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Chair

Ms. Jean Crowder

Standing Committee on Access to Information, Privacy and Ethics

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● (1145)

[*English*]

The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): I call the meeting to order.

Good morning, everybody, and happy new year. Welcome back to the committee. I want to thank our witness for accommodating the unexpected delay in our schedule. We will go ahead and conduct an hour's meeting; with whatever time we have left, we will conduct the committee business that was originally scheduled for the meeting.

Mr. Jordan, I understand that your presentation will be less than ten minutes, so I'm just going to turn the floor over to you. As usual, we'll then go to committee members for questions and answers.

Mr. Jordan, the floor is yours.

Hon. Joseph Jordan (Senior Consultant, The Capital Hill Group): Thank you, Madam Chair.

I want to thank the committee for the invitation to participate as a witness in your five-year statutory review of the Lobbying Act, as is mandated by section 14.1 of the legislation.

By way of introduction, I am a former member of Parliament. I served as parliamentary secretary to the Prime Minister. I served as parliamentary secretary to the President of the Treasury Board. I was the director of parliamentary affairs in a minister's office. I am currently a member of the Queen's Privy Council and am currently a senior consultant with The Capital Hill Group, a government relations firm here in Ottawa. I also teach government relations in the MBA program at the Rotman School of Management, University of Toronto. In other words, to use the vernacular of the bill, in recent history I have been a designated public office holder and I am now a registered lobbyist. Apart from the fact that I apparently have trouble holding down steady employment, I hope I can draw on some of my experiences while we discuss this legislation.

At the outset, I want to put on the record that I did appear before the Senate committee when Bill C-2 went through the legislative process. At the time I expressed some concerns about the bureaucracy's ability to enforce this bill logistically, because what it involved was a shift from a system that was essentially lobby registration to lobby regulation, and I had in my mind all the complexities that would involve. I must say that I think they have performed admirably. On a logistical side, the office is functioning at a very high level. Any contact I've had with it has been extremely positive; I think the registration system itself, the computer system, is working well, so I have to eat a bit of crow, because I predicted doom on that front and it certainly hasn't materialized.

On a personal note, I also want to state very clearly that I fully support the objectives of this bill. Anything that we can do or anything that you can do as parliamentarians and legislators to increase transparency on the political decision-making will help reduce some of the cynicism that I think is driving down voter participation rates and infecting people's views of government and government's role in their lives.

To that end, I'd like to review a couple of areas of the legislation that I think the committee should consider examining during your review.

The first item is essentially structural. The application of the regulatory framework in this act, which is extensive and far-reaching, is entirely based on a person realizing that they are engaged in activities that require a registration. Although subsections 5(1) and 7(1) list a number of activities that would be considered registerable activities, I think it may make sense to actually put a definition of lobbying into section 2 of the legislation. For a suggestion, I think a solid definition would be "communication with decision-makers to affect outcomes". I think that a clear and concise definition of the activity that is being regulated provides a stronger foundation to then define the related activities.

The committee testimony to date has reflected a concern about individuals who are "flying under the radar", as I think was the term used, meaning people who are engaged in lobbying activities but who, for one reason or another, are not registering and reporting those actions. Setting aside people who are knowingly and deliberately choosing to ignore the law, I think there are a couple of factors that contribute to this situation. The inclusion of an arbitrary time trigger, the so-called “20% rule”, involves an individual or organization performing some calculation of aggregate resources expended in lobbying activities. At best, it's confusing; I think that at worst, it's unconstitutional.

I'll give you an example. The August 11, 2009, interpretation bulletin on how to calculate the 20% rule states:

> One way is to estimate the time spent preparing for communicating (researching, drafting, planning, compiling, travelling, etc.) and actually communicating with public office holders. For instance, a one-hour meeting may require seven hours of preparation and two hours of travel time. In this case, the time related to lobbying with a public office holder would be a total of 10 hours.

That would be the time used to calculate whether you trigger the 20%.

Therefore, what you have is a case in which identical organizations engaged in identical activities could have separate reporting requirements if one is based in Ottawa and one is based in Vancouver. I'm not a lawyer, and that's not an apology, but I'd take this one to the Supreme Court. I don't think we can have legislation that is going to discriminate against Canadians based on where they live. Quite clearly, in my reading this interpretation bulletin does exactly that.

I think that may be one thing you want to look at and, at the very least, take travel out of the calculation, because I think there's an inherent bias in that to people who live closer to Ottawa. Again, that's something we are probably trying to have less of in our legislation.

It might also be useful to revisit the original rationale for the 20% rule. It was not the intention of legislation—this is what the rationale was at the time—to catch individuals or organizations that are engaged in occasional lobbying. I think you need to take a look at that and reconcile it with the objectives of the legislation.

It might be simply that you are catching people who are bad at lobbying, because the good lobbyists can get it done under 20%. This isn't necessarily a criticism aimed at any person, but as this bill evolves, as it reacts to situations, both policy and political, and as its reach is extended, I think you have to make sure that at the end of the day when you put the pieces back together, Humpty Dumpty makes an egg. I think in some cases we have gone a little sideways on what we're trying to do.

