the awareness of the LRA and the lobbyists code of conduct along the lines I talked about so the public office holders and people who hire lobbyists who actually want to do the right thing have the ability to do the right thing. There are many lobbyists who have registered; there are 5,100 people who have registered, so it's a lot of people trying to do the right thing. I need to help them understand this arcane act a little better.

Finally, the third pillar is to pursue enforcement and communicate the results, which again goes to this notion that there needs to be evidence. So I'm looking forward to tabling my reports, and it will be interesting to me to see what Parliament does with my reports, because the act is silent on what you're supposed to do with them.

Thank you so much. We look forward to helping this committee in your work in whatever way we can.

• (1720)

The Chair: Thank you very much.

Are there any final questions, colleagues?

Well, this has been absolutely fascinating, certainly for me, just a real eye-opener. On behalf of my committee members and myself, I want to thank you and your team for coming here, having this deck for us and making the suggestion that we interrupt periodically with questions. I think it worked well under the circumstances.

We wish you good luck, both with what is present and what may be coming with Bill C-2. We'll look forward to your parliamentary report. Presumably it will be directed here, and then I guess we'll decide what we'd like to recommend to Parliament should be done with your annual report.

Thank you very much for being here.

Before I adjourn, colleagues, I remind you that Mr. Shapiro will be here Wednesday. There will be no meeting Monday because of the seminar we're attending. The following Wednesday, a week Wednesday, we'll have a full committee meeting to discuss future business, which will also include possibly at that point a mandate by Parliament to review PIPEDA for the five-year review. We'll have to come to grips with that as well.

That's more or less it for the next two weeks. We'll see you Wednesday, 3:30 to 5:30, with Mr. Shapiro.

Thank you again, Mr. Nelson.

We're adjourned.

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