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Chair

Ms. Jean Crowder

Standing Committee on Access to Information, Privacy and Ethics

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● (1100)

[*English*]

The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): Good morning, and welcome to the continuing statutory review of the Lobbying Act. Welcome to our witnesses.

We'll start with our witnesses, and I believe each group is going to take ten minutes to present. We'll then go to committee members for responses.

Please proceed, Mr. King.

Mr. Charles King (President, Government Relations Institute of Canada): Thank you. How are you?

Good morning, ladies and gentlemen. *Bonjour à tous*. My name is Charles King. I'm the president of the Government Relations Institute of Canada. I am also the vice-president of government relations for Shaw Communications.

With me is Jim Patrick, who is the treasurer of GRIC, chair of our legislative affairs committee, and senior vice-president at the Canadian Wireless Telecommunications Association. I'd also like to put on the record that Jim is the one who has been spearheading our review of this act, and I want to thank him on behalf of the association.

As you may know, GRIC directly represents some 300 government relations professionals across Canada. Our membership includes consultant lobbyists as well as corporate and organizational lobbyists. GRIC welcomes this review of the Lobbying Act, as it presents government and other stakeholders with an opportunity to clarify elements of the act and its supporting framework.

Through daily practice over the past few years we have identified several areas that have served to cause confusion, not only for lobbyists, but for public servants and parliamentarians as well. This review provides an opportunity for Parliament to ensure that the rules that apply to lobbyists and public office holders are clear, reasonably enforced, and applied equally to everyone.

We have filed a comprehensive written submission with the committee, and today we'll be highlighting GRIC's five core recommendations for bringing additional clarity to the Lobbying Act and its supporting framework, while at the same time maintaining the government's objectives and Canadians' expectations when it comes to transparency and clarity in the government relations business.

At the outset, let me stress that we're not here today asking for easier rules for lobbyists. We are asking for and seeking clearer rules for lobbyists. Lobbying is a fundamental part of the political decision-making process. As lobbyists, our focus is working with our clients and government to make sure that laws and regulations are effective and practical and support the government's economic and social objectives.

Parliamentarians, government officials, business executives, and charitable organizations each have their own distinct way of talking about public policy issues and managing them. Professional lobbyists assist those unfamiliar with government in navigating the ever-changing landscape of government rules and regulations. Put in another way, lobbyists are translators. We explain business or civil society to government, and government to business or civil society.

[*Translation*]

We are hired by business and charitable groups to develop and advocate specific recommendations on legislation, regulations and fiscal decisions facing government. We are frequently approached directly by government for help on complex files.

Moreover, the vast majority of lobbyists perform these functions in total compliance with the applicable acts and regulations set out by the government.

[*English*]

Lobbying the government is not a privilege. It is a longstanding right that stretches back through the history of constitutional government. The vast majority of lobbyists take that right very seriously, as well as our obligations to govern our activities in accordance with the rules and regulations set out by the Government of Canada.

Since the act came into force in 2008, the overwhelming majority of communications between lobbyists and public office holders have taken place in full compliance with the letter and spirit of the act.

[*Translation*]

In other words, the majority of lobbyists, themselves, have acted in accordance with their understanding of the standards and rules set out by the government, and will continue to do so.

[*English*]

At the same time, the act has been interpreted and applied by the Office of the Commissioner of Lobbying, the OCL, in a way that has produced a lot of confusion and uncertainly for lobbyists and public office holders.

If the objective of the act was to provide increased transparency and accountability, the way the act has been administered has in many cases had the complete opposite effect: to confuse and muddy the rules under which lobbyists conduct their professional and, in some cases, personal affairs.

This is why GRIC has presented the committee with a short list of specific recommendations we believe would increase the predictability, transparency, accountability, and effectiveness of the regulatory framework for lobbying in Canada.

Jim.

● (1105)

Mr. Jim Patrick (Treasurer, Government Relations Institute of Canada): Specifically, we have five recommendations.

The first recommendation is that the commissioner's duty to educate public office holders should be more comprehensive. Several times it's become clear that various departments are unclear about their obligations under the Lobbying Act or about important details or definitions within the act. We recommend that OCL should have the explicit mandate to step in and request clarifications and to recommend corrective action where it's clear that a government department is offside with the spirit of the act, the same way that other officers of Parliament do.

Our second recommendation pertains to what's called the "officer responsible for filing returns". Today the president or CEO of an organization is responsible for filing the initial registration and then all reports of meetings with public office holders. The CEO's name is the only one that appears on the monthly report, even if the CEO wasn't actually in the meeting. We're recommending that in the interest of increased transparency, the names of all lobbyists who actually participate in a meeting be listed on the monthly report—noting that there may be cases where a limited set of exemptions might be in the public interest.

Third, we're recommending that the restrictions on lobbying set out in subsection 10.11(1) of the act—this is what's called the "20% rule"—be revised, but only as they apply to former designated public office holders. There have been instances where the 20% rule has been treated as a loophole rather than a guideline. Our submission, respectfully, is that the rules should apply equally to everyone.

I want to stress that this would not impact citizens or small groups or small businesses who have cause to contact the government or their MP once or twice a year. We would limit the closing of that 20% rule specifically to former designated public office holders.

Our fourth recommendation pertains to the definitions of "oral" and "arranged" communications that are set out in the lobbyist regulations. We think those need to be clarified.

Oral communications is pretty clear: anything that's not written. There's never, however, been a formal definition of the difference between an "arranged" and an "unarranged" communication. We sought clarity on what OCL considers a reportable communication, and we were actually advised that lobbyists should be reporting "unplanned but arranged communications".

[*Translation*]

That means that the best advice we have received from the Office of the Commissioner of Lobbying of Canada is that we should report all unplanned but arranged communications. Quite obviously, more clarification is needed around that.

[*English*]

However, we do not support OCL's recommendation that the solution to this is to simply erase the word "arranged" and require all oral communications to be reported. The result would be that lobbyists and designated public office holders, including members of Parliament, would have to record and report every conversation they have with each other, whether in your office or in an airport or on the street. As designated public office holders, you already have the requirement to make a record of all reportable communications and to make those records available to the commissioner, on request, to verify the reports that lobbyists file.

So if you get rid of that word, "arranged", you would either have to make a record of all conversations you have with anyone about the government—on the offhand chance that person was a lobbyist and reported the meeting and you were then asked to verify it—or, alternatively, you would have to ask everyone you talked to about the government whether they were a registered lobbyist. That would apply in your ridings, apply while travelling, and apply while campaigning so that you know whether you need to keep a record of that conversation. Simply put, that recommendation would micro-regulate the normal interaction between MPs and the people they represent, and should not be supported by this committee.

The underlying problem here is one of definition. What does the act mean by "arranged communications"? Rather than just erasing the troublesome words, as OCL recommends, we submit that this is something that could be solved through a straightforward consultation process run by the Governor in Council to establish a clear definition.

Our fifth recommendation is associated with rule 8 of the lobbyists' code of conduct. We believe this should be removed as written, and harmonized with the existing language found in the Conflict of Interest Act and the public service post-employment rules. There have been cases where a lobbyist has been found guilty of putting a minister in a conflict of interest after the minister has been cleared by the Ethics Commissioner of ever having been in a conflict of interest in the first place. We're saying the test for determining whether a lobbyist has put a public officer holder in a conflict of interest should be the same as the test for whether that public officer holder was in a conflict of interest in the first place. It would simply be a matter of aligning the language in the acts.

In our written submission, we explain each of these recommendations in detail. We also flag some other areas that we recommend you take a look at.

● (1110)

[*Translation*]

Mr. Charles King: I would once again point out that GRIC is not here to ask for more lenient lobbying rules. We are asking for clearer lobbying rules.

[*English*]

What's missing today is a clear red line running through lobbying rules and regulations, a line that says on one side that this is acceptable behaviour, and on the other side that this is not. In some cases the best advice we get from OCL is to go about our business and they'll let us know later on if we're guilty of an offence.

When we put that approach alongside confusing advice such as we should report all unplanned but arranged communications, it is clear that changes to the way the act is interpreted and administered are necessary to ensure the system is predictable, accountable, and transparent for lobbyists and public office holders alike.

Thank you for the invitation to be here today. We look forward to answering your questions.

The Chair: Great, thank you, Mr. King.

Mr. Capobianco, are you leading off? You have ten minutes.

Mr. John Capobianco (President, Public Affairs Association of Canada): Thank you very much, and good morning.

My name is John Capobianco, and I'm the chair of the Public Affairs Association of Canada, or PAAC. I am joined here today by Stephen Andrews, vice-president of PAAC and chair of our advisory committee.

I want to begin our presentation by thanking the committee for inviting us here today to discuss the federal Lobbying Act and our recommendations for improving this key piece of legislation and for the public policy process.

Before addressing PAAC's specific recommendations relating to reforming the Lobbying Act, we will provide the committee with an overview of PAAC and the importance of lobbying to the Canadian policy development process.

First, PAAC is a national not-for-profit organization founded in 1984. Our principal objective is to help public affairs professionals succeed in their work by providing them forums for professional development, the exchange of new ideas, and networking. PAAC also advocates on issues that directly impact its members.

PAAC's membership represents a cross-section of many disciplines involved in public affairs, including government relations, lobbying, public relations, policy analysis, and public opinion research. Our members come from both the private and public sectors in areas such as energy, finance, small business, charities, government departments, municipalities, law and accounting firms, colleges and universities, and trade associations. At the present time we have roughly 150 members, many of whom are active in-house as organization and consultant lobbyists.

I want to make it clear from the outset that PAAC fully supports the objectives of the Lobbying Act and the need to ensure that the highest level of transparency and accountability for lobbying activity exists. We have a voluntary ethics code that complements and supplements the lobbyists' code of conduct and which directs compliance with the provisions of both the federal Lobbying Act as well as corresponding provincial statutes.

We also assist our members and lobbying regulators by holding regular educational workshops with the federal commissioner and provincial lobbying registrars. This helps to ensure that our members understand the legal and ethical requirements involved in lobbying public office holders, while providing lobbying regulators with insights into the nature of the lobbying profession.