The second element is the requirement that a lobbyist be paid in order to be covered by these regulations. The Americans have a regime of lobby regulation and don't make that distinction.

In looking at the participating sectors of the argument industry, at the inputs that go into public policy making and the public policy making algorithm, I think the goal should be the highest level of transparency possible. So certainly the actions of paid consultant lobbyists should be transparent, but so should the actions of non-governmental organizations, think tanks, religious advocacy groups, professional organizations, and even academics.

The notion that only those who are directly paid to lobby have questionable motives and all the other participants in the debate are pursuing the public interest in its purest form strikes me as a little naive. I think that either eliminating the word “paid” or at least expanding the definition to include “indirect benefit” might be worth considering.

Again, to give you an example, I teach at the University of Toronto. The fact that I'm appearing before you here today is something that I will bring up the next time my salary is negotiated, so to somehow suggest that this particular undertaking may not have indirect benefit to me is again I think not realistic.

I think the legislation is also coming into conflict with legitimate objectives of certain organizations. In terms of governance in organizations, we live in a post-Sarbanes-Oxley world, and organizational and corporate boards are struggling with these new realities.

For example, if an association is trying to attract top talent for its board of directors and decides to compensate them any amount over expenses, they are then considered paid, and the 20% rule doesn't apply, triggering the potential requirement for the entire board to individually register as consultant lobbyists if they have contact with public office holders. If you check the registry, I think you'll see that the Canadian Medical Association is one organization that has had each of its board members register as consultant lobbyists.

I think we should be supporting these groups in their goal of better governance. I'm not sure that this additional hurdle is helpful in their recruiting.

Another element of the legislation that was predicted as problematic was the inclusion of designated public office holders identified as “senior”. Therefore, any registerable communication that was oral and pre-arranged with these individuals required separate filing of a monthly communication report. That was then posted to the public registry and available online. There was a hue and cry—all kinds of it—about how this was going to provide sensitive information to competitors. I don't think that has materialized, but there are some issues around it.

The original proposal in Bill C-2 before it was amended called for a higher level of detail regarding the actual communication information, and a dual filing process, whereby both sides at the meeting, the designated public office holder and the registered lobbyist, both reported their meetings individually and separately, and the lobbying registry office simply reconciled. If there was one half of a meeting reported, that was something they could then investigate. The problem we have now is that the lobbying commissioner's office has to respond to anonymous tips or whatever to figure out where to look for problems because they aren't going to surface naturally on their own.

We ended up with a system in which the responsibility rests solely with the lobbyist and the meeting details simply need to reflect the identified subject matter listed in the original registration. Again, the committee may want to examine the impact this element has had over the last five years and see if it's getting us where we want to be.

In addition, I think, on the inclusion of DPOH status, you could put this on the government electronic registry. One of the challenges we face is who is designated and who is not. It's a moving target in terms of the designations not being consistent across ministries as people move in and out of positions and are temporarily acting and these sorts of things.

● (1150)

The government has a very good electronic directory of employees. There may be some way of identifying on that directory if the person is or is not in fact a designated public office holder. I think it might simplify the process and reduce the number of false filings, wherein people file and don't need to because the person isn't designated, or where they don't file because they don't think the person is and that then triggers a separate course of action.

Staying with the DPOH theme, the original legislation gave the government the Governor in Council authorities to designate any class of DPOH, and they exercised this authority to extend designation to members of Parliament. I realize the political risks of anybody saying they want to do anything that would be seen to be reducing transparency and accountability, but I think designating individual MPs who aren't parliamentary secretaries or ministers as DPOHs is a bit of a knee-jerk reaction. It could have profound long-term effects on the rights and privileges of MPs and, in a sense, the relationship between the executive and legislative branch.

I'm not Chicken Little and I'm not saying the sky is falling, but I think we should all be concerned if as an MP there are certain regulations and restrictions around who you see and then actions you take subsequent to those meetings. Your responsibilities as to providing oversight as members of Parliament may take precedence over whatever objectives might be met under that exercise, although I do say again that it would be very difficult for somebody to walk outside this room and scrum on that issue, because it certainly would look like you're trying to make the system less transparent. I can say it; maybe you can't.

● (1155)

The Chair: Mr. Jordan, perhaps we could move to your recommendations.

Hon. Joseph Jordan: Sure.

The Chair: That would be great. Thank you.

Hon. Joseph Jordan: There are two final points I'll make. There has been a lot of talk about what's called "Rule 8": registered lobbyists' participation in elections and the electoral process. Good luck with that. It's a bit of a tricky one. What you are trying to do there is balance my rights as an individual, my constitutional rights to participate in the democratic process, with trying to prevent me from creating obligations that I would exploit further down the line.

I will say this. Whatever decision you come up with, I think the industry would welcome very, very clear rules for what can and cannot be done, as opposed to the interpretation bulletins that essentially say, "Well, do whatever you think is right, and if you do something that is wrong, we'll come a-knockin'". We're talking about a Criminal Code underpinning here and I think we need a little more clarity around that issue.

