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## Tuesday, February 7, 2012

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## Chair

**Ms. Jean Crowder**

# Standing Committee on Access to Information, Privacy and Ethics

**Tuesday, February 7, 2012**

● (1130)

[*English*]

**The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)):** Welcome, everybody, to our continuing statutory review of the Lobbying Act.

Before we begin I want to welcome a number of guests. I won't go through the whole list, but we have the intergovernmental affairs and justice committee from Saskatchewan here. Welcome. They've been given an opportunity to observe our proceedings today, and they're at the back of the room.

I understand that our witnesses are all well aware that they have ten minutes to present. And when you present, please introduce any other members you have brought with you.

Who would like to start? Mr. Wilkinson.

When we go to the question-and-answer period after your presentations, the seven minutes that the members have in the first round includes their question and your response.

Mr. Wilkinson, please proceed.

**Mr. Neil Wilkinson (Ethics Commissioner, Lobbyists Act Registrar, Office of the Ethics Commissioner of Alberta):** Thank you very much, Madam Chair and honourable members of the standing committee. It is certainly a pleasure to be here with you this morning.

By way of introduction, I should tell you that under the Alberta Lobbyists Act, I, as Ethics Commissioner, am named as the Lobbyists Act registrar, and the registry is administered in my office. But the act allows me to delegate most of my functions and responsibilities and authority to another person. I have done that, and he is sitting on my left. His name is Brad Odsen, and he is not only our registrar but our general counsel as well.

As de facto registrar, Brad is responsible—and I think this is good for you to know when it comes to question time—for the day-to-day administration of the act and the operation of the registry. He will be able to respond to any questions you may have on our experience with the Alberta legislation and on the lobbying community there.

There are five responsibilities I cannot delegate. One of the most important ones is the granting of exemptions from the contracting prohibition, with our without conditions. What that means is prohibiting lobbyists from being paid to advise and lobby government on the same subject at the same time.

With your permission, I'll start this morning by briefly touching on the public policy imperative of lobbying legislation, because that will help us set the context for our comments.

We start with the question: What public purpose is served by the enactment of lobbying legislation? One answer to that question, as you know, can be found in a paper presented to the OECD symposium on lobbying in 2007 by Professor Paul Pross, of Dalhousie University. He said:

> Experience to date suggests that the decision to regulate lobbyists and to introduce regulations that are effective is contingent upon the following underlying factors:
>
> Lobby regulation is perceived to address broadly accepted public policy objectives such as enhancing government transparency, openness and integrity.
>
> Regulation is compatible with the constitutional framework and political culture of the adopting jurisdiction.
>
> It is directed at achieving three principal objectives: promoting transparency in governmental decision making; supporting integrity in the policy process; enhancing the efficacy of policy processes.
>
> Regulation of lobbyists is conceived of as part of a body of regulation—a regime—that governs the ethical behaviour of public officials and those they deal with.
>
> The viability of the regulations depends on instituting rules of disclosure that can be realistically applied and on ensuring that officials have the powers and administrative autonomy sufficient to enable them to carry out their duties.

There are really two kinds of legislative approaches that could be taken to achieve these objectives. First is a lobbyist monitoring regime that is directed at making publicly available information on who is lobbying what element of government with respect to what broad subject matter on behalf of what interest, and in what ways is lobbying being undertaken?

The second is the lobbyists regulating regime, which includes all the foregoing but additionally is much more focused on the particulars of lobbying activity and on controlling such activities, to a certain extent. It can include timely reporting of who specifically spoke to whom when about what, what type of compensation arrangements for lobbying activities are permissible or not, and what types of lobbying activities are prohibited and in what circumstances.

The Alberta Lobbyists Act is very much within the spirit of a lobby monitoring regime, whereas the federal Lobbying Act is more within the spirit of a lobby regulating regime. This is not to say, members, that we feel that one regime, in any sense, is better than another, but there certainly are implications with respect to the level of activity required by those charged with the administration and enforcement of the legislation, and obviously, therefore, the level of resourcing required by you to achieve your legislative objectives.

Both approaches can be very effective in achieving the public policy outcomes of increasing transparency and promoting ethical behaviour. There are elements of regulation and enforcement in a monitoring regime, just as, of course, there are elements of monitoring in the regulation regime. Indeed, there are more similarities, as a matter of fact, among the various lobbying statutes in Canada. But there are some key differences between the Alberta and the Canadian acts we thought you might be interested in.

● (1135)

Number one, in Alberta lobbying is defined as "communicating with a public office holder in an attempt to influence", while federally it is defined as "communicating with a public office holder", in both cases for payment and in both cases with respect to prescribed activities of government.

Alberta does not have a lobbyists code. Alberta does have a contracting prohibition that we talked about earlier. Alberta does not require monthly reporting of meetings of any kind. In Alberta the post-employment cooling-off period for ministers is 12 months, and for elected members and senior government officials it is six months.

There are other differences, but with your permission and in the interest of your time, we will focus the balance of our remarks primarily on three differences that Commissioner Shepherd has highlighted in her presentation to this committee: the time-spent-lobbying threshold; the ability of the registrar to investigate breaches of the act and to impose administrative penalties; the lack of statutory immunity granted to the commissioner and her staff.

As to the first, in Alberta, if the cumulative time spent lobbying by those in an organization is less than 100 hours per year, that organization is not required to register. Now, as it presently stands, the act speaks of time spent communicating and does not include preparation time. One hundred hours is less than 2.5 hours per week, so it's already a very low threshold.

As you may know, the Alberta legislature just conducted a review of the act. In this case, the issue of whether there should be such a threshold—or if there is one, where it should be set—was probably the most debated issue in that review. The end result of that debate was that the committee has recommended that time spent communicating should include preparation time, which would have the effect, of course, of lowering the threshold even further.

Brad can speak more to this issue if you have any questions about that.

We would note that in our experience, once the practical effect of this section of the act has been explained to most organizations the response has simply been that they register, whether they feel they may have attained the threshold or not.

As to the second, while it is true that there has not been an instance when we have imposed an administrative penalty, anecdotal evidence suggests that the very fact that the registrar has this power leads lobbyists to take considerably more care to comply with the technical requirements, such as noting changes within the specified period of time or renewing a registration when the renewal is due. In a broad sense, there could be what might be termed breaches of the spirit and intent of the act, an example of which would be deliberately failing to register in order to conceal the lobbying efforts, and what might be called technical breaches, such as failing to amend a regulation within the required time period.

In our view, having the ability to impose administrative penalties, particularly for technical breaches, does lead to a greater effort on the part of lobbyists to comply.

The federal Lobbying Act—or its predecessor legislation—has been in effect since 1985, as you know. It's not something new to the lobbyist community. The Alberta act, on the other hand, was only proclaimed in September 2009. The approach of our office in these two years has been one of education and of encouragement, rather than enforcing compliance. There has now been sufficient time for the lobbying community to become familiar with the act and its requirements. After giving due notice to the lobbying community, we will start implementing stricter enforcement of these technical requirements, and in all likelihood using a model similar to what Commissioner Denham and her team in B.C. have devised as a template.

With respect to the third, as Commissioner Shepherd has noted in her recommendation number 9, Alberta and all other jurisdictions in Canada do have an immunity provision in their acts. We can assure you that this provision provides us considerable comfort in our administration and enforcement of the Alberta Lobbyists Act. Frankly, we cannot conceive, with respect, any valid reason to deny immunity to an officer of Parliament. That very lack could well, in our view, have the effect of constraining the ability of the commissioner to properly fulfill the statutory requirements of the act.