In addition, a number of our lobbyist members have been instrumental in advocating for lobbyist registration systems, codes of conduct, and other regulatory provisions for many years at all levels of government in Canada. Our members have given testimony to the development of lobbyist registration systems at the City of Toronto as they developed the first mandatory lobbyist registration system for municipalities in Canada. Further, PAAC has a solid working relationship with the Ontario ethics commissioner and the Office of the Lobbyist Registrar and has commented on recent changes to the Ontario Lobbyist Registration Act, 1998.

Lobbying and lobbyists serve a critically important function in the development of sound public policy. At a general level, lobbying helps to build the policy and the political case for the government to act and to address an issue or opportunity that impacts a particular group—say, a region of the country, a citizen's group, a business, or an economic sector. More specifically, lobbyists provide information to government policy-makers and decision-makers that is key to the development of balanced and fair policy. For example, lobbyists routinely provide impact studies on how a proposed course of action may impact a business group, a charity, or the industrial sector.

In addition, lobbyists add value to the policy process by advising clients on how to navigate the complex decision-making process of government, including the proper timing of various communications; how to be compliant with lobbying laws, procurement processes, and codes of conduct; and advising clients and organizations on the kinds of information and policy analysis that is important in helping the government solve specific policy problems.

This list of activities is not exhaustive in the ways in which lobbyists facilitate the development of public policy, but is an often overlooked part of our job.

We believe the following recommendations will assist in improving the transparency and integrity of lobbying in Canada:

First, enable the Commissioner of Lobbying to issue advance rulings on issues covered by the Lobbying Act and lobbyists' code of conduct. Under section 10.1 the commissioner has the legal authority to issue advisory and interpretation bulletins to clarify the requirements of the act and code of conduct to ensure compliance. However, the commissioner does not have sufficient resources to issue advance rulings or advisory bulletins in a timely manner that would ensure compliance with the act and the code. While not strictly speaking an amendment to the act, we believe the commissioner should have sufficient resources to issue advance rulings to lobbyists asking for clarification on various aspects of the act and the code of conduct.

Second, reduce the five-year ban on lobbying by former designated public office holders to one year. This requires amending subsection 10.11(1) of the act. We believe the current five-year ban contained in the Lobbying Act is punitive and inconsistent with provincial lobbying law. A one-year ban is sufficient to ensure the appropriate cooling-off period and to avoid any conflicts.

Third, remove the 20% threshold for all in-house lobbying, which would involve removing the significant part test from section 7 of the act. It is clear that this subjective nature of the 20% time test for determining who is engaged in lobbying activity undermines the transparency and legitimacy of lobbying.

● (1115)

Fourth, expand the commissioner's duty to educate public office holders in section 4.2 of the act to say “developing and implementing educational programs to foster awareness among public office holders of the legitimacy and public policy benefits of lobbying”. We think the educational mandate of the commissioner should ensure that public office holders understand the value-added contributions that lobbying and lobbyists make to the public policy development process.

Again, we'd like to thank the committee for inviting PAAC to present our recommendations and for involving us in the Lobbying Act. As we stated at the outset, we are fully committed to improving the transparency of the regulatory system. Lobbying done well only serves to enhance the laws and policies that government develops.

We look forward to your questions.

Thank you.

The Chair: Thank you very much.

We'll now go to the round of questioning for seven minutes, which includes the member's question and the response from the witness.

We'll start with Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you very much for the very interesting presentations.

Mr. King, I want to get right into it in terms of a recommendation on the duty to educate as per section 4.2 of the act. Can you give any examples of how this would actually work? What is needed here to deal with this aspect?

Mr. Charles King: That's a good question. Listen, from our perspective, the OCL's duty to educate I guess would be threefold.

Basically, I think it's incumbent upon the OCL. If they went and spent time with all the various independent caucuses.... For example, I think that in the past they've met with the NDP caucus. I'm not aware of them ever going in to meet with the Liberal caucus or the Conservative caucus. So basically, go and do that kind of expansion and explanation of the rules and of what the processes are.

As well, we're not aware of them having done that with various departments. Because you look around.... In my meetings with various officials, you ask them, just at cocktail parties, “What's your knowledge of the rules”, and it varies from department to department. Our view is that if they went out and did a very comprehensive program of educating, and not only DPOHs.... Let's go through all the departments and let's go to all the stakeholders and make sure that everybody is singing from the same bible.

Mr. Charlie Angus: That's very interesting. I know that we meet with them in our caucus. I thought that was the standard procedure, because we're told there's a set of rules and we need to really understand them. So you're saying that this is not happening across the board and it's not happening through all the departments?

Mr. Charles King: That's correct.

Mr. Charlie Angus: Okay. Thank you.

I'm interested in the issue of “oral” and “oral and arranged” in the recommendation made by the commissioner. What are your views on that?

Mr. Jim Patrick: Before the act came into effect, we had a senior staff person from the commissioner's office come in and meet with GRIC. We had an information session for all our members. This would have been in 2008 or 2009.

In the example given to help us understand which types of meetings we need to report, the example was which types of meetings we don't need to report. The specific example was that if you're at a conference or a cocktail party and you encounter a designated public office holder, you're not expecting to see each other, and you have a brief conversation about a file, you don't need to report that, because it's not an arranged communication; you just happened to be in the same place at the same time.

It was reported in *The Hill Times* last year that when the commissioner met with the New Democratic Party caucus, the specific example was the complete opposite. If a lobbyist approaches an MP at a cocktail party, that is an arranged communication.

The standard seems to have shifted without any notification or consultation. We sought clarity on that, and it only served to confuse the matter further, because the advice we got was that we should report unplanned but arranged communications.

● (1120)

Mr. Charlie Angus: Well, I guess it's a good issue, because you could be meeting in your office; you get those little decks and it's very arranged. But you meet someone at Hy's Steakhouse, they bring you over to their table and you sit down...you can get a lot of business done there. But that doesn't qualify, then? Or you just happen to meet.... Do you think that should be covered?

Mr. Jim Patrick: We think there needs to be a consultation process on what exactly "arranged communications" means. Is it the definition we were given when the act came into effect? Was it the definition that apparently and reportedly has been provided to other parties?

When we've seen them try to break it down, they get into how there's a request made, there's a time interval between the request and the acceptance, and that's what constitutes "arranged". So if I were to approach you at a cocktail party and ask you if I can talk to you about an issue, and you think about it for a second and say yes, that's now an arranged communication. If I just walk up and blurt out my issue without asking you whether you want to hear me first, then it's not arranged.

The lines are pretty vague here. We think you need to have a pretty clear process to determine what the actual definition is. We don't agree with just getting rid of the word, because it's problematic: it would require designated public office holders to keep records of every conversation about files they have with anyone, in case that person happened to be a lobbyist.

Mr. Charlie Angus: Mr. Capobianco, what do you think on this?

Mr. John Capobianco: I'm in agreement with that. I think at the end of the day it's common sense that prevails, and I believe if you are going to have an arranged meeting with a public office holder, it absolutely is a right to be able to record it. Most lobbyists, in fact all lobbyists, tend to do that. There are times where if you happen to bump into a public office holder at an airport or in the street and you speak about certain things, I think it gets to a point where it can get out of hand from that perspective. So I agree with GRIC's assessment on that.

Mr. Charlie Angus: You're on the board of directors of the Albany Club, and the Albany Club was recently in the newspaper because of the arranged dinner for an event with the President of the Treasury Board. I'm looking at the.... It talks about it being a politically Conservative club for

> "like-minded" people. We nurture our exclusivity and with that our privacy. The Albany Club is an important instrument of conservatism in Canada.

Now, obviously I haven't been invited to the club. I think one of the questions about lobbying is that it's who you know, right? It's the doors that open.

You have a club where it's exclusive. It's where you bring people together to make things happen. How do you ensure there's a sense of transparency as you speak about an accountability that if you set up a club where if you want to go and you want to meet with the right kind of people...? If I were a lobbyist, heck, man, I would have a membership there, because I could get a lot of business done.

How do we ensure there's a transparency element that you talk about?

Mr. John Capobianco: The Albany Club was established in the 1800s by Sir John A. and it has been established since then. It has been, I think, a great club for those who believe in conservative values, and they can join. It's a network social club.

I think at the end of the day those of us who are lobbyists who are members of the club, if we have discussions that are pre-arranged, we record them. We do that with any other.... In any other rule, if we were to meet somebody and it's pre-arranged, we would discuss and we would record it, as lobbyists.

At the end of the day, I think the club is more used for events and public policy discussions and so forth. There isn't anything else. You can have a discussion with a public office holder at a restaurant. It doesn't have to be necessarily a club.

Lobbyists by and large always will adhere to the rules that are set forward. We just want to make sure that the rules are clear.

Mr. Charlie Angus: I have many friends of mine who are lobbyists, or they seem very friendly to me when they're talking to me, which maybe is the case of being a lobbyist, but I'm concerned. We can't deal with every eventuality or every potential eventuality, but Ottawa is a pretty small town for a big city, and if you want to find out where the New Democrats are, we're not at the Albany Club. We're at Brixton's on Wednesday night. If people want business with me, they just have to be there.

The Chair: Mr. Angus, could you wrap this up?

Mr. Charlie Angus: A lot of business gets done in Ottawa that way. How do we differentiate between pre-arranged, planned, and someone coming in? They know you're going to be there. They're going to buy you a couple of drinks, and they're going to want to get down to business.

The Chair: Thank you, Mr. Angus.

We'll have a brief response from the witness, please.

● (1125)

Mr. John Capobianco: At the end of the day, sir, I think it really does come down to there being rules that are set out. We want the rules to be clearer and more succinct in some cases, but lobbyists will always adhere to the rules. If we do meet with somebody, be it in a bar or in a restaurant or somewhere, and it's pre-arranged, we will record it and we will register it as we always do.

The Chair: Thank you.

Just before I go to Mr. Calkins, I'll note for the witnesses that you actually don't need to touch your mikes. Our technician will turn the mikes off and on for you.

Mr. Calkins, you have seven minutes.

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

Welcome to our witnesses here. It's certainly good to have your perspective here. You are on the ground doing this on a daily basis, and it's nice to see.

