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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. Welcome, everybody, to meeting number two of the ongoing statutory review of the Lobbying Act.

I want to welcome our witnesses.

Before we proceed, I want to advise the committee that the commissioner has confirmed that she is available to come for the second hour on Thursday, February 16, which is what we had agreed to. We have not yet been able to confirm an appearance by the minister. We have proposed three dates, and at this point the minister is not available on any of those dates and has not come back with an alternative date.

As usual, we will start with our witnesses. Each of our witnesses will have ten minutes to present.

Mr. Andrews?

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

This is just a question. Is there any interest in reviewing whether we'll go back and maybe invite the RCMP to come as well? There has been some discussion, and we've had a few questions on this. Is there a willingness to revisit that one to see whether it's an option?

The Chair: Mr. Andrews, I wonder whether we could defer that discussion. There has been a notice of motion, which I think all committee members will have received, that raises that issue around the RCMP. Let us defer that discussion until our motion is before the committee, which will be on Tuesday.

Mr. Scott Andrews: That's fair enough.

The Chair: Going back to the witnesses, the witnesses will each have ten minutes to present. As usual, for the witnesses' information, the first round provides for seven minutes of questioning from the members, which will include the member's question and the witnesses' response.

We have agreed to start with Ms. Yates.

Ms. Yates, it's your ten minutes.

[*Translation*]

Prof. Stéphanie Yates (Professor, Department of Social and Public Communication, Université du Québec à Montréal): Good morning. I would first like to thank the committee for giving me the opportunity to make a presentation.

From the outset, we can say that the Lobbying Act as passed in 2008 works well, since most lobbyists submit to it in good faith, and that the Registry of Lobbyists is a relevant, credible, accessible and useful source of information.

However, four years after the Lobbying Act was passed, we must conclude that some gaps remain, which, even if they concern relatively marginal issues, fuel cynicism and suspicion among political observers. The statutory review of the Lobbying Act is thus an excellent opportunity to improve the legal framework—

[*English*]

The Chair: Ms. Yates, could you slow down just a little, to allow the interpreter to keep up?

[*Translation*]

Prof. Stéphanie Yates: Okay.

The statutory review of the Lobbying Act is thus an excellent opportunity to improve the legal framework for lobbying and its related activities in order to restore confidence.

My presentation will centre on what we see as three major gaps in the act as it stands: the revolving door, the fact that some activities are not registered, and the lack of transparency for the funding of certain organizations that engage in lobbying activities.

Let us first look at the revolving door. The revolving door problem refers to public office holders (POHs) moving into jobs in the sectors they were responsible for while in office or, conversely, professionals in these sectors becoming POHs.

The revolving door is generally associated with the creation of an influence network that can obtain benefits for its members, particularly through access to inside information from outgoing POHs or the complacency of incoming POHs toward the sector they will regulate and in which they were previously employed.

A number of jurisdictions have tried to better constrain their departures by establishing post-employment rules. These rules impose a waiting period before outgoing POHs can become lobbyists for a sector they were previously regulating. The Lobbying Act seems the strictest in the world in this regard, as it imposes a five-year waiting period on public office holders before they can become lobbyists.

However, it seems that beneath this harsh veneer there are in fact major gaps, of the sort that the spirit of the act is regularly violated. This is a result of the extremely narrow definition of what constitutes a lobbying activity. The Lobbying Act focuses on oral and organized communication with a POH. As a result, a former POH who uses inside knowledge of a file to establish a political strategy for a given client and prepares that client for a possible meeting with one or more POHs would not be lobbying under the restricted definition of the act, so long as the former POH does not communicate personally with the POH in question. Yet, it seems quite clear that in such a situation the client would have a leg up on competitors by having access either to inside information or informal information that fosters the relationship with the POH being lobbied. We believe that both situations are contrary to the spirit of the act, especially the logic behind establishing post-employment rules. Indeed, these concerns call for redefining what constitutes lobbying. We will return to this point.