In conclusion, we are pleased to have been here to make a brief presentation. We hope we can help further. This is really a very important piece of legislation, as you know. Professor Pross noted as well that it's part of a regime that governs the ethical behaviour of public officials and those who deal with them.

● (1140)

**The Chair:** Thank you very much, Mr. Wilkinson.

I'll go to Ms. Morrison for ten minutes.

**Ms. Lynn Morrison (Integrity Commissioner, Office of the Integrity Commissioner of Ontario):** Good morning, Madam Chair and honourable committee members. Thank you for asking me to appear before you today to provide some information about the Lobbyists Registration Office in Ontario.

I believe you've all been provided a chart that outlines the main provisions in our act, the Ontario Lobbyists Registration Act, which was passed in 1998.

I am the lobbyist registrar as well as the Integrity Commissioner of Ontario. My office is responsible for the following mandates: lobbyist registration; members' integrity, including conflict of interest rules; public service disclosure of wrongdoing, otherwise known as whistle-blowing; ministers' staff ethical conduct; and expenses review for ministers, opposition leaders and their staff, and certain agency employees and appointees.

My office has discharged its duties under the Lobbyists Registration Act with two principles at heart: (1) lobbying is legitimate, necessary, and part of democracy; and (2) transparency is a key goal, as the public has a right to know who is seeking to influence government decision-making.

At the time it was introduced, Ontario was the first province to have a lobbying act. It was, in fact, modelled on the federal legislation that preceded the current framework.

There are differences between the Ontario and federal systems, and between Ontario and its provincial counterparts. In Ontario, the definition of “lobby” is “any communication with a public office holder in an attempt to influence government activities”. For consultant lobbyists, lobbying includes arranging meetings.

A person must register if he or she is paid to lobby a public office holder. The requirement that you be paid captures both in-house lobbyists—or essentially, employees who are paid to lobby—and consultant lobbyists who work for firms, including law firms, on behalf of other organizations or individuals.

In addition, the act mandates our office to maintain an online public record of lobbyists. Not unlike the federal legislation, there is a long list of information that lobbyists must disclose in their registration. For example, they must provide the name of their client or employer, as the case may be; the subject matter of the lobbying effort; to whom the lobbying is directed; the method of lobbying; whether the entity is being funded by any government; and consultant lobbyists must state if they are being paid contingency fees.

As registrar, my duties are to maintain the registry, to verify information submitted, and to make that information available for the public.

In my view, the most important part of the registration process is ensuring that a member of the public can understand what it is that the lobbyist is doing. I often ask for further information about this aspect of the registration process. I've found lobbyists in Ontario have been cooperative in this area, and I will continue to require this level of detail in the future.

There is no code of conduct for lobbyists in Ontario; however, lobbyists are guilty of an offence if they fail to comply with the act or knowingly place a public office holder in a position of real or potential conflict of interest, and they are subject to a penalty of up to $25,000. I believe this is an important rule to have and enforce, though I will say that our approach in Ontario has focused primarily on the requirement of lobbyists to register and not on their specific conduct as lobbyists.

I do not have any investigative or inquiry powers about the conduct of lobbyists or unregistered lobbying. This is obviously a major distinction between the Ontario and federal models. As I just indicated, it is an offence to contravene the Ontario act and there are serious penalties, but to date there have been no prosecutions in this regard.

● (1145)

If necessary, I am prepared to refer information regarding possible offences to the appropriate authorities, leading to a prosecution. However, we do enjoy a high level of cooperation, and it has been my experience that when alleged lobbyists are informed about the registration requirement, they quickly come into compliance, if necessary.

The act also allows me to issue non-binding advisory opinions and interpretation bulletins about the act, which assist lobbyists in better understanding the legislation. Our office recently issued revised interpretation bulletins and has received positive feedback, all confirming my belief that education is key to ensuring the rules are followed. Our office also has a unique ability to encourage compliance through our other mandates, namely the ethical conduct and responsibilities of elected officials, including ministers as well as ministerial staff.

For example, we provide advice to minister's staff who are thinking of leaving their current position. We advise them of their obligations under the Public Service of Ontario Act, including but not limited to the restriction from lobbying their former ministry for a period of one year. We also ensure they are aware of the Lobbyists Registration Act and its obligations.

I would also like to speak to a new amendment to our act, the Broader Public Sector Accountability Act. It came into force last year and introduced new rules prohibiting certain public sector organizations from using public funds to hire external or consultant lobbyists. The restriction applies to public bodies, hydro entities, and larger and broader public sector organizations such as hospitals, school boards, and universities, as well as publicly funded organizations that receive more than $10 million in provincial funding. It is a new rule that we have been administering since early 2011. Consultant lobbyists can be hired by the above-mentioned organizations if the head of the organization signs and files with our office an attestation stating that the lobbyist is not being paid with public funds.

Apart from this change, there have been no material amendments to the act since it came into force in 1999. I do believe it is time to review and update our legislation, and I've requested that such a review take place. It is time for Ontario to consider such issues as whether the registrar should have investigative powers or whether the current threshold for a significant part of duties should be amended.

If a registrar has the ability to initiate investigations, it stands to reason that he or she should also be able to administer penalties. I can't speak from experience, of course, but I would imagine that both monetary penalties and the ability to name individuals who are found to be in non-compliance would be effective methods of encouraging compliance with the legislation. I also believe that if a registrar has the ability to administer penalties, he or she should have discretion on when and how they are used.

I know that Commissioner Shepherd has recommended the removal of the “significant part of duties” component for in-house lobbyists, and I agree that moving in this direction is the right approach. The best way to ensure transparency about who is lobbying is to require registration for all lobbying activity. However, as lobbyist registrars, it is our responsibility to make sure that registering is easy and accessible.

I am very mindful of the best practices emerging in other jurisdictions: in particular, we benefit greatly from the work that our federal colleagues have undertaken and the court challenges they have endured.

I believe the most important thing that a lobbyists registration system should do is provide a way for the public to know and understand who is influencing government in a way that makes it relatively easy for a lobbyist to comply with the rules. This balance can be difficult to find, but I strive to achieve it in Ontario.

Thank you once again for giving me this opportunity to speak to you today. I hope my remarks have been of assistance, and I welcome your questions.

● (1150)

**The Chair:** Thank you, Ms. Morrison.

Mr. Casgrain, for ten minutes.

[*Translation*]

**Mr. François Casgrain (Lobbyists Commissioner, Quebec Lobbyists Commissioner):** Madam Chair and members of the committee…

[*English*]

it's a great pleasure for me to be here today as part of the statutory review of the Lobbying Act. I want to share with you the Quebec experience with regard to the application of the Quebec Lobbying Transparency and Ethics Act.

[*Translation*]

Why have a lobbying act? The public's confidence in their public institutions is a major consideration in the practice of a healthy democracy and of good governance. Preserving that confidence was a major objective of the National Assembly in June 2002 when it unanimously enacted the Lobbying Transparency and Ethics Act.

Quebec's Lobbying Transparency and Ethics Act and the Canadian Lobbying Act have a number of features in common. However, there are certain notable differences.

The Quebec act defines the activity of lobbying as any oral or written communication in an attempt to influence a decision, while the Canadian act covers any communication with a public office holder.

The Quebec act covers a number of decisions that are not covered by the Canadian act, namely, the issue of certain authorizations, the appointment of members and administrators of government agencies and enterprises, as well as the appointment of senior officials such as deputy ministers and secretaries general of the *Conseil executive* and the *Conseil du trésor*.