I'm going to start off with a general question. Basically we're looking at a five-year review here of what's been in place so far. Notwithstanding the recommendations you have made overall, I'm looking for some general comments. Would you say that the result of the legislation and the administration of the legislation has been relatively successful to date?

Mr. Charles King: I would agree with that. I think it has been very successful.

Mr. John Capobianco: I would as well. As I said, we actually agree with having rules. I think it's just a question of having them so that.... You know, there are times we have to review them and make sure the rules are working well, but we believe in the fact that there's transparency and accountability.

Mr. Blaine Calkins: Very good. Thank you.

I'm going to go back to some of the recommendations. GRIC was very clear in some of its recommendations here. Some of them overlap actually with the recommendations that were made by the commissioner as well. We'll talk about that. We'll elaborate on that. If I have some time, I'll move over.

I'm looking at recommendation two. I'm a little bit concerned about this, because as a public office holder myself, I keep track of what I consider to be arranged meetings, which is when people call up and request a meeting in my particular office, they come over, they give me their business cards, and I keep track of that.

What I'm seeing here, though, is that I might not be able to reconcile that set of records that I keep for myself with the actual set of records that are actually filed with the ethics commissioner. Am I accurately understanding the nature of the recommendation you're making? Is the nature of your recommendation such that a cross-reference of the records that I keep of who I actually meet with—because the person who arranged the meeting might not be the person I actually met with.... If I understand that recommendation correctly, you're saying very clearly here, I think, that the circle needs to be squared. Is that right?

Mr. Jim Patrick: Yes, absolutely. If you pick up four business cards from four people in your office, then four names should be on the report at the end of the month. Right now, it's only the CEO's name.

We've had cases.... A CEO of a fairly prominent Canadian company passed away, and because of bureaucratic delays the impression on the public record was that he continued to take meetings with public office holders six months after he had gone to the great beyond.

If the actual lobbyists who work for that company were named on the reports, the transparency would be increased. It would be evident who was actually in that meeting.

Mr. Blaine Calkins: Well, I think that's great.

From an administrative perspective from your end, then, this isn't going to be a significant burden?

Mr. Jim Patrick: No. Right now it takes about five minutes to fill in the report on a meeting.

To go to the point that was made earlier, the lobbying commission really has listened to concerns about the burden, and they've really improved and streamlined the reporting process. If it were a matter of ticking off.... Within my organization, we have all registered lobbyists already listed on our file, but we don't have to say which of us actually go to the meeting. It would just be a matter of ticking a box.

Mr. Blaine Calkins: Okay, but you also have a disclaimer at the end of that recommendation that says "with a possible set of limited exemptions where such disclosure would not be in the public interest". Can you give me an example of where that would be the case?

Mr. Jim Patrick: Yes, I think there are cases where the name of the individual or their title could have the effect of divulging sensitive information. We give the example in our submission of two vice-presidents from two companies who both have responsibility for mergers and acquisitions and who go in and meet the competition commissioner at the same time. Somebody could look at that and, rightly or wrongly, conclude that those companies were about to merge. That could affect their stock prices.

We think there should be a process to determine what types of exemptions there should be, but off the top of my head, I think you should be able to go to the commissioner and say: "Look, this is our concern, and instead of reporting the meeting in 30 days, can we report it in 45, in 60...?" Disclose it, but it's the public reporting aspect that would, with the discretion of the commissioner, perhaps be delayed if it wouldn't be in the public interest to report it in that timeframe.

Mr. Blaine Calkins: That's very interesting. Do you suppose there should be some type of caveat, then?

I mean, it's nice to have lines in the sand. It's nice to have hard numbers. You can say 30 days and you can say 60 days, but even 60 days might not be enough. If you put something like that in the legislation, you may still have sensitive information divulged inappropriately if that period isn't long enough. Is there any other mechanism you can see that might work? I mean, the consent of the parties within a certain much broader timeframe or something like that, would that be...?

● (1130)

Mr. Jim Patrick: It could be left to the commissioner's discretion, depending on the circumstance.

Mr. Charles King: But as long as she has the information, people have disclosed it. She knows what's aware and—

Mr. Blaine Calkins: Yes, we're talking about the public disclosure aspect of it, right?

Mr. Charles King: Yes.

Mr. Blaine Calkins: The commissioner's office is aware of it, so it's all above board on that particular perspective. We're simply talking about the last step, which is the public—

Mr. Charles King: It's the last step, and she has the discretion to decide how to proceed.

Mr. Blaine Calkins: Okay.

I want to go now to the example you gave where the tests seemed to be different on accountability for public office holders and lobbyists. I find it a little bizarre, to be quite honest with you, that if an investigation of a meeting by the commissioner clears any wrongdoing of the public office holder, the lobbyist is not cleared from incidents arising from the same meeting. How prevalent is this?

Mr. Jim Patrick: Not very. Most lobbyists follow the rules closely enough that there's only a handful of cases the commissioner has had to investigate in the first place.

There was a case on the rules governing political activities of lobbyists. The commissioner's interpretation came into effect in 2009. A lobbyist was found guilty retroactively for events that took place in 2004, guilty of having placed a minister in a real or apparent conflict of interest. That minister had already been cleared by the Ethics Commissioner of ever having been in a conflict of interest in the first place.

The key here is that the Conflict of Interest Act as it applies to the minister tests for real conflict of interest, and the Lobbying Act, the commissioner's guidance, and the code of conduct test for a real or an apparent one. So I could apparently put you in a conflict of interest you were never in.

We think the language there should be harmonized. The test on both sides of the coin should be for real conflict of interest.

Mr. Blaine Calkins: Thank you. I think that's very helpful. There seems to be a principle of natural justice at play here, so I appreciate that. I think that's an excellent recommendation.

The other thing I want to talk to you about is a little personal for me as a public office holder. It's the cooling-off period of five years. Of course we took a lot of pride as a government in introducing the Federal Accountability Act and making some of the changes we've had here. I'm just wondering what the perceived need is to have public office holders.... Is it simply, as you stated, a matter of harmonization with some of the provincial legislation? Or is there, in your opinion, from your expertise...? I mean, I haven't been a lobbyist; I've only been lobbied as a public office holder—

The Chair: Sorry, Mr. Calkins, your time is up. Please ask a brief question, with a brief response.

Mr. Blaine Calkins: I've been interrupted and I've lost my train of thought.

I just want to know, because it seems to me that this would actually create more competition in the marketplace for people who are professional lobbyists and for people like me who exit my profession. What is the need for doing this? Is there anything else driving it other than what has been stated so far?

Mr. Jim Patrick: The act calls for a cooling off period. Whatever it is—five years—and whatever line or whatever the number is, we'll tell people they should follow it. PAAC has a very specific recommendation that it would be reduced, I believe. We have a more general recommendation that this committee go back and look at what the objectives were in setting a cooling off period and whether five years is the exact amount of time that needs to be in place to meet them.

The Chair: Great, thank you.

We'll go to Mr. Andrews, for seven minutes.

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

It has been a very interesting discussion this morning. We're really getting down to the nuts and bolts of this and getting a good understanding of it.

Let me start off talking about the 20% rule. The lobbying commissioner has requested that we eliminate it altogether—the significant parts of duties. I think, Charles, you guys put a little provision on that. You don't want it removed altogether. I'm trying to be clear what the lobbying commissioner wants and what her witnesses want with this 20% rule.

Mr. Charles King: Our recommendation is specifically for designated public office holders who leave and go to work for corporations as corporate lobbyists. Basically what the 20% rule allows is that if you spend less than 20% of your time lobbying or doing lobbying activity, you don't need to register or to declare those meetings. Our view is that the act was very clear on the five years for designated public office holders. There were no ifs, ands, or buts when you leave. If you worked in the system, you were captured by the five years with no exemptions. What you got is a situation where people will go in and work as a corporate lobbyist, and they'll hide under the 20%. They do less than 20%, so their advice that they are being given by their legal departments is that they don't need to register, so why do it? Our view is that it's a big loophole. Plug that hole. If you were a DPOH, you're bound by the five-year rule. There are no ifs, ands, or buts.

● (1135)

Mr. Scott Andrews: You want to keep the...?

Mr. Charles King: Keep the 20% rule for everybody else, because that was put in place so when the local farmers or the fishermen come to talk to you about the one issue once a year that they want to address, they are not captured and don't need to go through that onerous process of registering and reporting.

Mr. Scott Andrews: John, you are nodding.

Mr. John Capobianco: We have the same sense of agreement. Our members—Stephen has done some research on this—have a slightly varying view of the 20% rule, where we have said we actually think it should be limited for all in-house lobbying.

Stephen, I don't know if you want to expand on that.

Mr. Stephen Andrews (Vice-President, Public Affairs Association of Canada): Yes. It's about just making sure that the rules are consistent and easily understood across the board among all organization, in-house, and consultant lobbyists. I think Charles's point about the exemption for the small individual who might lobby once in a blue moon.... The issue is also a question of fairness. Someone who has worked within a system here very briefly could be captured under the five-year ban in the same sense as, say, the minister of a particular portfolio, even if that particular individual had no background or involvement in that particular portfolio. There's a question of balance. In the interests of transparency, we should eliminate the 20% threshold across the board.

Mr. Scott Andrews: Okay. One of our witnesses yesterday talked about unpaid lobbyists versus paid lobbyists. If you're unpaid, you could wheel a lot and have personal influence for yourself as well. Is there something there we should be concerned about as well?

Mr. Jim Patrick: We support the current approach, which is to apply the act to people who are professionals communicating with the government as part of their jobs. Imagine if everyone, paid or not, either as a private citizen, academic, union member, or a seniors group had to register as a lobbyist before they could call their MP to talk about changes to the tax code, copyright, collective bargaining, or whatever. To us, that's not lobbying. That's citizenship. The objective of the act was not to keep a complete record of all MPs' interactions with all their constituents who may approach them as individuals. It was to keep a record of professionals who communicate with the government to try to effect change as part of their jobs. We think that's the right approach.

Mr. Scott Andrews: Okay. Going back to the conversation regarding "oral, arranged, not arranged", you're right, there is confusion.

Since I've been involved here I've learned that if I call you then that doesn't need to be reported, even though we'll get into the conversation regarding X, Y, or Z.