Second, I would like to look at the issue dealing with activities not included in the Registry of Lobbyists. Under the Lobbying Act, paid lobbyists must register their lobbying activities in the Registry of Lobbyists if lobbying is a significant part of their overall duties. The threshold for deeming lobbying activities to be a significant part of one person's duties was set at 20% of those duties.

In her first five-year report, the Commissioner of Lobbying mentions her concern about the effects of the 20% rule, which seems to be a major obstacle to transparency, as a number of lobbyists are choosing not to register their activities on the basis that they do not reach the 20% threshold. To rectify this problem, the commissioner recommends eliminating the significant part principle so that any lobbying activity must be registered.

Moreover, to ensure that eliminating this threshold does not restrict access to POHs, the commissioner suggests introducing certain exemptions allowing community and charitable organizations not to register.

We have serious reservations about introducing such exemptions. The Quebec legislature took this approach and, as a result, the Quebec legal framework for lobbying does not apply to any person whose job or function consists in lobbying on behalf of an association or other non-profit group. The result is selective transparency and widespread suspicion of for-profit organizations while non-profit organizations are deemed virtuous in advance and thus removed from the dirty practice of influence-peddling. In the spirit of the Quebec law, these organizations do not engage in lobbying; they advocate for the common good. That may be debatable.

● (1105)

Consequently, we think it is quite clear that introducing a series of exemptions would be a definite step backward for transparency. We believe instead that revamping the definition of lobbying is a much more conducive way to close the two gaps just described.

It seems appropriate to expand the definition of lobbying to include consulting, research and strategizing in preparation for actual lobbying activities. The definition of lobbying entrenched in the American act could be a model in this regard because it refers to both contacts and the efforts in support of them, and specifies that these efforts can serve the lobbying activities of others.

By adopting a similar definition, Parliament would also largely address the concerns of the Commissioner of Lobbying regarding the 20% rule.

This expanded definition would encompass activities in preparation for communication with a POH. It is therefore conceivable that paid lobbyists who currently skirt the registration requirement by arguing that they do not reach the 20% threshold would then have to register. Moreover, it is possible that this change would not increase the burden on small organizations, such as community or charitable groups, which do not focus on lobbying. It would therefore be a clear step forward in upholding the spirit of the act.

However, an expanded definition would also undoubtedly have the detrimental effect of applying to the work of former junior-level POHs, such as political staffers, who are likely to be asked to do preparatory work for potential lobbying activities conducted by their superiors, even though this research might not necessarily be based on inside information.

Expanding the definition of lobbying as proposed would prohibit such preparatory work for the five years following the POH's time in office. This may seem excessive. It would be a shame if overly strict post-employment rules, which could be seen as a burden in future careers outside the public sector, become a deterrent to accepting a political staff position.

We should therefore review the scope of the waiting period either by revising the definition of those who are subject to it or by establishing different waiting periods based on the strategic importance of the POH position.

Third, I would like to clarify the nature of certain organizations in the Registry of Lobbyists. While the nature of most entities in the Registry of Lobbyists is clear, the goals of certain less well-known groups may be less clear to the layperson. It is often particularly difficult to determine these groups' funding sources, even on their official platforms.

This lack of transparency is worrying, given the existence of astroturfing. This rapidly growing phenomenon is expressly about pursuing a communications strategy whose true source is hidden and which falsely claims to be citizen-based. Let us think about MONCHOIX in Canada, for example. This so-called citizen-based group that claims the right to smoke in public places is in fact funded by large tobacco companies.

By simply adding to the registry a requirement that organizations reveal their external funding sources when they exceed a certain amount, Parliament could take concrete action on this issue and provide more transparency for one aspect—funding—at the heart of the influence game.

Consequently, we believe this measure would affect only certain organizations, such as coalitions, whose funding sources can be obscure, and especially astroturf groups. By revealing the background of these groups, this measure would do much to curb astroturfing.

Taken together, our observations lead us to make three recommendations to improve the Lobbying Act.

First, we recommend that the definition of lobbying activities be expanded to include activities in preparation for communication with public office holders.