In addition, the Québec act applies not only to parliamentary and governmental institutions, but also to all municipal and para-municipal institutions. It distinguishes between lobbyists on behalf of the profit-seeking enterprise and lobbyists on behalf of a non-profit organization. It does not require lobbyists to file monthly returns stating what communications they may have had with designated public office holders, as the Canadian act does. However, it provides that the registration must be updated as soon as a change occurs and must also be renewed every year.

The act provides that a lobbyist may request that the commissioner order that some or all of the information in a return be kept confidential when certain strict conditions are met. It assigns responsibility to the personal and movable real rights registrar who reports to the minister of justice, and not the commissioner, for keeping the registry of lobbyists. It provides that the commissioner may issue and publish notices concerning the carrying out, interpretation or application not only of the act, but also of a regulation thereunder or the Lobbyists' Code of Conduct.

The act also provides for the commissioner to adopt a code of conduct for lobbyists. Breach of the code is subject to sanctions and penalties.

Prohibitions on designated former public office holders engaging in lobbying may range from one year to two years according to the office formerly held. However, certain post-mandate rules apply to all former public office holders with no time limit.

The commissioner has the authority to carry out inspections, monitoring, audits and inquiries. For the purposes of his inquiries, the commissioner and any person he specially authorizes to conduct inquiries have the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions, except the power to order imprisonment. The commissioner therefore conducts his inquiries himself without transferring the case to a police service.

The act provides for three types of sanctions and penalties for breaches of the act or the code: penal sanctions; claiming compensation received by the lobbyist; and disciplinary measures that may be imposed by the commissioner if he ascertains a lobbyist has gravely or repeatedly breached the act or the code.

I would now like to share with you my thoughts on some issues that I think are important for attaining the act's transparency objectives and for ensuring that the act and the Lobbyists' Code of Conduct are respected.

The first point is the concept of significant part. Whereas consultant lobbyists are subject to the provisions of the act when they lobby on behalf of another person, enterprise lobbyists and organization lobbyists are subject to the act only when their job or their duties involve engaging in lobbying activities for a significant part of their time.

Determining what is a significant part means that when an enterprise or organization intends to instruct an internal person to lobby, it must ascertain whether communications for the purpose of influencing will be engaged in, based on the criteria of the notice issued by the commissioner.

This exercise is a complicated gymnastic feat for enterprises and organizations and for public office holders.

The concept of "significant part" may also result in problems of fairness and consistency.

● (1155)

[*English*]

**The Chair:** Excuse me, Mr. Casgrain. Could you please slow down a little for our interpreters?

Thank you.

**Mr. François Casgrain:** Yes.

[*Translation*]

If an enterprise organization retains a consultant lobbyist to lobby on its behalf, the consultant lobbyist must register in the registry of lobbyists. If the same enterprise organization instead instructs one of its employees to do the same lobbying, the most senior officer must register the purpose of those activities only if they represent a significant part of the activities.

In addition, proof that certain lobbying comprised "a significant part" is often difficult to establish. The city of Toronto has solved this problem by not making this kind of distinction. The communication for the purpose of influencing is a communication covered by the municipal code. Given the public's right to know who was attempting to influence decisions made by public institutions, it is important that all lobbying be reported, not just lobbying that comprises a significant part.

It is crucial that the act be easy to apply. On that point, it should be easy to identify the lobbyists covered, by answering a very simple question. Is the purpose of the communications for the purpose of influencing made by a person to a public office holder to influence the decision covered by the act? If so, the person should be registered in the registry.

Let's talk now about the role of public office holders. Lobbying involves two actors: one who is seeking to influence and one whom it is sought to influence. In other words, a lobbyist and a public office holder. That relationship must be transparent, and accordingly must be registered in the registry of lobbyists. That is what the act clearly requires. A person who seeks to influence has an obligation to register. However, that does not mean that the public office holder has no role to play. On the contrary: they have the role of ensuring that the people who seek to influence them comply with their obligation to register. Accordingly, the responsibility for ensuring transparency is not the exclusive prerogative of the lobbyists commissioner. The best way to ensure the effective application of the act is undoubtedly for public office holders to play their role fully.

Let's look now at the power to impose administrative penalties. Lobbyists commit numerous minor offences under the act. In general, these offences go unpunished since the people who commit them do not always deserve the stain on their reputations that might result from penalties or disciplinary measures. It is nonetheless important for consequences to be possible when there are breaches of the rules laid down in the act or the code. For that reason the lobbyists commissioner should have the power to impose administrative penalties, which might encourage respect of the act and the code.

Take the case of the consultant lobbyist who regularly registers in the registry after the time allowed by the act, sometimes even after the decision of the public office holder has been made. By doing that, they circumvent the public's right to know who is attempting to influence decisions made by their public institutions. Because the decision has already been made, the public is presented with what amounts to a fait accompli, and there is nothing at all that it can do in time.

Lastly, I want to talk about the ability of the commissioner to initiate prosecutions. While we must recognize that the efforts made to enforce the act must not be limited to prosecutions alone, we must nonetheless acknowledge that prosecutions are sometimes the only available option when a lobbyist stubbornly refuses to comply with their obligations. Accordingly, prosecutions can play an important role in enforcing the act and the code. While the lobbyists commissioner may conduct inquiries where he believes on reasonable grounds that there has been a breach of a provision of the act or the code, the act does not authorize him to initiate prosecutions personally.

The legal framework governing lobbying is a relatively new and specialized area of the law. The lobbyists commissioner is the only entity who has been empowered to publish notices concerning the carrying out, interpretation or application of the act or the code. It is up to the commissioner to inquire and determine whether there has been a breach of the act or the code, having regard to the facts brought to his attention. Therefore, as a result of his knowledge and expertise in the act and the code, the lobbyists commissioner is best suited to evaluate the relevance of initiating prosecutions and submitting the cases to the tribunal.

Madam Chair and committee members…

● (1200)

[*English*]

thank you for giving me the opportunity to share these observations with you. I remain at your disposal to answer your questions.

[*Translation*]

**The Chair:** Thank you, Mr. Casgrain.

[*English*]

We'll now go to Ms. Denham for ten minutes.

[*Translation*]

**Ms. Elizabeth Denham (Registrar of Lobbyists for British Columbia, Office of the Information and Privacy Commissioner of British Columbia):** Good morning, Madam Chair and members of the committee.

[*English*]

I'm very pleased to appear before this committee once again. I appeared as recently as two years ago in my former capacity as Assistant Privacy Commissioner of Canada. Now in B.C. I have two new roles, and I appear before you today as Registrar of Lobbyists for British Columbia. I am also the Information and Privacy Commissioner for British Columbia.

With me today is Jay Fedorak, who is acting deputy registrar.

I've also provided a more detailed written submission for consideration by the committee.

I can summarize the theme of my presentation in two statements. First, lobbyists play an important role in promoting fair and effective public decision-making by ensuring that public office holders have a full range of information, evidence, and opinions necessary to make decisions in the public interest.

Second, while it's essential that all interests receive the opportunity to be heard, it's critical to minimize opportunities for any particular party to exert undue influence in the ultimate decision.

Every day in this country lobbyists are communicating with public office holders to persuade them to support what I'm sure we can all agree are good causes. Non-profit organizations lobby for increased support for disadvantaged members of the community. Canadian businesses lobby for funding and regulatory changes that benefit the Canadian economy and Canadian workers.