I'll leave you with this thought, then, and I'll welcome any discussion or questions you have. The relationship between business and government is one of the principal determining factors in the performance of our economy and the quality of our society. I think politicians, bureaucrats, entrepreneurs, and citizens have a vested interest in this relationship functioning at as high a level as possible.

It's important to ensure that the transparency objectives of this legislation are realistic, attainable, and effective and that the compliance burden does not contribute to the insularization—I think I made that word up—of the public decision-making process. In other words, anything that causes government to retrench from consultation, to make decisions in a vacuum because of the burden of complying with this legislation, I think is taking us backwards.

Again, I think the committee has quite a challenge ahead of it. I look forward to discussing any or all of those points or any points that you want to bring up based on my experiences.

I'm at your disposal. Thank you, Madam Chair.

The Chair: Thank you, Mr. Jordan.

We will begin with Mr. Angus for seven minutes. That of course includes the member's questions and the witness's responses.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Jordan. It has been a very interesting discussion so far.

I'm interested in your recommendation about the question of lobbyists being paid and your interpretation of it, because one of the elements that has come up is that someone might not be specifically paid, but there might be a financial interest down the road, or it could be favours. But in that you would include think tanks, academics, and NGOs, and I'm wondering how we would do that in making it not only transparent but realizable. Many people come to our offices to meet with us on all manner of things, and if the onus is upon them to be registered as a lobbyist, I think a lot of well-meaning groups are going to get themselves into trouble. How would you actually make that work? And what would be the distinctions that are needed?

Hon. Joseph Jordan: Thanks for the question.

I think the point I was making is that if you can agree on what the objective of the legislation is, then work backwards: who is caught or where does the Canadian society benefit from transparency? Again, I think the point I was trying to make is that for anybody who is, in any kind of organized way—apart from the citizen-MP relationship—participating in a public policy debate, I think you can make the assumption that they're doing it in their self-interest. To simply use "paid" as the bar...you are having a lot of people who are influencing a considerable amount of pressure on that process and who are completely outside this regime.

So by putting the definition as "communication with decision-makers to affect outcomes", everybody understands what we're talking about now. If you take out "paid", then it's just the case that everybody who's going to play in that sandbox has to register and has to follow the same rules.

● (1200)

Mr. Charlie Angus: Yes. I'm still trying to get my head around that. One of the recommendations of the lobbying commissioner is that we remove this "significant part of duties", this 20% rule, partly because there are people who have enormous influence if they make a phone call. That might be 5% of their duties, but they could have enormous influence because it's about who you know, and that's what makes their phone calls effective.

So we're worried about them falling under the radar, but I guess if an academic were coming to meet with you because of concern about prison policy, copyright policy, or health care policy, they would have to be signed up the same as you in the Capital Hill Group would be. Is that what you're suggesting?

Hon. Joseph Jordan: I'm not suggesting the solution; I'm just pointing it out. But I would say, what would be the harm...? If the idea is that Canadians need to know who is trying to move the balance point in a policy—for whatever reason—why is the public good served by them knowing only what Joe Jordan is doing, but not knowing what person X, Y, or Z is doing, a person who is out there and having considerable influence?

I'm not saying it's easy, Mr. Angus. I'm just saying that if the goal is to throw light on everybody who's trying to get the government to do something, I think we're getting less than we could get by not including those other participants.

Mr. Charlie Angus: Well, I guess the question...and you've sort of raised this from another angle. As a designated public office holder, as an MP, if I'm being told that I have to register every single person who comes to and meets in my office, in some ways I don't have a problem with that, but in other areas I do. There are people who come to me because they have to give me information, because they're concerned about what's happening. There's secrecy...not secrecy, but privacy rights. So it seems to me that the little Joe and Jenny community group that wants to meet with me because they're concerned about policy gets treated the same as the Capital Hill Group if they don't register as lobbyists.

However, if I were an MP and had a list of all the groups I met with in a given day, I don't have a problem with that, because, jeez, people would think I actually worked hard for a living when they see all the people we do meet. But there are problems with that. So putting the onus on the group who's coming in, it seems to me, is letting you guys off the hook, because we're going to get swamped with all kinds of little community groups that aren't going to be meeting the Lobbying Act, and then we're going to be going after all these people for failing to register as lobbyists but missing the people who, with that little phone call, may have enormous influence.

Hon. Joseph Jordan: Well, I think that's why if you move MPs out of the DPOH category, you solve that problem, because people who go and see the MP then aren't subjected to the communication filings at all.

Mr. Charlie Angus: Yes, but it is the obligation of a registered lobbyist to talk about who they meet with.

Hon. Joseph Jordan: Oh, I have to, absolutely—

Mr. Charlie Angus: Yes.

Hon. Joseph Jordan: Absolutely, but if I'm seeing a public office holder—not a designated—as long as I'm duly registered, that communication I have is not part of the communication filing every month.

Mr. Charlie Angus: Right.

Now, the second recommendation of the lobbying commissioner was that the act "should be amended to require that every in-house lobbyist who actually participated in the communication be listed" in the report "in addition to the name of the most senior officer". So if a group of four comes, we know who those four are, as opposed to just the person who set up the meeting. Do you think that's a reasonable transparency goal?