Second, given this first recommendation, we suggest that the scope of the waiting period be changed to account for the circumstances of some POHs, who could see political experience as a major burden to any future career.

Third, to increase transparency regarding the background of certain pressure groups, we recommend that the external funding sources of any organization employing a registered lobbyist be included in the information declared in the Registry of Lobbyists when this funding meets a certain threshold.

● (1110)

I hope that these remarks will be useful to you. Thank you for your attention.

[*English*]

The Chair: Thank you, Ms. Yates.

We'll now go to Mr. Chenier.

Mr. John Chenier (Editor and Publisher, ARC Publications): Thank you for inviting me to appear before the committee on this review.

After writing about lobbying and lobby legislation in Canada and elsewhere for more than 20 years, I've come to the conclusion that reviewing lobby legislation is a bit like taking a long trip with a carload of children. Sooner or later—hopefully later—the inevitable cry of “Are we there yet?” drifts up from the back of the car.

This review of lobby legislation marks the sixth or seventh time—I forget which—that the question “Are we there yet?” has been posed since the legislation with respect to lobbying was passed into law in 1998.

Each review has come to the same conclusion: “No, we are not there yet.”

Part of the reason for that answer is that it has never been clear where the legislation was supposed to take us. We didn't know where we were supposed to go, or what the purpose of lobby legislation was.

Perhaps the ultimate destination was clear to some, but even then, the way to get there remained a mystery, perhaps because the road to get there hadn't been built yet. Maybe it still doesn't exist. It's like the New England saying “You can't get to there from here”.

What have been the course corrections so far? We're requiring more precise, accurate, timely, and current information from lobbyists in each iteration, we've sharpened the definition of lobbying, and we've lengthened the time to charge those in violation of the act from six months to two years to ten years.

The purpose of these revisions has been to ensure compliance by changing the definition and lengthening the time to prosecute violations, and to increase transparency. As a result, we do know much more than we knew back in 1998 about who is attempting to influence government.

Yet with all this time and effort, the registry still cannot give a definitive answer as to who is lobbying for whom and for what ends. Perhaps it may never succeed in this regard. Often attempts to strengthen one aspect of lobby legislation entice lobbyists to make use of hitherto unused or unknown avoidance tactics.

For example, in the U.S., the last major overhaul of lobby legislation by the previous Congress, spurred on by the Abramoff scandal, led to the disappearance of 3,000 people from the registry of lobbyists, but not, I might add, from the D.C. community of lobbyists. Part of that disappearance from the roster was also due to the Obama administration's effort to ban lobbyists from sitting on advisory boards and panels.

In Canada it would appear that strengthening post-employment guidelines may have led to more use of the 20% rule to avoid registering as lobbyists, and avoiding the post-employment ban in the process.

Let me say for the record that I concur with the suggestions or recommendations put forward to this committee by the Commissioner of Lobbying, Ms. Shepherd, on December 13.

I think the 20% rule should be suspended, but I also think it would be necessary, as Ms. Shepherd suggested, to craft some regulations to prevent a deluge of new registrations. You would not want the removal of the 20% rule to force all those many constituents and others who troop up to your offices day in and day out in the increasing number of lobby days to register as lobbyists. On the other hand, it is important to ensure that while the registry should be free of these foot soldiers, it captures the activities of all those involved in organizing these and other grassroots events.

With respect to the enforcement of rule 8 of the code of conflict, which is perhaps the most controversial measure, I think it critically important that this review provide the commissioner a clear and firm mandate in carrying out this difficult task.

I've been a student of public policy making since the 1970s, and I have worked on and off in various government policy units until 1986. When we began publishing *The Lobby Monitor* in 1989, I was aware that having a lobbyist who was known to be in regular contact with the prime minister or the minister working on behalf of a client involved in a file would have a major impact on how those inside government would handle your file.

There is no doubt in my mind that the lobbyists' known connections to political parties matter. They matter to the client, and they are often used as a major marketing tool. They matter to the public officials involved in the file. If they are not astute enough to recognize that, they shouldn't be where they are. They certainly matter to the public in terms of their perspective of how government works.