In British Columbia we see organizations like the David Suzuki Foundation lobbying the Office of the Premier, as well as the majority of the ministers and members of the Legislative Assembly, to address climate change, promote clean energy and sustainable fishing, and protect the oceans. Vancouver Shipyards is lobbying the Office of the Premier and many members of the Legislative Assembly, looking to assist the provincial government with employment training programs to ready candidates for employment in the marine industry. The Greater Victoria Chamber of Commerce is lobbying the Office of the Premier and most ministers, seeking support for the Victoria International Airport runway extension, which it suggests will add another $37 million to the local economy annually.

The different jurisdictions across Canada are fortunate to have safeguards in place to minimize the exercise of undue influence. Public registration of lobbying makes lobbying activities transparent through mandatory declarations. Laws that contain a mandatory code of conduct promote integrity in public decision-making. Together, registration and codes of conduct help to ensure that citizens and organizations influence public decisions in a visible and ethical manner.

But there's more that can be done. My submission to the committee outlines three recommendations to improve safeguards and promote legitimate lobbying.

My first recommendation is that the Commissioner of Lobbying be given the power to assess administrative penalties. Today the only enforcement mechanisms available to the commissioner are to report to the police on violations of the Lobbying Act, and to report to Parliament on violations of the Lobbying Act code of conduct. The only other option available to the commissioner is to try to educate the lobbyist violating the act.

The Lobbying Act is an administrative law statute. Violations are administrative in nature, and very few will likely be serious enough to warrant police investigations or prosecutions. On the other hand, many violations are serious enough to warrant more than a warning or a stern educational session.

As regulators under administrative law it's important that we have the power to issue penalties proportional to the offence. In the immortal words of Gilbert and Sullivan's *The Mikado*, the object in administering justice should be to let the punishment fit the crime.

In British Columbia, the Registrar of Lobbyists can investigate matters of non-compliance and issue an administrative penalty of up to $25,000. The purpose of such a penalty is to promote future compliance with the party in question.

● (1205)

We may also publish investigation reports, which are intended to promote compliance of others by example. Once lobbyists became aware that we had the authority to issue administrative penalties, they took their registration responsibilities much more seriously. In fact, registrations have increased significantly since we received our new powers in 2010.

In April 2010 the registry had 303 active registrations. As of January 1, 2012, it had increased to 507. That's a 70% increase once we had administrative penalties and investigative powers. If the federal commissioner were to obtain the authority to issue administrative penalties, I'm confident that the federal regulatory regime would see similar results.

My second suggestion is that rule 8 of the Lobbying Act be amended to address some of the concerns raised. I hope that the concerns don't obscure the important role that the code of conduct plays. While registration establishes transparency about key aspects of any lobbying activity, public office targets, the subject matter, the intended outcome of the lobbying, client information, and whether the client or employer is receiving any government funding, it does not provide transparency about the nature and the content of the communications between the lobbyist and the public office holder. Fortunately, the code governs the nature of the relationship between public office holders, which helps to further minimize opportunities for the exercise of undue influence.

In the absence of a code of conduct, as is the case in British Columbia, there's nothing prohibiting lobbyists from receiving and using confidential insider information, attempting to influence by providing gifts or other benefits, or pursuing an outcome in a way that would put a public office holder in a potential conflict of interest situation.

A strong code of conduct is absolutely vital to a clear and transparent program of lobbying.

I want to focus for a moment on rule 8 of the federal code, which forbids a lobbyist from placing public office holders in a conflict of interest. There were concerns expressed about restrictions on lobbyists who have assisted public office holders on election campaigns, for example.

One modest improvement is to require all lobbyists to declare on their registration whether or not they have engaged in political activity on behalf of the person they are lobbying, and in what capacity. This would, at minimum, provide some transparency to the public about the nature of the relationship between the lobbyist and the elected official.

My third suggestion relates to the five-year prohibition on designated public office holders from lobbying.

It's easy to see the problems with former public office holders who engage as consultants to lobby their former colleagues. I don't have to make mention of some high-profile cases we've seen that bring this problem to light. Originally there was a three-year prohibition established to prevent cases of undue influence. That ban was extended to five years in the absence of other necessary safeguards.

While the ban does help to limit undue influence, I respectfully suggest that there are other considerations at play that deserve our attention.

One of the goals of lobbyist regulation is to promote fair and effective lobbying. There are many businesses and not-for-profit organizations that have legitimate concerns and interests to communicate with public office holders. There is no question that former public office holders can be effective lobbyists. Access to talented lobbying professionals helps organizations obtain fair access. A five-year ban limits the size of this talent pool. Moreover, the length of the ban might also reinforce unfair stereotyping of lobbyists and public office holders.

● (1210)

The key for a healthy lobbying community and regulation system is to achieve the right balance. It's my recommendation that if the Lobbying Act is amended to incorporate appropriate administrative penalties, and the current code is maintained and strengthened, the committee might consider recommending a shorter ban or prohibition. I believe this would strike the right balance between promoting fair and effective lobbying while protecting against undue influence.

Madam Chair, this concludes my presentation. Thank you again for the opportunity to speak. I would be pleased to answer any questions.

**The Chair:** Great. Thank you very much to the witnesses for staying within the timeframe.

Before we go to the round, I want to welcome Monsieur Morin as a new committee member. Welcome to the committee.

We have two substitutes today. Mr. John Weston and Mr. Rodney Weston, welcome to the committee.

Members, because of the timeframe, if you wish to direct a question to a particular witness, I'd ask you to do that.

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

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

This has been very interesting. Having a sense of the varied experience across Canada is certainly going to help us in our work.

Ms. Denham, I would like to start with you, in terms of the three recommendations you made. The issue of administrative monetary penalties has come up again and again, not just under the Lobbying Act but in a whole manner of issues where we have commissioners playing roles and trying to make sure people follow the rules.

We're always talking about the lobbyists who play by the rules, who do all the hard work, and who have expressed concern about their reputations being impinged upon by any investigation. But there are others for whom it's not in their interests to play by the rules.

We're in a situation, for example, with Bruce Carson, who was looking at a $250-million contract where he was going to get 10%. For $25 million, there was no incentive for this guy to play by the rules. The only thing the lobbying commissioner could do was tell him to write an essay. Well, I had to write essays for Sister Frances Margaret, in grade six, for not paying attention. I faced the same penalty he did when he was potentially looking at a $25-million payout.

How essential is it to have administrative monetary penalties, not just for the bad guys, but to ensure that everybody smartens up and follows the rules?

● (1215)

**Ms. Elizabeth Denham:** I think it's very important to have administrative penalties. It's also important that the investigation and administration of penalties stay within the commissioner's jurisdiction. As soon as she's required to pass on a file to another body, such as the RCMP, that file will be subject to that body's rules and priorities. Again, I think there are very few infractions that the RCMP is going to have to concentrate on and investigate and decide to prosecute.

The 70% increase that we saw in British Columbia when our investigative powers and administrative penalties were granted is evidence that lobbyists were taking their responsibilities seriously.

It's been a year since we were given these new powers. We haven't issued any administrative penalties yet, but we have 16 active investigations under way. In the coming weeks you will see some findings. I think these kinds of infractions are better dealt with in-house and with administrative penalties.

**Mr. Charlie Angus:** I was fascinated when you talked about all these lobbyists coming out of the woodwork to get their names on the register once they knew they were going to get fined if they didn't.

We've had a very stagnant lobbying pool. Apparently, lobbying never changes here. Nobody ever seems to be added to the list; it's the same old crew.