I'm trying to tie this in to make a complete circle. What requirements are on the public office holder to report? I know we have to keep track of what we do, but there's nothing on us that we have to report to the commissioner so that someone can match things up. Should we look at closing that full circle and putting more onus on the public office holder to report to the commissioner so that he or she can do a check or balance?

In my mind, it's how we catch the ones who don't play by the rules. I think anyone coming before this committee and doing lobbying, as you've all said, is playing by the rules. It's the idea of catching the lobbyist who doesn't play by the rules.

Mr. Charles King: For whatever rules you put in place, there will always be people who will not follow them. We can't do anything about those guys. By and large, the majority of our members follow the rules, and if you were required as members of Parliament to start reporting all of that, the administrative burden on you would be outrageous.

For us, it's pretty simple right now. I do maybe a dozen meetings in a busy week, if that. How many people do you meet with in a day?

Mr. Scott Andrews: We have a schedule and everything is scheduled or arranged. Is it too much trouble to fill out a cue card?

Mr. Jim Patrick: I think there are three ways to look at whether you should be reporting a meeting.

You can look at it in isolation. As a stand-alone concept, having both sides reporting the same meeting would make it easier to see if somebody didn't report it. That would be a plus.

Second, though, to come back to the circle you're trying to draw around all the recommendations on the table, if you put that recommendation alongside all of the others, such as "all oral communication should be reported; you don't have to be paid to register; it doesn't matter who initiates the communication", you get the sense that you're looking at a major bureaucratic nightmare: MPs and lobbyists making records of and reporting every conversation they have about government with everyone they meet, anywhere, no matter what the context.

The third way to look at this is from a governance point of view. Charles is right. The commissioner's office would need to be greatly expanded. You'd be looking at an exponential increase in the number of reports coming in to that office. For every report coming in now, you'd have two. And if you put those other recommendations on the table, for every report coming in now you might have ten.

There was a well-received report last week on how to reduce red tape. I don't see how that recommendation supports this.

● (1140)

The Chair: Thanks, Mr. Andrews.

We'll now go to Mr. Albas for seven minutes. And welcome to the committee.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Madam Chair. I appreciate that.

And thank you to our witnesses for being here today.

On the subject of Ms. Karen Shepherd, the Commissioner of Lobbying, she has also suggested that we allow the commissioner to continue an investigation of a breach of the act even after her office has referred it to the RCMP. To me, this seems like it might be a breach of the separation of powers of relevant officials.

I would like to hear from each group as to what your thoughts are on that.

Mr. Charles King: If there's a breach and she refers it to the RCMP, they're the ones who are best to deal with that. They have the resources and they have the experience; OCL does not.

Mr. John Capobianco: We would agree with that completely.

Mr. Dan Albas: Have you found in your work over the years that some individuals or companies who should have registered under the Lobbyist Act were not? How pervasive is the problem?

Mr. Charles King: We don't know that because she doesn't tell us who she's investigating. We don't know what's going on over there. I mean, I have a situation where a lobbyist, a member of our association, came to us to say they received a letter before Christmas saying "You have been cleared of the investigation we have been doing on you for the last seven years." That person was never contacted, never talked to. They did not know they were being investigated. It's a bit of a star chamber over there, and I don't know what's going on.

That's fair. It has to be done in private. You can't go advertising what you're doing in terms of investigations. But if you have been investigated for seven years and they have never contacted you, I find that a bit of an odd situation.

Mr. John Capobianco: I think the challenge is that if you have rules and we as lobbyists abide by them and we tell our members to abide by them, if there's a perceived infraction, or if someone says to the commissioner, "We believe so-and-so might be in jeopardy of infringing a rule," I think it is incumbent on that person to let the lobbyist know. They can explain themselves, as opposed to having an investigation and a number of other people and sources being told and it maybe getting to that lobbyist third- or fourth-hand. It gets to be quite stressful.

When the rules are applied to some organizations or individuals, at the end of the day the common courtesy would be to let that person know if there might be a perceived infraction of those rules. That's what we're asking.

Mr. Dan Albas: It does sound to me like that may raise a challenge, because if someone is new to the industry, is not following the rules, and is under investigation, and they continue to not act according to the rules, that may actually create more hassle down the line.

Now going back to some of the things that MP Scott Andrews mentioned earlier, as well as Mr. Stephen Andrews mentioned earlier on transparency, one of the fears you have is that you create a system that does not achieve the public goal of being a transparent system so that people know the system has checks and balances. But I'm also worried about Mr. Patrick's comments about creating a bureaucracy, because we all know that red tape does end up costing more.

The Commissioner of Lobbying recommended that we broaden the scope of the Lobbying Act by removing the provisions regarding "significant part of duties". We discussed this a little bit earlier. This would allow the government to include companies and individuals who claim that lobbying is not a significant part of their duties but is still relevant.

Do we see a possible large increase in costs as a result of this recommendation? I do know that red tape, when you add it up, does cost everyone more, especially if it doesn't add value.

Mr. Jim Patrick: It wouldn't just capture all companies that have cause to call their MP once a year; it would capture anyone who contacts government in a professional capacity—charities, local health authorities, the president of the university in your hometown, labour organizations—anyone who contacted you, even if they conduct a registerable activity. If they're talking about legislation or policy, or if they're following up on a grant, once a year they would have to register. This would lead to an exponential increase in the number of registrations being made with the commissioner and in the number of monthly reports.

The red tape reduction report came out last week, and had a one-to-one rule—this is Minister Bernier's report—where if you create a new regulation or if you expand a regulation, you need to figure out which one you're going to get rid of.

All we've seen in this process is recommended increases in the regulation. We haven't seen any indication of what the Office of the Commissioner of Lobbying would propose to eliminate by way of regulation in order to comply with that report's recommendations.

● (1145)

Mr. Dan Albas: Just so I get my thinking straight, if we were to follow through with this line of reasoning, then someone who is involved in a United Way campaign, who just wants to update me as to their activities, that would fall under this as well, possibly?

Mr. Jim Patrick: Possibly. You have to go to the list of registerable activities. Are they talking about legislation or policy? If they're coming in to talk about government financing of a United Way campaign, absolutely. If you're talking about the awarding of a financial benefit of any sort, then you need to register, unless—currently—you do it less than 20% of your time.

Mr. Dan Albas: Thank you very much.

The Chair: You still have a minute.

Mr. Dan Albas: Excellent.

Just going back to the RCMP, if we were to increase the scope of lobbying commissioner investigations, how could we ensure that the RCMP and commissioner's office do not fight against each other?

Mr. Jim Patrick: I think we've already seen cases where the lobby commissioner and the ethics commissioner come to different conclusions based on the same set of facts. We want to avoid triplicating that process, where you have the same set of facts under investigation by three separate bodies.

Mr. Dan Albas: Would PAAC agree? Anything to add?

Mr. John Capobianco: We agree that having that potential three-way cross-section could be quite entangling for us.

Mr. Dan Albas: Madam Chair, I appreciate the opportunity to question the witnesses, and thank them again for their presentations.

The Chair: Thank you very much.

[*Translation*]

We will now begin the second round.

Mr. Boulerice, you have five minutes. Go ahead.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Madam Chair. Gentlemen, thank you for being here today.

Mr. King, you said earlier that the vast majority of lobbyists respected the letter and spirit of the law. That got me thinking. How do the minority of lobbyists who do not respect the law behave?

Mr. Charles King: I have no idea.

Mr. Alexandre Boulerice: You don't know.

Mr. Charles King: If the rules are clear and transparent, there are no excuses. The rules are quite simple. If someone cannot follow simple rules—

Mr. Alexandre Boulerice: In your view, however, the rules are not clear or transparent right now.

Mr. Charles King: If they were more transparent, there would be less questionable behaviour.

Mr. Alexandre Boulerice: Very well.

Why should the 20% rule no longer apply to former DPOHs but still apply to others? Why just them?

Mr. Charles King: The rule was clear. There is a hole in the act. If you are a designated public office holder and you worked on the Hill, you must wait five years after leaving office before you can engage in lobbying activities. You can't go in through the back door. There is no such possibility.

Why the small hole in the act if lobbying accounts for less than 20% of their activities? Whether it is 5%, 15% or 100% of their activities, lobbying is lobbying.

Mr. Alexandre Boulerice: Others argue that the 20% calculation should be maintained. What does the 20% mean to you? How is the percentage calculated? Is it weekly, monthly? Does it include preparation, travel, meetings?

Mr. Charles King: All of it, in other words, time spent preparing, travelling, working and writing briefs.

Mr. Alexandre Boulerice: Okay. You include everything.

My next question is for Mr. Capobianco.

Mr. Capobianco, you work for a lobbying firm. A few times, you have run as a candidate for the Conservative Party. You still appear to be a commentator for the Conservatives. You are on the board of directors of the Albany Club, a Conservative club that hosts Conservative ministers. Tony Clement was a guest at one of your events held in a Senate room on December 1st. Past guests have included Mr. Flaherty, Mr. Baird and Mr. Harper. You are virtually a member of the Conservative family.

As a lobbyist, does that not strike you as somewhat of an apparent conflict of interest or unfair advantage?

● (1150)

[*English*]

Mr. John Capobianco: Well, no. In fact I'm proud to be a Conservative, and there are many Conservative lobbyists. But I also live and work in Toronto, which is a Liberal province. I do very well there as a lobbyist. I think at the end of the day, what it comes down to, if you are working in the government relations profession, is that you firmly believe in trying to ensure that businesses and organizations that want to know and want to understand governments come to you as somebody who might understand the process and might be able to help them through that. I think that's why we're standing here before you: to say that we believe lobbying rules should exist. I think the clearer and more transparent they are, the better we will be able to do our jobs.

Lobbying—and we've made this clear in our submission—is a noble profession, and we're very proud to be lobbyists. I think whether you're Conservative, Liberal, or NDP doesn't really matter. At the end of the day, you're providing some service for businesses or organizations that want to work with government. As long as you abide by the rules and you do what the rules say, I think it's perfectly fine for people to do that. At the end of the day, if I were a candidate, I would either be an MP sitting on your side of the aisle or I'd be over here sitting on this side of the aisle. The idea of whether or not you belong to a club doesn't matter. It's all about trying to do good work for organizations that want to do work with government.