We will never be able to sever the connection between the world of government relations and politicians, but it is essential that we moderate it.

● (1115)

In my view, the unhealthy situation that existed between 1986 and 2009 was untenable. While it is true that balance may be reached in the internal decision-making process by equalizing opposing lobby forces, that does nothing for the public perception that hiring friends of the party is the way business is done.

In other words, you would often have the situation whereby people would say, “They have their lobbyists and we have ours, and it equalizes out”. Well, that might equalize out on the inside, but from the outside there's still the perception that everyone is hiring friends of the government or friends of politicians to get things done, and that is not a healthy perception.

Lobbying legislation is only one of four pieces of the whole that governs the conduct of government. The others are the conflict of interest code that guides the conduct of public servants, the Office of Conflict of Interest and Ethics Commissioner in the Commons, and the Office of the Senate Ethics Officer. All of these are essential to the health of our political institutions. Proper enforcement of rule 8 is, in my view, necessary for the Office of the Commissioner of Lobbying to fulfill its part in the overall ethics mandate.

Thank you. I'd be happy to answer any questions later.

The Chair: Thank you, Mr. Chenier.

Mr. Conacher, you have 10 minutes.

Mr. Duff Conacher (Board Member, Chairperson, Government Ethics Coalition, Democracy Watch): Thank you very much to the committee for this opportunity to appear before you as the chairperson of the Government Ethics Coalition, which is made up of more than 30 citizens groups from across the country, from various sectors of society, with a total membership of three million Canadians.

You have the submission of the coalition—10 pages with 10 key recommendations. It all adds up to, quite simply, a simple choice: will you strongly recommend changes to the Lobbying Act to end secret, unethical lobbying and to make enforcement effective, or will you ignore the loopholes and leave them open and not make recommendations to close them or to make enforcement effective?

The act is so full of loopholes it should not be called the Lobbying Act; it should be called the “some lobbying by some lobbyists act”, because that's all it requires: disclosure of some lobbying by some lobbyists. Because secret lobbying is legal, unethical lobbying is legal. Secret, unethical lobbying is legal even for cabinet ministers the day after they leave office because of loopholes in the act. They have to be a bit careful about whom they lobby mainly because of rules in the Conflict of Interest Act, not the Lobbying Act. And they have to be a bit careful for whom they lobby and on what they lobby, but they can lobby cabinet ministers, senior government officials, and everyone in the government and the opposition parties and the public service. Cabinet appointees and every government institution can lobby in secret the day after they leave office. That's how bad the situation is.

There are no valid excuses for failing to close the loopholes and failing to strengthen enforcement. You simply have a choice. Will you endorse, as every committee and every party and every government has endorsed right back to Confederation, secret, unethical lobbying and ineffective enforcement, or will you strongly recommend that the loopholes finally be closed and the enforcement be strengthened so that secret, unethical lobbying is illegal? It's not that it will be stopped. People will always try to violate every law that exists. That's not a reason to leave the loopholes open. Some people say you can't legislate morality. They're twisting that saying. That saying means that no matter what you do, some people will be immoral. It doesn't mean you leave loopholes open because some people will be immoral. So you have this choice.

This is the tenth committee hearing for the House or Senate I've attended on this subject since 1993. No committee has made these recommendations; no government has made the changes. No opposition party has ever introduced a private member's bill, but every party in opposition has complained about secret, unethical lobbying.

Will you either continue playing the game that's been going on since 1988 or finally clean up your acts by making the recommendations that will clean up the Lobbying Act and related laws to finally clean up the federal government?

Why should you do this? The Supreme Court of Canada, the Federal Court of Appeal, the UN, the OECD, the World Bank, the IMF, and every other international institution says you don't have a democratic good government if you allow secret, unethical lobbying. If that's not reason enough, how about how you look at yourself in the mirror if you're not going to make these recommendations? What will you say to your children and your grandchildren? That you had a chance to recommend ending one of the most fundamental problems that undermines democratic good government but didn't take that opportunity? Instead, as again every committee has done since 1988, you just kept your eyes closed to secret, unethical lobbying and pretended that everything was fine.