It would seem from the B.C. experience that there's no incentive for the guys who are flying under the radar to play by the rules. From what I hear from you on administrative monetary penalties, it's not necessarily that they're going to get caught, but they're going to start to smarten up and make sure they follow the same rules the legitimate lobbyists play by.

Is that your experience with the administrative monetary penalty?

**Ms. Elizabeth Denham:** We don't have absolute evidence that the 70% increase is completely due to the existence of the power to issue penalties. We have also conducted extensive education. We've had a conference. We have newsletters. We have really tried to improve education and outreach and knowledge of the law. But I think it certainly helps when there are penalties and there's an outcome if somebody fails to register.

**Mr. Charlie Angus:** I want to continue with you on the issue of keeping it in-house. Our situation is that if the lobbying commissioner finds that someone has done something wrong, they have to suspend that investigation immediately and turn it over to the RCMP. We've had zero follow-up from the RCMP. This is not to suggest that the RCMP aren't doing their job, but they have a whole different set of codes they work by and we've never had any follow-up.

Again, in the absence of administrative monetary penalties, it does seem to be a get-out-of-jail card. Do you think it's more effective for the lobbying commissioner to be able to carry out an investigation, do the work based on the principles of the parliamentary system, and then administer the penalty and issue the report?

**Ms. Elizabeth Denham:** I think the question is whether the breach of the Lobbying Act is a criminal infraction. It's perhaps too heavy a hammer to use to prosecute someone who's failed to register three times in a row. I'm suggesting that keeping the issuing of penalties and the investigations in-house is a sensible approach to regulating lobbying activities.

**Mr. Charlie Angus:** Your recommendation number two is on the code of conduct and the need to have a code of conduct so that everybody knows what the rules are, and then the role of lobbyists playing political roles. You suggest that in their code of conduct they have to state if they're active politically, if they're putting up signs on election day, or if they're doing something for a particular party or a particular candidate. That way, the public will have a better sense of whether there's a potential intermarriage of interests that may not be in the public interest.

● (1220)

**Ms. Elizabeth Denham:** I'm suggesting that it's a modest fix to require lobbyists to register their political activities in support of an elected official. I realize that there is an array of activities—putting a sign on your lawn, attending a fundraising, sponsoring a fundraising dinner. I also know that maybe the timelines of reporting and lobbying aren't going to solve the problem, but I'm suggesting that it's in the spirit of transparency to have such a requirement.

**Mr. Charlie Angus:** We had a situation with Minister Raitt, who was brought up before the ethics commission because the lobbyists for the cement industry were doing fundraisers for her. If they had declared that up front, do you think that might have spared Ms. Raitt some embarrassment and that we would have had a clearer and more transparent understanding of why you don't want to have cement-mixer guys doing fundraisers for someone who's dealing with such a big portfolio?

**Ms. Elizabeth Denham:** I can't speak to that; I don't know the details.

**Mr. Charlie Angus:** Thank you.

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

Mr. Del Mastro, for seven minutes.

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

You hear some talk about the cooling-off period and the five-year restriction placed on it. I find it a bit ironic that there's a five-year cooling-off period on parliamentarians going to government relations firms under the current legislation but nothing prohibiting lobbyists from running for leadership of political parties, like Mr. Topp or others running in the NDP leadership campaign. Certainly they would be beholden to those interests when they come in. It's interesting.

Just a bit for thought there, Chair. I'm doing some name dropping.

**Mr. Charlie Angus:** I must have got you on the elbow there, eh, Dean?

**Mr. Dean Del Mastro:** I did have some interest in the Lobbying Act, but I wanted to talk specifically about the five-year cooling-off period.

I believe Ms. Denham mentioned the installation of an administrative monetary penalty that would seek to make sure that the code of conduct was adhered to. Perhaps you could take a look at that. It's something we've heard from other witnesses before the committee. I'd be stretching the truth a bit if I suggested that some groups representing lobby firms had indicated they were in favour of administrative monetary penalties; they're not, but it is an interesting suggestion.

From each of the witnesses, if you have a cooling-off period in your territory, how long would it be for a former public office holder to be able to work as a lobbyist? Could we just go across the table?

**Mr. Bradley Odsen (General Counsel, Lobbyists Act Registrar, Office of the Ethics Commissioner):** If I may, in Alberta there is a cooling-off period. It's contained, however, in the Conflicts of Interest Act, not in the lobbyist legislation. For ministers, it's one year for lobbying the ministry, but they can lobby other elements of government. For senior government officials and former political staff, it's six months.

**Mr. Dean Del Mastro:** Six months for others, okay.

Ms. Morrison.

**Ms. Lynn Morrison:** In Ontario, under the Members' Integrity Act, the ministers have a one-year post-employment restriction, and the ministers' staff have a one-year post-employment restriction under the Public Service of Ontario Act. That is a restriction from lobbying their former ministry or ministries that they worked for 12 months prior to their departure.

**Mr. Dean Del Mastro:** Suppose I use an example. If they were working in the Ministry of Transportation, nothing would prevent them from immediately lobbying the Ministry of Education, for example.

**Ms. Lynn Morrison:** That's correct.

**Mr. Dean Del Mastro:** Thank you. I appreciate that.

Is there any restriction on parliamentary assistants?

**Ms. Lynn Morrison:** Parliamentary assistants, no.

**Mr. Dean Del Mastro:** There's not, okay.

**Ms. Lynn Morrison:** It depends on the circumstances too.

**Mr. Dean Del Mastro:** Okay.

**Ms. Lynn Morrison:** Depending on the ministry they were involved in and where they're going.

**Mr. Dean Del Mastro:** Okay, thank you.

Monsieur?

[*Translation*]

**Mr. François Casgrain:** In Quebec, former ministers are prohibited for two years from engaging in lobbying, in this case as consultant lobbyists with any public office holder or colleagues on the council of ministers. Nor can they lobby as enterprise or organization lobbyists with former colleagues or in the departments with which they had been associated. Some prohibitions also apply to members of ministers' offices. In this case, the prohibition is for only one year. In the case of other public office holders, for example, deputy ministers and people with the opportunity of being near the centre of decision, some restrictions apply and generally last for one year.

● (1225)

**Mr. Dean Del Mastro:** Okay. Thank you.

Ms. Denham, you have the floor.

[*English*]

**Ms. Elizabeth Denham:** In B.C., like Alberta, under the Members' Conflict of Interest Act, there is a one-year cooling-off period for ministers.

**Mr. Dean Del Mastro:** Is there anything for anyone else, political staff or parliamentary secretaries or assistants?

**Ms. Elizabeth Denham:** No, I don't believe so.

**Mr. Dean Del Mastro:** One year for ministers. Okay.

I want to come back to this issue of administrative monetary penalties. Currently the federal commissioner has the ability to relay things to the RCMP if she believes there's been an egregious violation of the act or a violation of the act. It's a fairly significant step to refer something like this to the RCMP and to have it investigated by the national police force. While I would not want to take that ability away from the commissioner, if she feels something very egregious has happened I think it's entirely appropriate.

Do you think in some cases it would be inappropriate? It would seem to me that if there was an opportunity to assess an administrative monetary penalty, you might also have better compliance with the act, simply because the only option for the commissioner right now is to refer things to the RCMP. She might not want to do that unless it's very significant. So if you're in the grey area, something that might get you an administrative monetary penalty and bring you back into compliance might not be significant enough for her to refer it to the RCMP. Do you see where I'm going with it?