[*Translation*]

Mr. Alexandre Boulerice: When Mr. Clement attends a social gathering, lecture or dinner at the Albany Club, it is arranged and planned. When circumstances of that nature allow you to have direct contact with a minister, do you consider it a lobbying activity?

[*English*]

Mr. John Capobianco: If it's a pre-arranged meeting at which I plan on speaking with any minister or any member on a specific issue, I will register it. It will be a registered activity. If it's an event at which we're having a speaker, and the minister or an MP happens to be there, and it's just a regular social event and there's no business being discussed, there won't be any need to register that activity. I think at the end of the day, if a meeting is specifically arranged to discuss a client issue or an issue that is registerable, our members, including me, by and large will register that activity no matter where it is.

The Chair: Your time is up, Mr. Boulerice.

Mr. Butt, you have five minutes.

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Madam Chair.

I should thank Mr. Boulerice for all the free advertising he is giving to the Albany Club today, because I'm a member there too. There you go.

Thank you, gentlemen, for coming today.

I think it's very important for this committee to hear the views of your organizations and the people you represent as to how this act has worked in its first five years. I think this is very helpful to us. We know that lobbying is a legitimate professional service. I think we all want to make sure we have some rules and some context around the Lobbying Act to make sure that it's done above board and properly and legally and fairly. So I appreciate your being here to help us in our study.

One of the areas the lobbying commissioner has perhaps recommended there be a change to—and I'd like your opinion on this—is whether she should have the authority to place a monetary penalty or some sort of an administrative penalty on someone who has breached the act, rather than having to refer it to the RCMP perhaps if it's not a criminal issue. How do you feel about that? Would it strengthen the act if she and her office could levy some sort of an administrative penalty instead of referring something to the RCMP? I think her view is that when there is a significant issue, her only recourse is to refer it to the RCMP. What's your view on that?

Mr. Jim Patrick: First, I would just like to endorse Mr. Jordan's comments from Tuesday that as a lobbyist, having your name placed in front of Parliament as someone who has violated the rules has a financial consequence. It affects your career prospects.

Coming back to the specific question of administrative monetary penalties, anytime you have an officer of Parliament or a tribunal of any sort with essentially unfettered quasi-judicial powers, especially powers with a Criminal Code underpinning, you want to make sure that there's a clear commitment to due process. Before we could endorse that recommendation, we'd need to see a greater commitment to due process on the part of the OCL.

As mentioned, we've seen rules applied retroactively, such as having 2009 rules applied to events that took place in 2004. We've seen lobbyists found guilty of putting a cabinet minister in a conflict of interest after the Ethics Commissioner has said that the minister was never in a conflict of interest. We've seen straightforward investigations last up to ten years. We've seen seven-year investigations without the subjects being aware that they've been accused of anything; they just get a letter one day that says congratulations, you're no longer under investigation. We've had lobbyists denied the right to have counsel make oral representations on their behalf during investigations, and we've had the Canadian Bar Association find that certain rulings and actions by the OCL have been unconstitutional. There's a legal opinion on the record to that effect.

The commissioner is asking, in effect, to be the registrar, the regulator, the investigator, the judge, and the jury. So before we could support that recommendation, we'd want to see a clear requirement within the legislation that before penalties were applied, there would be an investigation that adhered to the most basic and fundamental concepts of judicial due process.

● (1155)

Mr. Brad Butt: Thank you for that.

Do you see any difference between what I would call financial or economic lobbying and social lobbying? I'll give you an example. Someone comes in to see me and is lobbying on a specific tax policy or on something that's going to make a company or an individual money or that would make it easier for them to do business. That is versus someone who comes in and just wants to lobby me on my position on abortion, let's say, as an example. Do you see a difference in that type of lobbying? Is there a difference, in your view? Or is it anything that's coming or is likely to come before the House of Commons in any way, shape, or form? Should it all be treated the same way? Are all those issues the same, whether it's a non-profit group coming in to see me or a Fortune 500 company?

Mr. Charles King: We support the current definition. Let's be clear: lobbying is lobbying is lobbying. Whether I'm lobbying for doughnuts or I'm lobbying for tanks, it's lobbying. If you're being paid, the rules should be very clear.

Mr. Brad Butt: It is when you are being paid. So these not-for-profit groups, then, you don't believe should be treated the same way.

Mr. Charles King: They're being paid.

Mr. Jim Patrick: If an executive director who's being paid is coming to see you in a professional capacity, it should be reported.

Mr. Brad Butt: Okay.

I'll give you an example. I'm on the human resources committee as well, and yesterday we had a representative who is a volunteer with the group Victims of Violence, and she made a deputation at committee. I haven't met with her, so that wouldn't be a registerable interaction, because she was at committee. But if she comes to see me personally to lobby me on a bill that's before the House, but she is a volunteer, your view is that the person should not be covered under the act, because it's different lobbying from paid lobbying.

Mr. Charles King: The 20% rule would apply here. If that's all this person does, and she's not paid—there is no remuneration whatsoever—and she spends two hours a year on this file, I would argue no. But if she's doing 40 hours a week in the office, and she's lobbying you 15 times a month, I would argue that we're going to have to look at it.

The Chair: I have to interrupt. Your time is well up. Could you just conclude?

Mr. Charles King: That has implications on legislation—stiffer criminal fines and all that kind of stuff.

The Chair: Mr. Capobianco, did you have a very brief comment on that?

Mr. John Capobianco: I was just going to say to Mr. Butt's point about companies, whether or not they come to government with respect to some sort of money issue, I think what the commissioner has done is take away the whole contingency success fee for lobbyists, which we agree with. So even if a lobbyist works for a company that comes to you, to government, or to any public office holder with respect to a potential lobbying activity that might gain that company some money, the lobbyist doesn't benefit from that, as it was in the past. We agree with that. That's another restriction that we all believe would stop that from being a potential conflict.

The Chair: Great. Thank you.

[*Translation*]

Mr. Dusseault, you have five minutes.

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

I want to continue along the same lines as my colleague regarding the Albany Club.

If I understand correctly, when it's a social event and no specific business is being discussed, you do not have to report it to the lobbying commissioner. It would seem to me that, regardless of whether the event was meant as a social activity or a business gathering, you could potentially discuss a certain file. People could strike up certain conversations, and a minister or a designated public office holder could discuss a particular file.

Should you consider reporting those kinds of meetings, even if they do not deal directly with business?

[*English*]

Mr. John Capobianco: It's no different, I think, from what Mr. Angus was saying about how the NDP caucus or members would gather at a specific bar on a specific night, and there are people who might know that there are NDP, Bloc, or Liberal members who congregate at a certain bar for a social activity. Any lobbyist or anybody who happens to be in the government relations industry may know that, may attend that, and may be speaking with MPs about a specific issue.

Arranged or not arranged, I think it's incumbent upon us that at any event, be it the Albany Club or be it any restaurant.... Where you see somebody at an event that happens to be social, if there's work being done or if there are discussions being portrayed to that particular MP, it would be upon on us as lobbyists to report that, I think, if it's in good faith. We would do that because we believe in trying to ensure that any rule that's there, we're going to abide by; we've told our members that. We adhere to those rules.

So whether or not it's the Albany Club—and you seem to be specializing on the Albany Club—it's the same as if it would be at Hy's or if we were at a social event for a charity group and we're talking to politicians. If business is being exchanged, we would record that.

● (1200)

[*Translation*]

Mr. Pierre-Luc Dusseault: Very well.

I have a question on the latest figures. Since 2009, the number of lobbyists has gone from 5,626 to 5,129 now. So it has dropped. Over the past three years, the number of lobbyists has dropped. I am not sure whether you have an explanation for that or not.

Are the rules too lax? Have people stopped registering or has the number dropped because people are no longer doing this type of work?

Mr. Charles King: We have seen a drop because of the five-year rule. As a result, fewer people come into the system. Most people who worked on Parliament Hill would become lobbyists after they left. But that isn't allowed anymore. I think the numbers will drop because of that rule.

Another consideration is that there are 5,000 registered lobbyists. My association has 300 members, most of which are large lobbying firms here in Ottawa. On top of that, you have all the big companies. A large number of people are not members of our association, and we do not know who they are.

Mr. Pierre-Luc Dusseault: So there are lobbying groups who are affiliated with one another, but some lobbyists are not connected to any group.

Mr. Charles King: Precisely.

Mr. Pierre-Luc Dusseault: Mr. Capobianco, is there anything you would like to add?

[*English*]

Mr. John Capobianco: I would agree, actually, sir. The five-year rule—which is why we're suggesting it be put down to one—I think is very limiting for a lot of folks who either want to get into government or work for a particular member or minister and who know that when they leave they're bound within the five-year rule to be excluded from a specific profession. I think that's limiting. I think folks who may choose to take the career of going into government know they can't be a lobbyist for five or six years, so I think that has a huge effect.

I also believe, too, that a lot of them are going in-house, as opposed to joining lobbying firms and so forth. So I think there are a lot of reasons for that.

But generally speaking, though, of the lobbyists that are registered now, I think a lot of them are quite proud to be part of the profession. I think that's why you see that number still staying within the 5,000 range.

[*Translation*]

Mr. Pierre-Luc Dusseault: I will wrap up with one last question.

The lobbying commissioner told us that she felt she did not have enough authority to enforce the act. With that in mind, do you think that tougher penalties or fines could help with compliance, and prevent lobbyists from failing to register or comply with the act?

Mr. Charles King: You have to respect the process. If the rules are clear and very simple, there won't be any problem.

Mr. Pierre-Luc Dusseault: What about fines?

[*English*]

The Chair: Excuse me, Mr. Dusseault. Your time is up. Thank you very much.

Mr. Dreeshen, for five minutes.

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

Welcome to our guests.

I have just a couple of comments.

First of all, Mr. King, you talked about different types of lobbyists. I wonder if you could review for everyone just what their roles are, because I think that's important as well.