What major changes are needed? The coalition is making 10 recommendations. I'm going to focus on a few of them because the devil truly is in the details.

As you've heard the other two speakers and every other witness talk about, there are loopholes that allow for unregistered secret lobbying. Those loopholes must be closed. But some of them haven't been mentioned before the committee. It's not just the 20% rule that is exploited to lobby in secret. It's also that you can lobby about the enforcement or administration of a law, regulation, code, guideline, policy, subsidy, or tax, and not register. That's a gigantic loophole. Tons of lobbying goes on about enforcement and administration of laws, but no registrations are required for it.

● (1120)

The paid and unpaid lobbying is also a gigantic loophole. All you have to do is arrange to have someone pay you to do other services for them and you do the lobbying for free.

A lot of people have emphasized over the years that they're worried most about these paid lobbyists, that they're the worst. Actually, the unpaid lobbyists are as bad. They are the ones you should worry about more in some ways. They are the cabinet ministers who leave and have their nice gold-plated pensions and make a few calls for friends for free. They have enormous influence on the inside and they don't have to register because they're unpaid.

You either solve this problem by closing these loopholes, including requiring unpaid lobbying to be registered, or, as the Conservatives promised in 2006, you flip the onus and require everyone in government, in every institution—in opposition parties, Parliament, staff, and everyone—to disclose anyone who communicates with them about their decisions.

The only exception to that—and it's really the way the act should have been designed in the first place because then you wouldn't have these loopholes—would be the constituent contacting you about a personal concern every so often. If they were organized and had a little community group and they were pushing, it would be disclosed. Then you would capture it all. Secret and unethical lobbying would be ended because secret lobbying, and therefore unethical lobbying, would be illegal.

Turning to this five-year cooling-off period, it was extended in a kind of blunt move that's a bit unfair to all MPs. It should be changed into a sliding scale.

If you're a backbench MP who is not on a committee, then you would sit out for a certain length of time. It should run from one year to five years. It should cover staff of all politicians as well. They're not covered by any ethics rules at all right now.

Depending on whether you were on a committee or chaired a committee or you were parliamentary secretary, you would go up this scale from one to five years.

That's the fair change to make. The fact that a backbench MP who doesn't even sit on a committee has to sit out for five years after they leave—the same length of time as a cabinet minister—doesn't make sense.

That change should be made, but you should not lower the five-year limit. Five years is appropriate for cabinet ministers and senior government officials. It's the length of time that's needed to have a changeover in government so their influence and access is not as potent as it is when they first leave.

In the enforcement area, you should also make changes to the act that require the commissioner to conduct regular random audits and inspections. The commissioner is sitting back too much and waiting for complaints and not proactively out there checking who is communicating with which institutions. It's basic law enforcement to be doing random, regular inspections. Police officers do it; everyone who is enforcing a law does it.

You have to require the commissioner to do it. Give her the clear power and mandate to do this. As well, in the enforcement area, you should require the commissioner and the Director of Public Prosecutions to be ruling publicly, within a reasonable time period, on every situation that raises issues of violations.

If you look back to 2004, there are dozens of complaints that still haven't been ruled on. We don't even know who the complaints are about. From all evidence, often the commissioner is rejecting some complaints without ever publicly stating they have been rejected. The public has the right to know about all the situations that have arisen and what the ruling was by the commissioner.

As well, in enforcement, a key area is giving the commissioner the power and the mandate to impose penalties. On Tuesday you heard all four commissioners from the provinces say this is necessary, and some are saying it's going to cause some sort of conflict. GRIC, the Government Relations Institute of Canada, was complaining that this might cause a conflict; the RCMP and crown prosecutors might be doing something different from what the commissioner does.

I think they misunderstand it. The administrative penalties are not there for violations of the act that amount to a crime but for administrative violations of the act. There would not be a conflict in terms of investigations and having that power to levy fines.

● (1125)

If this were allowed, the commissioner would be able to proceed and make a ruling rather than waiting for the RCMP and crown prosecutors to bounce it around for three, four, five years before she finally can proceed under the lobbyists' code.