Hon. Joseph Jordan: I certainly agree with the principle. I just don't know...and you've touched on it too: I mean, what can you reasonably expect to accomplish through a regulatory framework?

Part of the problem with in-house lobbying is that a large company will have different people on different files. They may have people from different countries on different files. So it would be an exercise of constantly updating whoever is working on that file. It could be done, but again, I don't know whether the pain is worth the gain. Right now, they register the senior officer.

Generally, companies that are lobbying fall into two categories. In one, they are constantly in contact with regulatory frameworks—the banking community, the pharmaceutical industry—and they have their own lobbyists because there's more than enough work to keep somebody busy constantly. Or it's a company that has one issue they're trying to address because of something that has come up. If you throw them both in the same basket, you're going to create quite a compliance burden on the company that's only going to be there once every three or four years.

Mr. Charlie Angus: Recommendation four is that the act should be amended to require lobbyists to disclose all oral communications about prescribed subject matters with designated public office holders regardless of who initiates them. Do you think that's a reasonable recommendation?

● (1205)

Hon. Joseph Jordan: Well, you and I could be standing beside one another at the urinal and have a conversation and that would have to be registered. So I mean, that one, I think.... You people need to be streetwise. Is just going near a lobbyist going to pollute your minds to the sense that you're going to turn the government in a bad direction?

I guess logistically it can be done. I'm already, as a registered consultant lobbyist, subjected to the highest standard in terms of the rules. But if you go that route—you know, things that happen at a cocktail reception—I think you'll fundamentally put a burden on organizations and associations that represent groups of entrepreneurs, let's say. I think the compliance burden there will be extremely high.

Right now it's pre-arranged and it's initiated by the lobbyist. Those are the communications that fall under the category. So by eliminating pre-arranged—

The Chair: Thank you, Mr. Jordan. We're well over seven minutes.

Hon. Joseph Jordan: Okay. Sorry.

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Madam Chairman.

Thank you, Mr. Jordan, for your presentation today.

I note that you said off the top that the office has performed admirably and efficiently. We appreciate hearing that—albeit, you have made some recommendations that I'd like to go over with you.

Rule 8 has come up in the past, frankly, and I did have a number of organizations talk to me, and their representatives talk to me, specifically about rule 8 because they want to comply. They want to comply with whatever the ruling is.

I'm asking you this more as a person who is registered: Do you think a rule that came down that indicated that if you are registered as a lobbyist you should not be allowed to participate in any political activities would be a fair rule or a rule that would unfairly target people, in your view?

Hon. Joseph Jordan: I will answer that, but I will say, too, that I have some sympathy for the commissioner, because I think the commissioner is in a position where they have implied responsibilities without the underpinning authorities. So I think the fact that the committee is going to look at this is useful.

From my own personal point of view, and that's the only view I can give you, I have already done that. I made a decision that engaging in partisan political activities is first of all not in the interest of my clients. If I'm screaming at the government one day and then asking to bring somebody in and have a sensible discussion the next, I don't see how that helps.

I've chosen to be in this profession, but I'm also a political junkie. I grew up in politics. You're talking about somebody's constitutional rights, but I guess wherever you decide the line is, I think I'm already there. I didn't go to the last convention of my party. I don't donate to any party at the federal level. I quit going on TV to be a strategist for one side or another because I thought I might be, you know, endearing myself.

If you're asking me personally, I don't have a problem with that, but I think as you hear other witnesses, you're going to get some differing opinions on that. The only point I was making is to have a list that says do and don't. Make it clear.

Mr. Dean Del Mastro: Okay. I'd just suggest that you might want to donate to all parties equally. We'd be good with that.

Voices: Oh, oh!

Mr. Dean Del Mastro: Of course, I'd also suggest that some of the folks appearing as party strategists haven't always got the party strategy down, so you might not necessarily be endearing yourself to anyone in that function either.

You talked about your view that it might be a good idea to insert a definition of lobbying into section 2. Do you think the public has a good idea of what lobbying is?

Hon. Joseph Jordan: I don't think so. I teach government relations, so I've been down this road before. It's not shoving money in a paper bag. The analogy I use is that the legal system in this country is complicated, it's changing, and if you come in contact with it and get it wrong, the ramifications can be severe. Government is complicated, it's changing, and if you come in contact with it, the same story.

As for what a lobbyist does, it's less of a Rolodex industry now; maybe 20 years ago that's what it was. What you're trying to do is you're trying to prepare a business that has very real economic interests that have to be balanced against other interests of other sectors. They're trying to have a strategy to intervene to make their case heard. I guess it's like anything: it's not as exciting as it sounds.

● (1210)

Mr. Dean Del Mastro: I've spent some time talking to people in my constituency about this, and I think that government relations, and lobbying in general, are quite a bit different from the way they're actually perceived.