Mr. Charles King: Right now there are three categories of lobbyist. There are consultant lobbyists, who work for lobbying firms. There are corporate lobbyists, who work for corporations. Then there are organization lobbyists, and the majority of those would be not-for-profit organizations. Those are the three categories. We're all bound by the same rules in the sense that we all have to register, we all have to file our monthly reports, and we all have to respect the Lobbying Act.

As for where there are exemptions, there is an exemption right now for anybody who spends less than 20% of their time lobbying. Then you are exempt from the regulation. That 20% is a pretty complex calculation, but it's everything: all the time you spend drafting your materials, talking to your fellow executives about it, and travelling to the meeting. The two hours you spend dreaming about this presentation, I would argue, have to go in as part of the 20%. That's the only exemption out there.

● (1205)

Mr. Earl Dreeshen: When you're looking at the 20% rule, does it vary whether you're a consultant lobbyist or a corporate or organization lobbyist?

Mr. Charles King: That 20% only applies to corporate lobbyists.

If you're a consultant lobbyist, you're a lobbyist. I mean, what else are you doing today? Are you planting tomatoes? You're lobbying; it's very clear. If you're in an association, it's the same thing.

The Chair: Mr. Andrews just wanted to get in there, Mr. Dreeshen.

Mr. Stephen Andrews: There are also some complexities involved in the nature of the Lobbying Act. If you are a member of a board of directors for an organization and you routinely lobbied on behalf of that corporation, for example, you would be considered a consultant lobbyist. There may be some complexities around that.

Also, if we are talking about a partner in a law firm, for example, or about a limited liability partnership such as accounting firms and law firms, again it's not precisely clear how, if you are lobbying on behalf of your limited liability partnership, you would be viewed. Right now, roughly speaking, you're viewed as a consultant lobbyist.

Mr. Earl Dreeshen: When you talk about the social meetings that might come up, you're also talking about the accuracy of the reporting. You have the situation, then, where an MP is at a particular event, so you have the lobbyist saying, "Well, I believe I should be mentioning that I have met with these particular individuals." You may have someone who is handing out cards, who then says that they have met with an MP. The MP could have been giving his card to these individuals for a future meeting or whatever. But there is a point then that the MP should then be able to remember each and every person he has met with, and then there is concern about being able to have the MP's records match with the records that you're going to have there.

I would think that there would just be a great deal of confusion when that takes place, because I know that I might talk to a lot of individuals who may want to say "Yes, I've talked to 12 MPs here", so they could check it off to take back to their bosses. But that interaction might not have meant the same thing to the person who was approached.

I wonder if you could comment on that.

Mr. Charles King: I think you're right; there are people who do that in order to satisfy their management's expectations. There are people who will say that they met with 12 MPs the night before. "What did you talk about?" "Nice shoes—you know."

But if you get into the substance of the matter, then I would argue that's something you have to register—no ifs, ands, or buts about it.

Mr. Earl Dreeshen: I have a question for PAAC. In one of your recommendations you talked about the commissioner not having sufficient resources to issue advanced rulings or advisory bulletins in a timely manner. I'm just curious as to how you have come up with that conclusion.

Mr. Stephen Andrews: A number of individuals have consulted with the commissioner's office around certain kinds of grey areas involving different kinds of cases that may or may not involve registerable activity—certain kinds of organizations, certain kinds of communications. For example, what exactly is, as the GRIC mentioned, an oral and arranged communication? Under what circumstances is that considered to have taken place?

I've been personally involved on behalf of clients in a number of consultations with her office, and she has made it very clear that even though she has the legislative authority to issue interpretation bulletins, advisory bulletins, and opinions of that nature, she just does not have the time or resources to answer to certain kinds of grey areas. Sometimes that's very critical.... These are not the headline-grabbing cases. These are very complicated cases involving certain kinds of organizations—certain kinds of crown corporations, for example.

The Chair: Thank you, Mr. Dreeshen, and thank you, Mr. Andrews.

We'll go to Mr. Angus for five minutes.

Mr. Charlie Angus: Thank you.

I think that when we're talking about clarifying the rules, this isn't a red-tape-cutting exercise. I think the rules were put in place because we had a revolving door and all kinds of monkey business going on, and the Canadian people expect us to have rules people play by. So there is an Ethics Commissioner, and if a lobbyist does a big political fundraiser, say representing a cement firm for a key minister, the Commissioner of Lobbying steps in, and the Ethics Commissioner steps in. It might seem nice to have a one-stop shop, but I don't think that's in the interest of the Canadian people.

The RCMP have a role to play, but we're concerned here that the RCMP are a dead-letter shop. So it might be convenient to have the lobbying commissioner not able to follow up when it has gone to the RCMP, but we have never seen the RCMP do anything with any of these cases.

When we're talking about clarifying the rules, shouldn't we be making sure that at the end of the day this is not about burying people in nuance because the lobbying commissioner doesn't have time for that? Shouldn't we ensure that if things are not correct, we have the appropriate measures in place? We're not sure if they're all there yet. They're almost there and it's a good system. But given the fact that the RCMP don't do their follow-up, don't you think it's incumbent upon the lobbying commissioner to follow through if she's investigating something? She needs to follow through and be able to deliver that report so it clears people.

● (1210)

Mr. Charles King: I agree—as we said earlier, as long as there is a sense of fair due process. But to have somebody be the regulator, the jury, and the judge.... If the rules aren't clear, I don't think we're getting a fair shake at the end of the day. This is a system where you're guilty until proven innocent, not innocent until proven guilty, so it has a big impact on people's reputations and the way they conduct their business.

Mr. Charlie Angus: Welcome to politics. If charges are made against me in the press, I'm guilty back home until I can prove otherwise. We're not talking about people being in a normal business. You're dealing in politics, where people are trading on influence.

Have you guys been hard done by? I don't really see where that has happened. The lobbying commissioner has done some fairly reasonable reports, as far as I can see. I don't see that she's been beating up on you.

Mr. Charles King: We don't know everything she does. Not everything is made public.

Mr. Jim Patrick: The difference is that when you are subject to accusations in the media you're aware of them and able to respond. We've had an individual, a member of our association, just get a letter saying "We've just closed an investigation on you that we've been conducting for seven years". That person wasn't aware that an investigation was under way.

The problem in having multiple, simultaneous parallel investigations on the same set of facts is the potential for different conclusions. What would the courts do if the RCMP cleared somebody of placing a public office holder in a conflict of interest, the Commissioner of Lobbying found the lobbyist guilty, and the Ethics Commissioner said there was no conflict of interest in the first place?

Mr. Charlie Angus: Okay, so who do you respond to then? Is it the Ethics Commissioner? Is she higher than the Commissioner of Lobbying or the RCMP?

Mr. Jim Patrick: That's why we're recommending that you need to synchronize the process and harmonize the language in the act so the two commissioners.... Commissioners can only administer the language they're given in the act. The standard in the Lobbying Act is "a real or apparent conflict of interest". The standard in the Conflict of Interest Act is for "a real conflict of interest". So lobbyists are being held to a higher ethical bar than public servants and politicians, because we can get hauled up if there is an apparent conflict of interest.

The Chair: Mr. Angus.

Mr. Charlie Angus: I'm just trying to get my head around this. If someone has been doing a seven-year investigation and you never heard of it, obviously there wasn't much of a problem. It seems every time I turn around CRA is checking on my daughter's university tuition fees. I have to send forms all the time. I don't know when they start the investigations, but they're doing them. That's the nature of government.

We're talking about an ethical standard that Canadians expect, because we saw what happened under the Liberals and the sponsorship. Canadians are holding us all to a higher standard. I haven't seen evidence that you guys are getting pushed around here, and we haven't seen the RCMP follow through.

There's a standard for us, as public office holders, with the Ethics Commissioner. If the recommendation is that the Ethics Commissioner has to raise the bar, okay. But you don't respond to the Ethics Commissioner, because you're not designated office holders; you respond to the lobbying commissioner. So those are two different functions and we have two different relationships. And then there's the RCMP.

Explain to me how it has to be transformed to make it simpler for you so we still have accountability.

The Chair: Please give a brief response.

Mr. Angus, your time's up.

Mr. Jim Patrick: We're not talking about simpler rules or looser rules; we're talking about clearer rules and consistent rules, so that you have two officers of Parliament examining the same set of facts through the same lens and you don't have situations similar to the ones in which someone was found guilty of putting a public office holder in a conflict of interest that the public office holder was never in.

● (1215)

The Chair: Thank you, Mr. Patrick.

Thank you, Mr. Angus.

Go ahead, Mr. Del Mastro, for five minutes.

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

I want to thank the witnesses to begin with. This has been an outstanding panel, and I've enjoyed the interaction back and forth from members. It's been very helpful.

Do you have to file the current activity you're undertaking today with the lobbying commissioner?

Mr. Charles King: No, it's on the public record.

Mr. Dean Del Mastro: Ah, great. There's another loophole.

Mr. Charles King: You invited us today. You invited us to appear today.

Voices: Oh, oh!

Mr. John Capobianco: The good news, Mr. Del Mastro, is that we both have a clear indication of what the discussions are about.

Mr. Dean Del Mastro: Very good.

I'll start with the Public Affairs Association of Canada.

Mr. Capobianco, you have two recommendations. You wouldn't pick just one of them; they'd have to work in unison. One is to reduce the five-year ban on lobbying to one year. The other is to reduce the 20% threshold.

If you simply remove the 20% threshold, you're really saying that anybody who has been in a position in which they've been deemed to be a designated public office holder can't work at all in these firms for five years—unless, of course, you reduce the five-year ban. Is that not correct?

Mr. John Capobianco: Yes, or unless you register your activities.

Mr. Dean Del Mastro: But right now you've got a five-year ban, which means the 20% threshold allows them to do some government communications as long as it's not the dominant part of what they're doing. If you leave the five-year rule in place and eliminate the 20% threshold, they would then be entirely out of the profession for a full five years. Is that correct?

I'm just trying to understand what it is you're recommending. You're not recommending to eliminate the 20% rule and replace it with *x*; you're just saying eliminate it, right?

Mr. John Capobianco: You're right. Our goal is to get both of them taken into account.

Stephen, I don't know if you have a comment with respect to this aspect, but our intent was not to eliminate anybody from actually getting into the profession.