The Chair: Mr. Conacher, I'll ask you to wrap up.

Mr. Duff Conacher: Yes, I was going to. Thank you.

The penalty should also be there for violations of the code, not just of the act.

To remind you again of another reason why these loopholes need to be closed and the enforcement strengthened, in another context about another law, Prime Minister Harper said on February 26, 2009, “It is essential, for deterrence, to have strong penalties that we all know will be enforced.” That's true for all violations of laws. They should be not just tough on crime but tough on undemocratic crimes and violations of laws.

So I urge you to uphold that ethic and make it a situation such that there will be deterrence, because there will be strong rules and strong penalties that we all know will be enforced.

I welcome your questions about any of the details of the submission we've made. Thank you.

● (1130)

The Chair: Thank you, Mr. Conacher.

We'll now go to Mr. Angus for seven minutes.

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

There have been very interesting presentations this morning. I guess one of the things we've been wrestling with is trying to define lobbying so that we have transparency, because if everybody's a lobbyist, then nobody's a lobbyist. That's the concern we have as New Democrats. If everybody who ever comes into my office is treated as a lobbyist, then how's anybody going to go through all the thick woods and figure out who actually is doing the serious business, which is the issue of access to power? That seems to be the fundamental question that has to be addressed.

Mr. Chenier, you talked about how it shouldn't be about friends at a party.

Madame Yates, you talked about the cynicism and suspicion out there.

Mr. Chenier, how do we set up a system? It's never going to be perfect, but it shouldn't be about friends at a party who can make a call and open those doors. That seems to be where we, time and time again, get caught up. Do we have to sweep up every single person in this net to do that, or is there a way we can focus in on ensuring that some people just don't have excessive amounts of access?

Mr. John Chenier: There are two components to this. One is indeed the enforcement of the rules in the code—rule 8, I believe it is. I think the commissioner has been trying her best to make sure that those people who are involved in partisan politics for any party cannot lobby or are banned from lobbying certain groups or members, and that is a step in the right direction.

The other part is, what activities have to be registered? I share your concern that if every person who walked in your door had to register, then probably the registry would be meaningless and the important would be lost in the mundane.

There is, in my view, a definite cut-off point, which is whether or not it is organized. If it is, you have to at least get the organizers and their activities listed on the registry. Again, the lobby days are organized by someone. The people who are coming into your office are quite often organized. They've been trained. They come in with their list of questions or their issues. You're going to be invited to a reception later that evening, and you're going to be talked to again all night by your constituents.

It seems to me, anyway, you can't put all their names on the registry, but you can certainly put down that the railway association or whatever has organized X, and this is what they organized and these are the people they saw, etc.

Mr. Charlie Angus: Mr. Conacher, I guess the issue of the revolving door is a real concern for us. I think what made access to power so disturbing before is that if you were a cabinet minister or you were a deputy minister, you could set up a nice little nest egg in the bureau, walk out, go into private practice, come back four months later and walk out with the prize. That was how things were done.

Now we have a five-year rule, and some people say the five-year rule is not fair. But I think it would send a really bad message to Canadians if we have a rule but we're saying we want to weaken the rule.

You talk about a fairness slide so that we ensure we're not overly penalizing members of Parliament who might want to go back to work even if it's in the non-profit sector. You're talking about a sliding scale. How do we define that sliding scale so that we're not sending a message that we're loosening the real clear rules that were set out under the Accountability Act?

Mr. Duff Conacher: First of all, they're not real clear rules. There's no five-year ban. You can lobby the next day. You just have to be careful—

● (1135)

Mr. Charlie Angus: Yes.

Mr. Duff Conacher: —especially in the first two years as a minister, because of the conflict of interest rules, not the Lobby Act rules, and one year as a senior government official covered by the Conflict of Interest Act.

For anybody else, again, you just have to join a corporation and lobby less than 20% of the time, or, if you have a healthy pension or you are doing other work, lobby for free and you can do it and you don't have to register. So there is no five-year ban; it's a five-year ban on being a registered lobbyist.