One of the things you understand once you get here is that government is a very big machine and legislation has long tentacles in some regards. You may not understand how it impacts on any specific industry, so hearing from folks who are representing those industries is invaluable to members of Parliament, because you're not going to hear it on the Hill otherwise. I think there are some very valuable functions that are performed.

In talking about the process of registering and reporting, is it timely? Is it exhaustive? Is it difficult?

Hon. Joseph Jordan: No, it's not. What our firm did when the legislation was first passed was to designate a compliance officer in the firm. We conducted and documented training so everybody knew what the rules were. We had a very close relationship with the commissioner's office. They were extremely helpful.

That process is very routinized now. It's not a burden on our firm; it's part of our job, and there's no economic cost to us to do that.

Mr. Dean Del Mastro: Okay, so if you were to look at the 20% rule and say we're just going to have everybody report things, it wouldn't be an exhaustive function for them to have to undertake.

Hon. Joseph Jordan: I don't think so.

But going back to Mr. Angus's point, it would be a situation where all of a sudden you capture a lot of groups that traditionally haven't seen themselves as engaging in lobbying; they may see it as advocacy, or whatever name they want to use. I think the problem you would have is the transition, for people to realize they are now covered by this.

Mr. Dean Del Mastro: Right. I guess I'd go back to my earlier question, which was to ask whether you think people know what lobbying is.

Most people don't have a good idea of what lobbying is. To assume that what they're doing is not lobbying.... I think you're putting a burden on folks who don't have an idea what constitutes advocacy or lobbying.

I think advocacy, lobbying, government relations are all the same. Advocacy groups are often speaking more about the public sector. Where is the government going to invest funds? How is it going to invest those funds? How might it invest funds better or what have you? Lobbying tends to be more in the private sector; they're talking about the impacts of government on the private sector.

Ultimately, as far as the government is concerned, it's the same thing. It doesn't matter if it's the government spending money or the government reducing a taxation impact—for example, some of the things we did for manufacturing on accelerated capital costs; it's the same ultimate impact on government one way or the other.

But I do think it's perceived differently by the public. You may capture some folks who don't consider themselves lobbyists, but then again a lot of folks don't really know what lobbying is either.

The Chair: Mr. Del Mastro—

Mr. Dean Del Mastro: Is that my time?

The Chair: It's well after.

Mr. Dean Del Mastro: I just made a salient point, so this would be a good juncture to move on to someone else.

The Chair: Mr. Jordan, do you have a very brief response?

Hon. Joseph Jordan: I'd say that's why the inclusion of communication with decision-makers to effect outcomes I think demystifies.... It lays out exactly what we're talking about. Something is going to come out on who was involved in moving that balance point before it happened.

The Chair: Thank you, Mr. Jordan.

Mr. Andrews.

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

Welcome, Mr. Jordan. In your opening statement you talked about the lobbying commissioner's ability to investigate. The commissioner can only investigate if she receives tips from individuals. It's very difficult for the lobbying commissioner to find out where there might be a breach. She sees the reporting, but is there lobbying going on that is not being reported?

Do you think we can tighten up on that a bit? How do we make both sides more accountable?

I've asked the question about reporting on the office-holder side. They report. The lobbyist reports. You compare notes, and if there's a consistent absence of reporting on one side or the other then there might be some reason to investigate.

I think you also said that this was in Bill C-2, the previous bill, but it didn't make it into the final draft.

Do you have any comments?

● (1215)

Hon. Joseph Jordan: You make a good point, and I touched on this in the opening. Originally, the design of the system was that both sides report independently. Therefore, the commissioner's office simply reconciles the meetings, and if you get half of a meeting reported, then you know where to go and pick up the phone and find out what happened. Without both sides reporting—I was just speculating, and maybe the commissioner has spoken to this—the commissioner's office then has to tell them there is a potential problem or an unreported meeting. That's a whole different process, and it is very random. I think it would be much more effective to look at the original model.

Then, the other thing you want to look at is why that was left on the cutting room floor. I didn't look at the transcript of the testimony, but if you go back to Bill C-2, there must have been some pretty persuasive discussions at committee for the committee to say "Let's not include the bureaucratic or political side. Let's just put the onus on the lobbyist." That's fine, but I think it's less efficient in terms of enforcement, because you don't have a way to flag when there is an issue every month, which you would have if both sides had to report.

Incidentally, as MPs, as designated public office holders, you have certain responsibilities under the act as well. You don't have to report your meetings, but you have to keep a record of your meetings and make that information available to the commissioner if you are asked. I don't know whether that presents any problems in your constituency work, but you are being dragged into this framework, either knowingly or not.

On a separate point, I do a lot of work with defeated MPs as a volunteer through the parliamentary association. Most MPs don't realize they are now covered by the five-year ban. When you leave politics, as a designated public office holder, you are now banned for five years from engaging in any registerable activities. Is that a hammer kill on a flea? I don't know. You may want to look at that.