Do you see instances when referring something to the RCMP might be excessive, whereas an administrative monetary penalty might be more appropriate?

**Mr. Bradley Odsen:** It's our view in Alberta. We certainly do have the power to initiate a prosecution if we want to do so, so we would be referring it to the police, but we also have the authority to issue administrative penalties. As the commissioner indicated, while we have not yet done so, we're going to be moving in that direction shortly.

I can tell you I've had calls from lobbyists who have committed technical breaches, as we refer to them, saying inadvertently they're two days late in their renewal. They're really sorry it happened for this and this or whatever reason, and please don't fine them; they're working really hard to get it in, and that kind of thing. My point is that I think it does encourage compliance and paying much more attention to it. There's that side of it. And then, of course, the other point is you're absolutely right, there are all kinds of things like that where it's just not appropriate to be referring it to the RCMP or a police service.

**The Chair:** Thank you, Mr. Odsen.

We're well over time, but I am going to allow the other commissioners a very brief comment in response to Mr. Del Mastro, but please keep it brief.

**Ms. Lynn Morrison:** Although I don't have any powers to issue monetary penalties, I do believe that referring an issue to the OPP in Ontario because somebody filed three days late is a waste of its time, and I think it's much better handled to give the commissioner the discretion as to what should be done.

**The Chair:** Mr. Casgrain.

[*Translation*]

**Mr. François Casgrain:** I think the lobbyists commissioner is best suited to conduct these inquiries from start to finish. The commissioner is the one who knows the act and must apply it and interpret it. People from the outside, such as members of police forces or even directors of public prosecutions, are used to administering the Criminal Code, but this is something completely different. That's why I think the lobbyists commissioner is best suited to do this.

[*English*]

**The Chair:** Ms. Denham.

**Ms. Elizabeth Denham:** Like Alberta, I would refer certain files to the police for very egregious and serious issues such as someone who was obstructing us in our investigation, but I would reserve the right to issue penalties to such cases as the third time somebody has failed to register or the third time they've filed late. Then I think penalties are the better way to go.

● (1230)

**The Chair:** Thank you very much.

Mr. Andrews, you have seven minutes.

**Mr. Scott Andrews (Avalon, Lib.):** Just on the penalties question, Ms. Denham, I know you said there have never been any penalties charged under your act as far as you know.

What about the other jurisdictions? Have any of you had administrative penalties issued to any lobbyist or since...?

**Mr. Neil Wilkinson:** No, we have not.

**Mr. Scott Andrews:** Ms. Morrison, you mentioned I think in the part when we were talking about penalties and that, that just the ability to name the lobbyist does have some effect, and we heard that from some lobbyists that, yes, the ability just to name them as a breach of the act does come with some penalties. Do you want to elaborate on that just a little?

**Ms. Lynn Morrison:** Here is one of the things we are seriously considering in Ontario. Lobbyists are required to terminate a registration within 30 days of ceasing any activity. Some lobbyists just don't do it and they don't renew either, and we send them three or four notices to remind them. I then have to terminate it. That goes into an inactive registration list. I'm looking very seriously at having a separate list: inactive, terminated registrations and registrations terminated by the registrar. We're not sure yet how that will all play out or what exactly we will put attached to that document, whether we provide a reason or whether we just put it in a list indicating the registrar terminated and let the public take a look at it and decide whether they want to ask further questions.

**Mr. Scott Andrews:** Ms. Denham, at the end of your presentation, you said the ban should be shorter if there were more investigative power and administrative penalties were given. If those two things were given, what should that ban be in your opinion?

**Ms. Elizabeth Denham:** What should the ban be?

**Mr. Scott Andrews:** Yes.

**Ms. Elizabeth Denham:** Unfortunately I haven't had experience with cooling-off periods. In B.C., we just have a very limited cooling-off period. I don't think I'm equipped to answer that question. We recently held a conference in Vancouver on lobbying. Everybody who attended—from academics to industry to legal counsel and to my fellow registrars and commissioners—thought that the five-year period was too long and, in fact, it wasn't in the public interest to keep some of the talent out of the industry for that long a time period.

**Mr. Scott Andrews:** I think that led into one of the other questions too when we asked each one of you how long the cooling-off period has been in each jurisdiction.

Mr. Wilkinson, getting back to the low threshold on lobbying activities. You mentioned that yours was very low. Can you just give us a little bit of the history about why it was set at that bar? Has that been effective? You also made a comment that there's been a lot of discussion or you recently had some review around the threshold. Do you want to just elaborate a little bit on that aspect?

**Mr. Neil Wilkinson:** Yes, I'd be happy to. If you don't mind, I'll turn it over to Brad Odsen, our registrar.

**Mr. Bradley Odsen:** Thank you.

Where it came from initially I cannot tell you. Part of the legislative drafting...that's what they came up with. When I am contacted by an organization and questioned around that issue because they're trying to determine whether they might fall below the threshold and therefore not register, this is what I tell them: “That's fine. That means you'll have to track every single lobbying activity all of your staff are engaged in. You'll have to devote resources to that, because I may be coming in eight months from now to do a forensic audit to see whether or not you've met the threshold. On the other hand, if you register you don't have to do any of that. Decide what you want to do.” The typical response is “That's kind of a no-brainer, isn't it? I'll get my registration in this week.”

**Mr. Scott Andrews:** The lobbying commissioner is recommending eliminating the “significant part of duties” threshold, the 20%. Do you think that's a good recommendation from the commissioner?

**Mr. Bradley Odsen:** I can't speak to the public policy aspect of that. I don't think it's our role to say whether there should be a threshold. But I think that a lower threshold such as ours means there will be very few organizations engaged in any kind of regular lobbying activity that are not registered, if any. I'm quite confident that there are none in Alberta engaged in any kind of regular lobbying activity, even if it's somewhat sporadic over the course of a year, that are not registered. I'm sure they're all registered.

● (1235)

**Mr. Scott Andrews:** Okay.

How much time do I have?

**The Chair:** You have just about two minutes.

**Mr. Scott Andrews:** If we give investigative powers to our commissioner, what powers should they actually have? Subpoena documents...? What do they need to do effective investigations? It's okay to say you can have investigative powers, but if you don't have the ability to get what you need, it doesn't really make sense.

When we talk specifically about investigative powers, how much power and what should we look out for in giving our commissioner that power?

[*Translation*]

**Mr. François Casgrain:** What I can say is that the authority that the lobbyists commissioner is given in Quebec is the authority of an investigations commissioner. That authority makes it possible to find all the evidence necessary, which isn't always easy to obtain.

You just spoke about the concept of "significant part". It's one of the major reasons that makes it difficult to comply with the act. Every piece of legislation that has been adopted in Canada has in part copied what existed. In my opinion, that explains some of the problem.

As for the authority to investigate, it's important that we be able to go and see public office holders and that they be required to provide the information required so that we can conduct an inquirty. It's also important to be able to go and get the lobbyists' side of things, when the time comes, if explanations are required.

The lobbyists commissioner is best suited to get to the bottom of things because it is his responsibility to ensure that the act is respected and because he administers that specific act. He knows all the ins and outs of it. He's the one who can go the furthest in finding the truth.

Since the purpose of the act is to enable the public to know what has happened, in other words, making the activities of lobbyists transparent, I firmly believe that the commissioner must have all the authority to obtain all the information needed to be able to report to Parliament, to the National Assembly or to the provincial legislative assemblies.

[*English*]

**The Chair:** Mr. Andrews, we're well out of time.

Does somebody else have a very brief comment?