Mr. Dean Del Mastro: Okay.

Mr. Stephen Andrews: Right now the provincial jurisdictions that have lobbying registration systems have a cooling-off period for political staff or public office holders of one year.

There are some differences, such as a cabinet minister, for example, who was involved in sensitive negotiations in a particular sector becoming a lobbyist in the same sector where his or her ministry dealt with a variety of very sensitive files. We think that to make the system fairer, individuals leaving public office or political staff roles or senior civil service roles should have a cooling-off period of one year. That would be consistent. With the 20% rule, it would mean.... Typically, they would not be able to engage in lobbying activity for a year.

Mr. Dean Del Mastro: The point is that you wouldn't want to do one without doing the other. I understand.

My own impression is that the public has a real misperception about what government relations people and lobbyists actually do. In some ways I think lobbyists are given far too much credit for how legislation and government policies are actually adopted. In other ways I don't think you're given enough credit for raising the awareness of public office holders or MPs about things that might be going on in the Canadian economy or things such as unintended consequences of legislation, which does happen. I think these things are invaluable. I will say that your profession is certainly misunderstood.

I think there was a consequence, and this is something I've witnessed over time, of the rules the way they are, but I don't know that there's a perfect way of doing it and I don't want to suggest to you that there are any changes one way or the other coming in this regard.

In any case, as we were working to become more transparent and to make sure that government was accountable to Canadians, these rules were adopted; an unintended consequence was that staffers—in our case, Conservative staffers—who were in place prior to the Federal Accountability Act were suddenly in huge demand. Everybody wanted to hire them. Some of them do very well, because they weren't covered under the act and they have no more connection in this current government than people who perhaps were working in government relations in previous governments prior to our taking power. After the last election, everybody was racing around looking for anybody who had any kind of ties into the NDP, because they were suddenly the official opposition. Government relations people were out buying orange ties and trying to see if they could get a table at Brixton's. There was all kinds of weird stuff going on.

● (1220)

The Chair: Mr. Del Mastro, could you wrap up?

Mr. Dean Del Mastro: The bottom line is do you see this as an unintended consequence of the act, the way it operates?

Mr. Charles King: It is a little bit of an.... It is. I mean, there is a chill out there in the sense that there is a five-year ban. It's good for the people who are in the business as it is, because if fewer people are coming into your marketplace, you have the field to yourself.

The Chair: Perhaps you could wrap it at that. You are well over time.

Mr. Dean Del Mastro: Thank you, Madam Chair.

The Chair: Great. Thank you.

Mr. Andrews, you have five minutes.

Mr. Scott Andrews: Thank you.

Almost on the same line of conversation, John, you mentioned earlier that you are in a government relations firm, that this is the business you're in as well. Can you explain to me the difference, if there is one, between a GR firm and a lobbying firm?

Mr. John Capobianco: I think by and large they are one and the same. We prefer to call them government relations firms, but my firm, Fleishman-Hillard, is a strategic communications firm. We do both public relations and public affairs. Within public affairs, we do public relations.

So there are firms out there like ours, and there are others, like Hill and Knowlton, where they do strategic communications as well, who do communications and public affairs. There are other firms that are just strictly government relations. They have individuals who will do strictly government relations activity, where they don't do much on the communications side of it.

I think when someone says “lobbying firm”, it is an organization that does government relations. It could be a firm that is just strictly government relations or a firm that does strategic communications, which involves a communications component and a public affairs component.

Mr. Scott Andrews: So can you be a government relations firm without doing any lobbying?

Mr. John Capobianco: I'd like to see that happen. I don't think you can.

You can be a government relations firm and not do lobbying in the sense that you can do a lot of public affairs activities, one of them not being lobbying, which means you can do stakeholder management, advocacy, etc. But just given the rules, I think any interactivity with government you'd want to register, so therefore you would become a lobbying firm, just to be on the safe side.

Mr. Scott Andrews: So how could former—

The Chair: Mr. Andrews, the other Mr. Andrews had a comment.

Mr. Scott Andrews: Oh, sorry.

Mr. Stephen Andrews: Generally speaking, there is a distinction in the act. Certain types of communications are registerable communications. Certain types of government relations consultants and firms would not have direct conversations with government. They would advise clients on, for example, who makes what kind of decision. It would be like a Government 101 kind of service.

I mean, there are firms out there, people out there, practices out there who do that. For example, in the work that I typically do, I don't lobby. I say, “This is how government makes certain kinds of decisions. Here are the basic rules of lobbying compliance. Here is what you're going to have to do to kind of communiqué a case to government that makes sense.” But I don't lobby—

Mr. Scott Andrews: So should we be able to catch those individuals...and in particular former public office holders who go out and start a government relations firm?

John, you said you can't do a government relations firm without lobbying, basically. My question is how would former public officer holder Stockwell Day be able to have a government relations firm and not do any lobbying?

If he's strictly doing what you just suggested, Stephen, that...you don't catch that, he doesn't follow by the five-year ban, and I would argue that would have a lot more influence than a lobbyist.

Mr. John Capobianco: Just to that, Mr. Andrews, I think if a public office holder or a former member or a former cabinet minister decides to go into a government relations firm or strategic communications firm, that person is absolutely bound by the five-year rule. Therefore, they will not engage in any lobbying activity. They could advise clients and they could advise internal staff as to the inner workings of government and how that works, but none of that is registerable activity, so they would still be bound by the five-year rule.

I think your question is about a lobbying firm versus a government relations firm. I think there are lots of similarities, but the distinction I make is that in a strategic communications firm that has both communications and public affairs, if a public office holder happens to be working in that firm, he or she could be doing communications or issues management work without doing lobbying work.

● (1225)

Mr. Scott Andrews: Okay, but you also wield a lot of influence, even if you don't lobby, as a former public office holder. If you were a former cabinet minister, you would have influence. You would be able to tell whoever to meet with whomever, and that is a non-registered activity.

Should we look at changing the Lobbying Act to capture that type of influence?

Mr. Charles King: Good luck. I would argue no. Providing somebody strategic advice one on one? There's no lobbying. Let's take a former cabinet minister. People are going to ask about the dynamics around that cabinet table and how it works. If I just provide advice and walk away, what have I done that is illegal? What have I done wrong here?

I've not done anything wrong—unless you guys want to create an influence act or something. You're going to have to start getting into.... Good luck.

The Chair: Your time is up, Mr. Andrews.

The other Mr. Andrews, a brief comment to finish.

Mr. Stephen Andrews: There's no jurisdiction that I'm aware of in the OECD that would do that, that has legislation around this kind of matter. It's all narrowly defined in terms of actual direct communications to government or third-party communications. That is what is defined as grassroots lobbying; that is, a call to action whereby a lobbying organization gets a number of people to write letters to MPs or develops advertising and that kind of thing that is advocating a specific legislative or policy change.

The Chair: Great. Thank you, Mr. Andrews and Mr. Andrews.

Mrs. Davidson for five minutes.

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

Thanks very much to our presenters here this morning. It has certainly been interesting. I think we've got into a different level of understanding about where we need to go. So it has been great to hear what every one of you has had to say.

Mr. Capobianco, you talked about dealings and relationships with different levels of government. You talked about the City of Toronto, I believe, and about the province and the federal government. Are there things that we need to be doing here at the federal level that will help harmonize policies and rules as far as dealing with the different levels of government?

Mr. John Capobianco: That's a really good question. The reason why it is so is that in our association, specifically, more so than the GRIC, we're based in Toronto, so a lot of our members are firms that do work with Queen's Park and also with the City of Toronto. We've been lucky, in that the lobbyist registrar of the City of Toronto has been very eager to work with us, and in fact a couple of members of our board worked with her at the time to come up with the lobbying rules for Toronto, and now Lynn Morrison, the commissioner for Ontario, has also been engaging with our association.

To your question specifically, I found different levels of lobbying and lobbying activities within the three jurisdictions. I think any way or any how we can get all that to be somewhat more streamlined or focused on a lot of similarities would be helpful to our profession.

I know it's different because how you lobby Toronto City Hall is totally different from how you would lobby Queen's Park or even Parliament Hill. So some differences have to be accounted for from that perspective. I'm encouraged by the fact that all the lobbying registrars, from the City of Toronto and other municipalities across Canada as well, and certainly Ontario, are looking to our associations and other groups to try to get the common denominator of lobbying rules.

They're looking at Ottawa specifically and asking what's working best with Ottawa, what's not working best with Ottawa, and our advice was the same, which is that the five-year rule is quite a hindrance, as is the 20% rule.

I hope that answers your question.

Mrs. Patricia Davidson: Yes, it does.

Are there any particular differences in policy that are creating confusion within your industry?

Mr. John Capobianco: I don't know of any that cause any specific confusion.

Mr. Stephen Andrews: There are differences, but I don't know if there's confusion.

For example, the federal system requires the filing of monthly communications reports that the lobbyists would have with designated public office holders, as do B.C. and Alberta. Manitoba has legislation; it's not in force. Ontario and Quebec do not have requirements to file monthly communications reports.

Typically, the provincial systems are more about registration processes and the federal system has a bit more of a regulatory component. Some provincial systems have lobbyist codes of conduct that have the force of law, such as Quebec. On the federal side, the code of conduct does not have the force of law, though it's enforced through reports to Parliament.

I think the issue is the role of codes of conduct. For example, the Ontario registrar has made it clear to us in various presentations and discussions that she's looking at eliminating the 20% rule but not moving forward with the introduction of any form of a code of conduct.

Provincial systems are a little worried about resources for managing codes of conduct, I think. In Quebec's case it's a little different, since it has the force of law, so if you violate the code of conduct in Quebec it could carry the same sorts of penalties as violating the act itself.

● (1230)

Mrs. Patricia Davidson: Mr. King, did you have anything to add to that?

Mr. Charles King: No, I think they did a very good job.

Mrs. Patricia Davidson: Okay, great.

One of the recommendations of the commissioner was that the education mandate of the commissioner remain explicit in the legislation. I think in both of your presentations you talked a bit about the education mandate or perhaps the lack of that. Could you both please comment on that and where you think we should be going?