Mr. Scott Andrews: With regard to that ban, is that five-year prohibition a reasonable thing? Is it something we should look at? Maybe we've overstepped our boundaries a little too much. Furthermore, when you're defining where lobbying starts and where government relations begin, I would argue that if you're in a government relations firm, advice given to a client is much more valuable than actual lobbying itself. There is a difference between government relations and lobbying. Where does that start and where does it end? Is the five-year ban actually something—

Hon. Joseph Jordan: If you look at what it used to be.... When I left politics, if you were a minister, there was a two-year ban. If you were a parliamentary secretary, there was a one-year ban, but it applied to files that you had handled in your portfolio. Maybe that was setting the bar too low. When you go to a five-year ban on all activities, the challenge you face is that it's very hard to back away from this stuff. It's very hard to step away from that without giving the impression you have lowered the bar. There are all kinds of stories about former political staffers—even in the current environment—who go into the government relations industry. You are absolutely right.

If all I do is work out a strategy for companies and I never engage in registerable activity, I am not covered by this. It's a free country, and I can do whatever I want. The restriction is only on actions that would require a registration. In my view, I think five years is too much. Or actually, I should be arguing for ten years to keep more people out of this profession and drive up my wage. For the people I deal with—defeated MPs—it just takes a realistic option right off the table in terms of post-political employment. There is a process for reducing that. I notice that is posted, and that seems to be working. If somebody thinks they weren't in the office long enough to be covered, they get a fair hearing, and in some cases they get that waived. That may be a problem that fixes itself.

Mr. Scott Andrews: With regard to the 20%, the way you define it and calculate all that is actually better than any other way I've heard of. Is there a standard for calculating that 20%, or does every firm perhaps calculate the 20% in a different way?

Hon. Joseph Jordan: I was reading from the document that came out of the lobby commissioner's office. I didn't understand it either. The problem is that it's very complicated. At the very least, take travel out of there. It doesn't need to be included.

● (1220)

Mr. Scott Andrews: The commissioner is actually recommending eliminating a significant part of the duties altogether. Would you support that recommendation from the lobbying commissioner?

Hon. Joseph Jordan: In my world—the world of registered consultant lobbyists—everything we do is regulated to the highest degree. What you are talking about with regard to reducing the 20% rule is increasing individual companies' or associations' requirements to register. You had better be careful with that one. You'll be bringing a lot of people into this framework who historically weren't covered or didn't see themselves as being covered by this. You're going to have to calculate whether or not that's worth it.

Mr. Scott Andrews: Thank you.

The Chair: Mrs. Davidson.

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

Thanks very much, Mr. Jordan, for being with us here today. I think we all have a lot of questions about how this is working, so it's great to hear from you with the hands-on information that you're bringing us today. I think it gives us a much better perspective.

It has been interesting to hear the discussion about the 20%. I think that's something we're grappling with and trying to figure out how it's figured out, and how organizations and lobbyists determine that.

One of the things the commissioner said when she appeared before this committee was that all oral communications, regardless of who initiates them and whether or not they are planned, should be reported. Right now I think it's only oral and planned communications. Can you comment on that?

Hon. Joseph Jordan: I would say at the outset that without clear definitions of what we're talking about in terms of communication, you're going to run into problems. Is the communication a registerable communication or not? I think we could bring some clarity to that.

For example, it's not registerable if I ask you for information. Every citizen has the right to ask government for information, free and unencumbered by this legislation.

I think the committee might want to focus in on exactly what you're trying to accomplish, and be clear on that. Then some of these questions may answer themselves.

Right now I think that's going to create a big mess, because people won't know. The general model that seems to work—and you are on the other side of the fence—is that groups will come to Ottawa on a certain day, they'll book a number of meetings with MPs, and they'll go through their spiel, and that's registerable and the communication reports are filed. Then they generally have a cocktail party or reception that night, and you potentially have constituents there and you go. You are now bringing what happens there into this framework. So I would be very careful about that one. Unless you can figure out what the mechanism is to get everybody clearly understanding the rules and when it is registerable and when it is not, we're either going to have a lot of unregisterable activity going on or we're going to flood the system with bits of information that really aren't getting us anywhere in terms of our transparency goals.

Mrs. Patricia Davidson: Do you think it's possible to define that enough that you can get around the problems with it?

Hon. Joseph Jordan: I think it is, but then again the other side of that is are we better off? Is that information of any use in terms of what we're trying to accomplish with the transparency objectives of the legislation?

I don't mean to minimize the job the committee has; you are trying to balance some pretty serious rights and responsibilities here.

Mrs. Patricia Davidson: One of the other things we've heard about from the commissioner on many occasions is the issue of penalties or the lack of the ability of the commissioner to levy any type of a monetary penalty. Things get referred to the RCMP and then the commissioner suspends her investigation while that is ongoing. There are no monetary penalties adopted or levied.

Can you talk to me a little bit about what your feelings are on monetary penalties, and whether or not the commissioner should be able to levy any penalties on issues that get referred?

Hon. Joseph Jordan: As long as there is due process, I don't have any issue with monetary penalties. I will say this, though, and I say this sincerely: if somebody is a registered consultant lobbyist and they get named in a report as being offside of these rules, I can't overstate the effect that has on that person's livelihood. That is a very severe sanction. Nobody is going to want to hire somebody who has danced on the wrong side of the line. So don't buy into this notion that having your name in a report isn't a serious penalty; it is.