Ms. Morrison.

**Ms. Lynn Morrison:** Under the Members' Integrity Act in Ontario I have the power to investigate a complaint right up to a public inquiry; however, we haven't resorted to that since 1989. So I think Commissioner Casgrain is absolutely right that we need whatever it takes to get the information we need.

**The Chair:** Ms. Denham, please be brief.

**Ms. Elizabeth Denham:** I'm just going to add immunity. I think it's very important that the commissioner be protected from prosecution.

**The Chair:** Thank you very much.

We'll now go to Mrs. Davidson, for seven minutes.

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

First of all, thanks very much to each of you for being here. Certainly it's brought a perspective to our review that we definitely need.

Ms. Denham, with respect to your remark on immunity, that is one of the things our commissioner has talked about. It is one of the changes she would like to see happen.

Could I have each of you make a comment on the need for immunity and whether that would be a positive change in the federal legislation?

**The Chair:** Mr. Odsen.

**Mr. Bradley Odsen:** Thank you.

It's our view that it's important for all officers of the legislature to have an immunity provision in their enabling statute. Without that immunity, as legal counsel, general counsel, to the commissioner, anytime virtually anything comes up where there's the potential for either an investigation or a prosecution naming a person, or one of those kinds of things, I would have to advise the commissioner that we must be aware that doing anything would have the potential for an action against him personally and against our office. Having that immunity cuts that off right at the pass. You're now able to go ahead and do your job the way you're supposed to do it.

● (1240)

**Ms. Lynn Morrison:** I would agree with Mr. Odsen. I think it's absolutely essential that we are able to do what's necessary to conduct an inquiry if necessary. If we didn't have it, it could be detrimental to our ability to carry out our responsibilities.

[*Translation*]

**Mr. François Casgrain:** I think it's crucial that the commissioner have immunity for his inquiries and the reports he submits. Furthermore, he's an officer of the National Assembly. He's a designated person, as we say in Quebec. All designated people have immunity, whether the person is an ombudsman, the auditor general, the chief electoral officer or the ethics commissioner.

We think that it is essential that the commissioner also be given that immunity to ensure that his work is done in the interest of the House, of which he is an officer.

[*English*]

**The Chair:** Go ahead, Ms. Denham.

**Ms. Elizabeth Denham:** I believe that the other agents of Parliament—I could be wrong—have immunity against prosecution. It's logical. It makes sense.

**Mrs. Patricia Davidson:** Thank you.

One of the other things we've heard some difference of opinion on is the process itself. How is the investigation undertaken, and what triggers that process? In our system, only the lobbyists file reports. It's strictly a complaints process. How is it handled in your jurisdictions? Do you have any cross-references filed so that you're able to determine whether or not things are being done? Is it a complaints process in your jurisdictions? Do you just rely on people complaining about their competitors, hoping you catch the ones who need to be caught?

**The Chair:** Mr. Wilkinson, I'm sorry, you had a comment on the previous question.

**Mr. Neil Wilkinson:** Thank you, Madam Chair.

I wanted to put in a line that I had in my opening remarks. We cannot conceive of any valid reason to deny immunity to an officer of Parliament, with respect.

**The Chair:** Go ahead, Mr. Odsen.

**Mr. Bradley Odsen:** Thank you, Madam Chair.

In Alberta we can self-initiate an investigation. However, we have not done so. There have been two investigations conducted, and both were in response to complaints. You need a lot more resources if you're going to go down that road. At this point, we simply don't have those resources, so it's very unlikely that we would be doing much in that regard.

**The Chair:** Commissioner Morrison.

**Ms. Lynn Morrison:** Obviously I don't have any powers of investigation at the moment. One of the things I've relied on very heavily is moral suasion, and it's worked very well in Ontario. However, that's not to say that it's the right answer. It's the best I can do under the circumstances.

However, if you are talking about putting an onus on the public office holder to do something that can match up with the registration of the lobbyists, I don't believe it should be a public office holder's responsibility. Yes, I do everything I can under my jurisdiction as Integrity Commissioner and Lobbyists Registrar to educate at least ministers and their staff about lobbying. But I don't think they should have to be producing documents other than their calendars or whatever is required in an investigation. I don't think they should have to be filing a document.

**The Chair:** Mr. Casgrain.

[*Translation*]

**Mr. François Casgrain:** In Quebec, one of the commissioner's responsibilities is to provide monitoring and oversight. Not only does he have the authority to investigate when matters are brought to his attention, but he can also initiate inquiries himself. However, before investigating, an audit must be done. We don't open an inquiry before that.

He also has the authority for monitoring. He can monitor target sectors or groups. Take for example the matter of shale gas. We knew that lobbying was going on, given that it was a developing industry. So instead of waiting to catch people, we were proactive. We tried to make sure they were well aware of the act and that they were going to comply with it. It was successful. Because of the lobbyists commissioner's actions, many lobbyists did register, understand the act better and are aware that they were engaging in lobbying in some situations.

I think this is extremely important. I've often said that I don't want to be considered a police officer, even though I have the authority to investigate. I prefer to help people understand why we have a lobbying act and why it's important to comply with it.

● (1245)

[*English*]

**The Chair:** Ms. Denham.

**Ms. Elizabeth Denham:** The focus of our legislation is on transparency in lobbying activities, not public office holder activities. For a detailed answer to the question I'd like to turn it over to my colleague Jay Fedorak.

**The Chair:** Please keep it brief, because we're out of time.

**Mr. Jay Fedorak (Acting Deputy Registrar, Office of the Registrar of Lobbyists for British Columbia):** We have a detailed compliance strategy document that I can provide to the clerk that goes over it in detail. In addition to taking complaints, we verify the information when it's first entered. If our staff spot any issues, that could provoke some questions. We also do environmental scanning by following stories in the media and government press releases that suggest there might be some lobbying activity. Then we look into it from there.

We only use the formal investigation as an avenue of last resort when we can't resolve any issues that arise through talking the parties through the registration process and getting them to register properly.

**The Chair:** Thank you.

Before I go to the next two speakers I'm going to check in with the committee here. We really only have time for two more members to ask questions. I don't know if the committee has an ability to stay for a couple of minutes to allow two more questioners.

**Mrs. Patricia Davidson:** I can.

**The Chair:** A number of members can't stay. Okay, we'll wrap it up with the next two. These are five-minute rounds.

We'll hear from Monsieur Dusseault, and then Mr. Butt.

[*Translation*]

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

Thank you to everyone who testified today. I think holding meetings is the best way to improve on the federal government side of things. It's important to see what is being done elsewhere, in the provinces. In everything we do in life, it's good to go elsewhere to improve.

I'm glad you are here, and I'm glad to have heard about how lobbying is regulated in the provinces. I also found it interesting that the commissioner of Quebec has such significant investigative powers. I think we should go ahead with that on the federal government side. We should let the commissioner, not the RCMP, have this responsibility. The RCMP did not follow up in any of the cases, and that's unfortunate.

I'd also like the committee to invite the RCMP to appear. Unfortunately, when we asked to invite them to testify, the members voted against it. Be that as it may, there is a consensus here that the commissioner should have this investigative power.

I'd like to ask Mr. Casgrain a question and hear what he has to say about partisan activities. Ms. Denham, from British Columbia, spoke about this briefly.

Mr. Casgrain, I'd like to know what you think about partisan activities. Could you tell me how they are regulated in Quebec under the lobbying act?