Mr. Charles King: I would argue it's incumbent upon her to go out and educate as many people as possible, and that would be everywhere from MPs to senators to bureaucrats.

We've done a couple of information sessions on behalf of GRIC, where we've invited her to come and do some more explanation with our members. I think it's incumbent upon her also to go into the general public and spend more time educating them.

When people ask me what I do for a living, I say I'm a government relations consultant. They then kind of look at me and ask what that means. When I say I'm a lobbyist they say, “Oh...”. When I ask if they know what a lobbyist is, they say no. Then what's with the perception of it?

I think it's incumbent upon all of us to spend more time educating the public about what we do, that it's constitutionally legal and above board. We follow a set of pretty complex rules, and by and large we govern ourselves according to the act.

The Chair: Thank you.

Your time is up. Thank you.

As a reminder for the committee, we actually have four provincial commissioners coming on Tuesday, as witnesses.

[*Translation*]

Mr. Boulerice, you have five minutes.

Mr. Alexandre Boulerice: I want to start with a quick comment. I get the sense that nowhere in Canadian history has Brixton's Pub been mentioned more than here, in this parliamentary committee.

I think the work you do is entirely legitimate, useful and practical, and that it raises the level of debate and discussion. Clearly, that is not in question. But I do want to say that it is not the presence of lobbyists that bothers me, but rather the fact that some people on Parliament Hill cannot afford lobbyists. That is unfortunate. You don't have to respond to that; I just wanted to put it out there.

The 20% rule seems to be problematic. On the one hand, I appreciate having a limit. But on the other, you can tinker with percentage calculations when you want to. If you say that lobbying represents 15% of your activities, you do not have to report it.

However, 15% can have a major impact. For instance, if you call up Brian Mulroney or Jean Chrétien, and you make one lobbying call a year, the message will probably be heard loud and clear.

If we did away with the 20% threshold for former DPOHs, as you suggest, would a former minister or prime minister who made one or two phone calls a year to a current minister have to report it?

Mr. Charles King: That recommendation applies solely to DPOHs. The 20% threshold would be maintained. The recommendation applies solely to those who, like me, work for corporations.

[*English*]

Basically what we're advocating is getting rid of the 20% rule only for DPOHs who go in as corporate lobbyists, who work for a corporation.

Mr. Jim Patrick: Right now, under the rules, the former ministers you're using in your hypothetical example could not go and work for a trade association, could not go and work for a consulting firm, but could go and work for a corporation as long as they estimated that 19% of their time is all they spend on lobbying. We're saying that if you are a former designated public office holder and you're under the five-year ban, you should not be able to any lobbying, period.

● (1235)

[*Translation*]

Mr. Charles King: There would be no exception.

Mr. Alexandre Boulerice: What would happen after five years?

Mr. Charles King: You would do as you please.

The rule states that, after five years, you can do whatever you please.

Mr. Alexandre Boulerice: The Public Affairs Association of Canada wants to do away with the 20% limit for everyone. In that case, how would you define a lobbyist in terms of a community group or a small organization that contacted us to discuss a specific matter?

In my riding of Rosemont—La Petite-Patrie, that could potentially mean 83,000 lobbyists would have to register. Where should we draw the line?

[*English*]

Mr. John Capobianco: The concern we have with the 20% rule is how you define the 20% rule. In some cases it's 15% versus 20%, or is it 25%? It gets into that area where there's a lot of potential for miscommunication or misunderstanding of those rules, which could cause lobbyists to be, in part, in an infraction against some of the lobbying rules, which gets them into trouble.

Our view is that if you're a lobbyist you're a lobbyist. So if you're lobbying government, no matter what role you're playing and what issue you're doing, notwithstanding the five-year rule, which we're saying to reduce to one, it should be registrable. That way it gets away from any potential issues or conflicts that might come up that might cause a lobbyist to be in trouble. That's what our general sense is, what our members are telling us.

I don't know, Stephen, if you've specifically talked about it with our members.

I think a lot of that comes down to the clarification that if you're a lawyer working for a law firm and you're lobbying a firm, you are a lobbyist. If you're in communication with some government official on behalf of a client, you should be able to register if that's a registerable activity.

Mr. Stephen Andrews: I think it's clear that the point of the recommendation is that transparency should trump some of those circumstances where small groups are doing occasional lobbying, assuming they are actually engaged in registerable activity; that is, they're paid and communicating to government about specific policy changes and the various activities defined in the Lobbying Act as it is now.

I think the commissioner could potentially look at special cases and make recommendations where a small group is not being paid or receiving any sort of financial benefit. These may be exemptions to this particular rule, but I think it's probably more important to have a clear rule related to the transparency of all registered activities.

You mentioned earlier the case of a former prime minister. I think a number of individuals at that level sit on boards of directors of corporations, and to the extent that they do registerable activity at the federal level, they would be considered consultant lobbyists and have to register any form of any single communication. That would be an important distinction.

[*Translation*]

The Chair: Thank you, Mr. Boulerice.

[*English*]

Mr. Lemieux, for the final question.

Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC): Thank you very much.

From your point of view, how are complaints initiated? Where are they coming from? I know you can't answer for the commissioner, but I'm sure you've got clients who perhaps explain their situation to you. If someone is doing some lobbying and they don't register, then the fact that they might have even lobbied in the first place is a bit unknown. I'm interested in knowing, from your point of view only, if this is a sort of competitor-versus-competitor type of complaint, or is there something else at play? That is one question.

The other question I have is how the average lobbyist views lobbying within the Lobbying Act. What I mean by that is, do they see it as a low-risk affair? In other words, "Oh, I see the speed limit is 80; I'm going to stay below 80 and everything should be fine." Or do they see it as something ready to pounce on them and does it continually occupy their mind that this could backfire at any moment?

I'm wondering if you could give us a feel for their comfort level. I understand there are concerns and I understand there are some things that need to be fixed. What's the overall comfort level for the average lobbyist?

So the first thing is on the complaint and the second thing is on comfort level.

Mr. Jim Patrick: On the complaints, I think you're right. This is essentially a complaints-based investigation process, which is very similar to any other tribunal or officer of Parliament you can think of. Media stories sometimes bring cases to the attention of the commissioner, and I think she has mentioned that in front of the committee.

I don't see that changing, short of the commissioner putting on a disguise and staking out Brixton's on a Wednesday night. Good advertising for Brixton's today. I think it will continue to be a complaints-based process.

With respect to your second question, I think most lobbyists would err on the side of caution. If you hit an area and you're not sure.... I must have a record of fifty e-mails to the commission checking a point on something. They're very good about trying to help lobbyists understand the rules.

Sometimes the answers don't clarify things as much as we'd like—we've pointed to a couple of examples—but I have to say the staff there is typically excellent. The processes they have put in place for their computer systems have become much easier. They've heard concerns about that and they've responded.

I'd say the comfort level of how lobbyists interact with the commission on a day-to-day basis is pretty high. I don't know many people who are shy about calling up and saying they're about to go into a meeting and they don't know if they have to report it. The advice you usually get is along the lines of "err on the side of caution", but it's better to ask for an explanation than forgiveness later. I think most people would find the day-to-day interaction between the commissioner, her staff, and the lobbying community to work very well.

● (1240)

The Chair: Mr. Capobianco wants to intervene.

Mr. Pierre Lemieux: Yes, by all means.

Mr. John Capobianco: Mr. Lemieux, I think both of your questions were bang on.

To your second point, and not to go far from what Jim was saying, I think our style of lobbying, certainly from the American style of lobbying, is totally different. I think the rules we put in place and the rules that are in place are things we support. We believe in that transparency and accountability.

I think certainly the federal commissioner and also the provincial and other ones we deal with have all opened up and they are receptive to changes. They understand that the first set of rules has to have some level of adjustment. I think they're listening to what we want to be able to do.

This process in and of itself is great. If you're getting into the lobbying profession, I think more and more folks are aware of the rules and the ramifications. They see the front page of *The Globe and Mail* when a lobbyist happens to be under investigation and what kind of effect that has on that person's career and reputation. Whether or not you're proven guilty or innocent at the time, it's quite profound. I think a lot of folks who want to get into the profession are starting to think about what could happen with them.

With regard to what Jim said, we're advising our lobbyists within our firm and our clients that if there's a risk, then register and be safe, and ensure they have a record of things so they don't get into trouble, not only for themselves but also for the public office holders. We're trying to do that.

Mr. Pierre Lemieux: Let me just follow up on a point you made about Canadian lobbying versus U.S. lobbying. How would you differentiate between the two? How do you classify them?

Mr. Charles King: Money.

Mr. Pierre Lemieux: It is also in their activities or their aggressiveness.

Mr. John Capobianco: I think we'll all have a minute to say something on this.

I think with the grandiose American style of anything that happens, the influence on us is profound in some cases, and unfortunately in most cases. But with lobbying, the money in the U.S.—the retainer amounts, the success fees, the contingency fees—is beyond the pale, and I think it allows for people to be motivated or incented to do things that otherwise....

The fact that we don't have contingency fees or success fees here is a great thing. None of us ever complain about that. We're not here to benefit. If the client gets a certain issue resolved through government, as Mr. Del Mastro said, by and large it's the government that decides, or it's the opposition that decides. We just help to facilitate that meeting more than anything else and help with the strategy, I think, from that perspective. The American style is so much more focused on money.

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

With the committee's indulgence, I have a brief question for a brief response, I'm hoping.

Mr. Jordan, when he came the other day, recommended that we might want to review the designated public office holder definition and suggested that we might want to go back to not having all members listed; we would just have former parliamentary secretaries and cabinet ministers. I just wondered if you had a comment on that.

Mr. Jim Patrick: Legislatively, politically, it's hard to put the toothpaste back in the tube. I think within the act, Parliament has given the commissioner the power to designate anyone a designated public office holder. You'd have to remove that and then run through a Governor-in-Council process of some sort. But none of us are holding our breath to see that change happen.

Mr. Charles King: If it ain't broke, don't fix it.

The Chair: I want to thank the witnesses very much for appearing before the committee. I think it was a very informative discussion. Some really good suggestions came up.

I'm going to suspend for two minutes, and then we have to go in camera to deal with some brief committee business.

[*Proceedings continue in camera*]

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