If the commissioner sees value in having some additional sanction at her or his disposal, I don't see any problem with that. The only thing is that when you bring in the Criminal Code as the underpinning for this, in some cases you're making it harder to convict someone because of the very high standards within the Criminal Code. So it is almost paradoxical. We think we have a tough law because we're underpinning it with the Criminal Code, but in actual fact you may have an unenforceable law because of the ambiguity that is around a lot of this stuff. Again, it's what you are achieving at the end of the day.

I don't see the monetary penalty having any detrimental effect that doesn't already exist if somebody has been named as not following the rules. Who is going to hire somebody if they can't keep this legislation straight and be on the right side? How can they possibly give anyone advice on how to do it?

● (1225)

Mrs. Patricia Davidson: There's one other thing I was interested in from what you were saying. Right now, when only the lobbyist has to register and it does not have to be registered from the other side, the commissioner almost has to rely on anonymous tips, and so on, for incidents to come to her attention.

Can you just elaborate a little more and expand on that? What do you see as the solution to that?

Hon. Joseph Jordan: The problem is that any solution brings its own issues and unintended consequences. If, as the bill was originally written, both sides independently file registrations, then at the end of each month—because it's all computerized and the computer system is working really well—the lobby commissioner could probably just get a printout of one-sided meetings. Either somebody who had a meeting filed from the bureaucratic political side and the participants from the lobbyist side didn't file, or the lobbyist filed and the bureaucrat didn't file. Then you could focus your time on sorting those out.

Right now the lobby registrar's office gets a number of filings every month. There's no way to know whether that reflects reality. Somebody who doesn't register isn't going to show up unless something happens that gets the commissioner's attention. For example, I think a couple of months ago an organization sent out letters to MPs stating a case and asking for a meeting, and they weren't a registered organization. Somebody must have checked and made a complaint, and I think they subsequently registered. But if that's the process for enforcement, it's not a very good process; it's not a very efficient process.

Mrs. Patricia Davidson: Okay.

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

Mrs. Patricia Davidson: Thank you.

The Chair: We'll now go to the five-minute round with Monsieur Boulerice.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Madam Chair.

I think I am right in saying that this is our last go-round; I am going to share my time with my colleague Pierre-Luc.

Thank you very much for joining us today, Mr. Jordan. Thank you for your presentation: it really was very interesting.

I have a question about your proposed definition, which I find extremely broad. As I see it, if everyone who communicates with a lawmaker, a public decision-maker, with a view to influencing public policy has to be considered a lobbyist, there are potentially 83,000 lobbyists in Rosemont—La Petite-Patrie. That is what people do any time they meet with us: they try to influence us and to tell us to go in one direction or another, to do or say this, that or the other. It's a lot of people.

So if you want the 20% idea to be eliminated, if you don't want to say that people must be paid to be considered lobbyists, and that anyone who communicates with us in order to influence us is a lobbyist, you are going to be up to your ears in lobbyists.

[*English*]

Hon. Joseph Jordan: If everyone's a lobbyist, no one's a lobbyist. But if you're not a DPOH, it's not an issue.

If the goal is to bring transparency to the various groups that are influencing decisions, your challenge is where to put the fence. Who are you interested in finding out about, and who are you not—or is it everyone?

Believe me, I don't minimize the challenge you have, but I don't think it's individuals—it's groups, associations. It's people who have a certain amount of sway in the public policy arena. I bump into these people in the halls, and I'm subjected to completely separate rules from what they are because I'm paid to do it and their benefits are more indirect.

● (1230)

[*Translation*]

Mr. Alexandre Boulerice: So you feel that every charity, every church, every university professor and every research centre should have to register as a lobbyist.

[*English*]

Hon. Joseph Jordan: I think they need to be considered if they are engaging in trying to influence the outcome of decision-makers. I guess the logic is why would you not include them? Again, I don't have an answer for that. They're there for some reason. They obviously have an interest in this. It may not be directly financial, but you can't minimize the impact they're having on the process. If it makes sense to shine a light on what I'm doing, surely it makes sense to shine a light on what everybody's doing.

It's really a matter of degree as to what's practical and enforceable. I think that's what the committee will struggle with.

[*Translation*]

Mr. Alexandre Boulerice: I am going to let my colleague Pierre-Luc Dusseault take over now; but first, I must say that you certainly are a good lobbyist yourself.

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

I have a quick question that I hope will clarify your introductory remarks. I am not exactly sure that I understood them.

You said that, when lobbyists are working, they are not obliged to say which clients they are working for. That is the part I would like to clarify. Lobbyists can have several clients. Is it the case that, when they meet with a public office holder, for example, they are not obliged to disclose whom they are working for?

[*English*]

Hon. Joseph Jordan: Oh, no. If I left you with that impression, I apologize. That's not the case at all.

Every time I file a communication report, it lists exactly who I'm acting on behalf of. It couldn't be clearer. You can go into that lobby registry and you can find out from consultant lobbyists exactly who is working for whom and what meetings they've had for those people. Even if I have two or three clients in the same meeting who have a similar issue, separate communication filings have to be filed for each of those clients. It's absolutely clear who you're working for.