**Mr. François Casgrain:** Quebec is one of the only jurisdictions with a code of conduct that can lead to penalties, meaning criminal sanctions, including disciplinary action for non-compliance with rules. As for lobbying, the Lobbyists' Code of Conduct has provisions dealing with professionalism and respect for public institutions. Part of this respect comes from always telling the truth, providing complete information, avoiding undue benefits, and—I think that's what they said in the Lobbyists' Code of Conduct—making sure that public office holders do not go against their own ethical rules. Members of Parliament must follow certain rules so that they do not find themselves in a conflict of interest. Lobbyists therefore shall not place them in a conflict of interest.

I for one am not in favour of a general prohibition because I don't think that is what we are looking for. Perhaps it is because I am a former chief electoral officer, but I really don't think we should discourage people from getting involved in politics, at whatever level. We obviously have to make sure that active lobbyists do not end up placing ministers or members of Parliament in a conflict of interest. It depends on the facts. If they need to provide names to be able to volunteer, there is no problem with that. But if it is really about a quid pro quo, then it is a whole different story. So we have to be able to determine what the situation is. I don't think we have had any problems like that in Quebec so far. However, there might have been some at the federal level, but we have not had to deal with those types of problems in Quebec so far.

● (1250)

**Mr. Pierre-Luc Dusseault:** My understanding is that you are dealing more with individual cases and you look at whether influence has actually been an issue.

**Mr. François Casgrain:** That's right, if we want to respect the spirit of the provision. The provision refers to principles and it is important to see whether those principles are respected beyond the strict standards. It is often difficult to have standards, since we seem to tell ourselves that, if we comply with the standards, we are doing well. We are talking about making a distinction between ethics and conduct. When we talk about a code of ethics and a code of conduct, the code of conduct sets out standards, but beyond standards, there are values and principles that we need to uphold. It is important to be able to go beyond mere standards. Sometimes, they are also difficult to establish.

**Mr. Pierre-Luc Dusseault:** If I am not mistaken...

[*English*]

**The Chair:** Mr. Dusseault, you only have 30 seconds.

[*Translation*]

**Mr. Pierre-Luc Dusseault:** To conclude, Ms. Denham, if I am not mistaken, you said that every partisan activity must be reported. That is what I understood from your comment earlier. Is that correct?

[*English*]

**Ms. Elizabeth Denham:** No, I didn't say that. I was making a suggestion in terms of the federal issue around rule 8 of the code of conduct, suggesting that a modest transparency requirement may address some of that problem. But there is no code of conduct in the B.C. law. We don't regulate political activities.

**The Chair:** Great. Thank you very much.

Mr. Butt, for five minutes.

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

Thank you all for being here. We appreciate your input today.

I think all of you have indicated that you think it would be beneficial for the federal lobbying commissioner to be able to have some sort of administrative penalty or fine. I guess my concern about that might be that unless it's done properly—maybe you can give me some advice on this—what would you see as an appeal process of that? What would you see as making sure that the individual who has now been fined by the commissioner has some fairness of an appeal mechanism? I don't know if any of your provinces have a system like that right now. Maybe you can share that if you do. If you don't, do you have any suggestions for us as to what we might do to ensure we have due process?

I don't know who wants to start.

**Mr. Bradley Odsen:** In Alberta, it's specified in the legislation that upon the issuance of a notice of administrative penalty, the party receiving the notice has 30 days within which to file an application in the Court of Queen's Bench. The court can review the amount or indeed whether it was even appropriate to have issued an administrative penalty. The appeal is directly into the courts.

**Mr. Brad Butt:** Okay, very good.

**The Chair:** Ms. Morrison.

**Ms. Lynn Morrison:** In Ontario we don't have the ability to issue those penalties. It is something we're looking at, and what the appeal mechanism would be is not determined yet.

**The Chair:** Monsieur Casgrain.

[*Translation*]

**Mr. François Casgrain:** In Quebec, we don't have administrative penalties, although the lobbyist commissioner has made a suggestion to have administrative penalties for very specific offences. Not all offences would necessarily be subject to administrative penalties with opportunity to appeal, since that is already the way it works with the commissioner's power to impose disciplinary measures.

At the moment, disciplinary measures could be imposed on a lobbyist who has gravely or repeatedly breached the provisions under the act. We have used this power before. We first have to give the lobbyist a notice of intent, with an opportunity to make comments. It has been the case that the comments have made the commissioner back off. If there are no comments, the commissioner may decide to impose measures, which could be appealed before the Court of Quebec within 30 days.

In my opinion, we can have mechanisms in place to establish security indicators for those likely to be penalized.

● (1255)

[*English*]

**The Chair:** Ms. Denham.

**Ms. Elizabeth Denham:** Madam Chair, in British Columbia, like Alberta, there is a requirement in our legislation that there be a reconsideration. Also, after the reconsideration the decisions are subject to judicial review.

I've also structured my office in such a way that I am the registrar, so I am the reconsiderer. I am the appeal body, and it's my deputy registrar who carries out the investigation and makes the findings and makes the recommendation for the administrative monetary penalty. So I've structured my office that way for a reason, and it also allows a fair process, appeal, and then decision subject to judicial review.

**Mr. Brad Butt:** Here is my last question, just quickly, because I know we're running out of time.

We've had other witnesses come before the committee and indicate that they didn't even know they were under investigation, or their lobbying firm was under investigation, until they got a letter three or four years later saying the case had been closed. How do you notify, or do you notify, individuals or companies that are under investigation by your office? How would somebody know, in whatever province, that a complaint had been lodged against them, you are launching an investigation and conducting one, and you would obviously be back to them when some conclusions are reached or when you need to interview them to get their side of the story or whatever? What process do you use?

I know that in Ontario I don't think you have investigative powers, but maybe the other provinces that do perhaps could answer that.

**Mr. Bradley Odsen:** We have the same provisions in the Alberta legislation as there is in the federal legislation with respect to confidentiality and privacy. So we are faced with much the same kind of an issue with respect to that.

We've only had three instances when there has been a request for an investigation, and in two of those instances we conducted the investigation. The third instance is private, and that's the way it's treated with everybody.

**The Chair:** Ms. Morrison.

**Ms. Lynn Morrison:** You're right that I don't have any investigation powers, but we do receive complaints, and we have established a process where I will notify the alleged lobbyists. I will try to educate them as to what the rules are, as well as the complainants. However, whatever the alleged lobbyist comes back to us with does not go to the one who lodged the complaint. We hope that the education process encourages the registration, but that's as far as we can go.

**The Chair:** We are out of time, but I'm going to allow Monsieur Casgrain and Ms. Denham a brief response.

[*Translation*]

**Mr. François Casgrain:** We won't necessarily notify the people who have been reported. But during audits, we are going to have all the latitude we need to be able to find or provide the evidence. However, quite often, they are aware of this and we are called to meet with them directly. So very seldom are complainants not aware that we are conducting an audit or an investigation. We will carry out an investigation only in very rare cases.

[*English*]

**The Chair:** Ms. Denham.

**Ms. Elizabeth Denham:** Our law says that the lobbyist must be notified and have a chance to respond before any penalty or any finding is made.

**The Chair:** Great.

Before we close, Mr. Fedorak, you mentioned you could provide the clerk with a copy of the B.C. compliance document. That's great. We'll get that translated for members.

I want to thank the commissioners and staff who have come before the committee today. I think your testimony will be invaluable for the committee as they're continuing with the statutory review of the Lobbying Act.

Thank you very much, committee members.

The meeting is adjourned.

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