Yes, a sliding scale of one to five years, depending on who you are, is what we're suggesting. You would just have categories. If you were not on a committee, just a backbench MP, you'd sit out for one year. But if you joined a committee halfway through your term, then you would be bumped up to one and a half years or two years and just slide it on up, depending on the power, so that on the opposition party side, opposition critics would sit out more than committee members; on the government side, the parliamentary secretaries would sit out more, then ministers of state, then the full cabinet ministers, and the same with staff.

Staff have to be covered. Right now they're not, except in the leader of the opposition's office, in terms of opposition parties. That would really solve things.

A lot of people don't realize that, in terms of loopholes and who has to register, the 20% rule is totally different for an NGO, for a non-profit or any type of organization. At an organization you have to count up all of the time your staff spends lobbying and pretend you're one person. So if you have five staff and they each spend 4.1% of their time lobbying, that's five times 4.1%, which crosses the 20% threshold, and all five have to be listed in the registration.

The 20% rule has always been there to hide corporate lobbying. NGOs have always had a higher threshold of disclosure, which is perverse because they obviously have less power in most situations than the big business lobbyists.

Mr. Charlie Angus: Madam Yates, you made a really interesting reference to astroturfing, because we see how it is completely distorting the public discourse. A perfect example is Ethical Oil, a total front organization. There seems to be a revolving door between the PMO's office, his key cabinet ministers, and this front group.

My question is, does that come under lobbying? It seems that their job is to distort public discourse. They don't actually need to call the minister because they pretty much have worked for them. Does the issue of astroturf organizations come under this, or is this a separate issue that has to be addressed?

The Chair: A brief response, Ms. Yates.

[*Translation*]

Prof. Stéphanie Yates: Yes, these groups have some activities that do not fall under lobbying. They are actually doing lobbying that could be described as indirect, meaning that they make the media aware and then the media might make public office holders aware. Sometimes, these groups communicate with public office holders. I am thinking of Friends of Science, for example, which has been very active. If that's the case and if that needs to be registered in the registry, it would be very easy to simply add a line or a field for those groups to specify what their major sources of funding are.

That would not fully lift the veil on the issue, but it would at least lift some of it, making some of the activities of these groups transparent, including lobbying. In a nutshell, this is a simple measure that would make it possible to partially lift the veil.

[*English*]

The Chair: Thank you, Ms. Yates.

Mr. Del Mastro, seven minutes.

Mr. Dean Del Mastro (Peterborough, CPC): Thanks very much, Madam Chairman.

I'd actually like to pick up on this question of astroturfing, as you've suggested.

I think it's a tremendous recommendation you're making in this regard because I do think groups should have to demonstrate who is funding them. If they appear to be a public interest group that's actually funded by, especially, money outside the country, I think Canadians have a need to be able to see that, so that they can understand what might be motivating that position.

Is there a specific recommendation that you would make in this regard?

You've indicated that when they register they should have to indicate where their funding is coming from, but it would seem to me that it would have to be some kind of an ongoing process so that they would have to indicate if they have money come in. At the point of registration they might not have that money. It might come in at some other point, which could change the nature of that lobby group.

How would you do that? Do you have a specific recommendation on that?

[*Translation*]

Prof. Stéphanie Yates: If we take a look at the American example, groups have to update that information quarterly. In the American context, if they receive funding that exceeds $5,000, they will have to update their registration every three months.

● (1140)

[*English*]

Mr. Dean Del Mastro: All right. You talked about the—

The Chair: Mr. Del Mastro, I think Mr. Conacher wanted in on that briefly.

Mr. Dean Del Mastro: Well, I have second question, and I'd be happy to have Mr. Conacher make a comment on that.

You and Mr. Conacher both talked about the scope of the waiting period. We've heard his recommendations on it, and I'll re-phrase the question to him once I have your answer, but what is it that you're proposing in that regard?