[*Translation*]

Mr. Pierre-Luc Dusseault: Fair enough, that is clear. So let me take my questions in another direction.

You are a good example. In the past, you were a parliamentary secretary and you complied with the five-year rule, I hope.

Just now, you mentioned people who can wield a lot of influence with one phone call or in a couple of meetings. Do you feel that people who have held a public office similar to yours still have a great deal of influence after five years? Is five years appropriate? What do you think?

[*English*]

Hon. Joseph Jordan: First, to clarify, when I got out of politics, it was only a one-year rule. It wasn't five. It's like anything else: There are probably some people who will have influence for the rest of their lives, just because of their personalities and who they are, and there are some people who don't have any influence two seconds after they leave the building. So what's a reasonable number? To me, five years seems like a very long time to restrict what somebody can do. I mean, that's what you're talking about. You're talking about somebody's right to work. We need to take those kinds of step-ins seriously. Is two better than five? I don't know. The problem, again, I recognize, is that if you drop it from five, you open yourself up to criticism that you're being less transparent than you were. It's a challenge.

The Chair: Thanks, Mr. Jordan.

We'll go to Mr. Carmichael for the final round of questioning.

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

Thank you, Mr. Jordan, for your testimony today.

I'd like to go back to a couple of comments you made in your opening statements related to board governance, because I would like to better understand. When we talk about advocacy, government relations, and lobbying, then you look at corporate boards.... From Rotman, you certainly have exposure to the ICD program—

Hon. Joseph Jordan: I'm a graduate of it.

Mr. John Carmichael: Me too.

When you go through a program like that, you understand what your responsibilities are on a board. It can be a terrifying experience.

Could you go a little bit deeper in your thoughts about corporate board members working with paid lobbyists in firms? They come and advocate on behalf of their product, or whatever they're here particularly to do. I'm wondering if we're on a collision course where that area has to be better defined or included, etc., to ensure that corporate boards of directors, be they not-for-profit, charitable, or otherwise.... They're all included in that milieux. I just wonder if more consideration should be given to that. Can you go a little deeper on that?

● (1235)

Hon. Joseph Jordan: It is an issue that needs discussion. For clarity, my point had more to do with non-corporate boards. I think corporations are in a position to decide what structure they use for their government relations, and clearly, corporate board members are paid above expenses. What I was talking about is associations, non-profits. If they pay one cent above documented expenses and they're expecting those board members to engage in advocacy, you get in a situation where now you have to go to this person and say "Not only did we get you to volunteer to do this, and we're paying you expenses that in all likelihood aren't really covering your expenses, but now you have to file as a consultant lobbyist, and there may be some tax implications to that, and if you do this wrong, you could end up in jail".

I'm not sure that's helpful when at the same time we're trying to increase not only the definition but the performance of what these boards are supposed to be doing. For the longest time, especially in public sector boards, these were seen as places to stick people as favours, and what we are finding is that we now expect these boards to do a job, and if you want people to do a job, you should treat them accordingly. I see a danger that this is bumping into that and we may end up hurting these organizations' chances to get quality people.

To complicate things, you have parliamentarians who sit on corporate boards, so this gets rather incestuous. If policy is discussed at a corporate board meeting and a sitting parliamentarian is a board member, how do you reconcile that? How do you go public? With a publicly traded company, how do you now file a communication report? You don't. So you're not getting at that.

You need to look at it.

Mr. John Carmichael: That's on a publicly traded company or public board.

Hon. Joseph Jordan: Yes.

Mr. John Carmichael: When you talk about public board members, though, being paid for their expenses and being accommodated for the effort they put in, say to come to Ottawa or whatever, are you not automatically lumping them into that lobbyist mix?

Hon. Joseph Jordan: I'm not. The legislation is.

Mr. John Carmichael: That was my point.

Hon. Joseph Jordan: As soon as they're paid, and part of their job is advocacy, the 20% rule doesn't apply, so you can't make the argument that it's only a little bit of what they do. If it is any of what they do and they are paid a dime, now they are covered by the same rules as I am, and I do it full-time.

Down the road there could be a point of friction there that is unintended.

Mr. John Carmichael: That's a good point. But then stepping back to the not-for-profit charitable sector, you take volunteers and put them into that mix, not only are they under the gun now for the time, volunteer fatigue, which we all know is a real problem in the charitable sector, but now with the risk, the liability, the potential, you're going to dry up your volunteer corps.

Hon. Joseph Jordan: On the other side of that, let's say you get a volunteer board that is extremely effective and well positioned to effect policy change. They don't have to register because they are not paid. That is an anomaly that needs to be looked at, at least.

Mr. John Carmichael: That's a good point. Thank you.

The Chair: That was right on time. Thank you, Mr. Carmichael.

Mr. Jordan, I want to thank you very much for coming before the committee today.

We are going to suspend for two minutes and we will go in camera for some committee business, so I would ask you to clear the room.

[*Proceedings continue in camera*]

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