[*Translation*]

Prof. Stéphanie Yates: This actually sort of goes back to what we were saying earlier about how to politically sell the idea of going up a scale from one year to five years. I completely agree with that suggestion.

I think that, if we expanded the definition of lobbying activities, it would be easier to sell this at a political level. Rather than casting a wide net and excluding a number of activities from lobbying, why not expand the definition of lobbying? And then why not change the scope of the waiting period to include those who lobby in a broad sense—including preparation activities, research, and strategizing—and put it all under lobbying? Once we do that, we can change the waiting period based on the strategic nature of the role public office holders play. It really makes no sense that a political staffer who works with the team of the opposition leader is subject to the same rule as a former cabinet minister.

[*English*]

Mr. Dean Del Mastro: Mr. Conacher, in part I've heard people make the argument—and in some ways you witness it here on the Hill—that when you put restrictions in place, like a five-year waiting period, it does have an impact on who applies for jobs here on the Hill, because they begin to worry about their future earning potential and so forth.

One of the things that's been recommended.... And I'd be interested in getting your view on this, because perhaps what you're suggesting could work in tandem with an administrative monetary penalty. If you put in place a sliding scale—and people understand what that is, so they understand what the restriction is on them—and if you were to put in place an administrative monetary penalty so that the commissioner had some teeth in the rules, do you see that these could work in tandem towards a positive kind of outcome?

Mr. Duff Conacher: Oh, very much so.

But I would say that this rumour—that people are not becoming staff of ministers because of the five-year ban—is a rumour. There's never been a case that anyone has ever come forward and said he or she didn't join the government because of the rule. There's no evidence that it is discouraging anyone. In fact, when it was a minority government situation, I think what discouraged people was that they didn't know when there was going to be an election and they didn't know whether they'd still have a job in two years. Would you really move to Ottawa, move your family, become a senior staffer, when you have a situation that is so unsure, because it could last one or one and a half years? That is far more likely to be a reason why people may not have joined Conservative cabinet ministers' offices as staff after these measures came in.

I don't think there's any evidence that five years is too long, but I think it is too long for MPs, and it shouldn't be the same standard. A sliding scale with the administrative monetary penalties would be a good combination.

Just to mention, when you were talking about disclosure of funding, Democracy Watch's and the coalition's recommendation is also that there should be disclosure of how much you spend on a campaign.

When you're asking about updates, there's a requirement for organizations to update any changes in their registration every six months already. That could be moved to quarterly, as in the U.S., but you would at least know every six months whether new money had come in, if you put in this requirement to disclose funding sources.

Mr. Dean Del Mastro: Does Democracy Watch have to register?

Mr. Duff Conacher: No, I actually de-registered it a decade ago, in protest—

Mr. Dean Del Mastro: So you don't actually lobby.

Mr. Duff Conacher: —of the loopholes. I had been before committee three times. Three times the government had said it was not going to close these loopholes. I'm not required to register. I was the only staff person, I wasn't lobbying more than 20% of my time, and I said before a Senate committee actually at one time that I had de-registered and I was not going to register again until it closed the loopholes. I'm not going to just register out of the goodness of my heart, when all sorts of other people are out there doing secret, unregistered lobbying.

● (1145)

Mr. Dean Del Mastro: Some might say that you're not really holding up your own standard.

Mr. Duff Conacher: It's a protest against the loopholes.

Mr. Dean Del Mastro: It's a protest against your own standard.

Mr. Duff Conacher: No, it's not. My standard is to require all lobbying to be disclosed by law. If you're not going to do that, then don't expect people to register, and don't expect me to register. I did it as a civil action protest against the loopholes in the law and the continuing ignorance of those loopholes and failure to close them.

The Chair: You have 15 seconds, Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you.

Mr. Chenier, you said the question that keeps coming up is: are we there yet? What is the destination that we should be heading towards?

The Chair: Give a brief response, Mr. Chenier.

Mr. John Chenier: Total transparency in the policy process would be the 15-second answer.

Mr. Dean Del Mastro: Thank you.

The Chair: Great. Thank you very much.

Mr. Andrews is next for seven minutes.

Mr. Scott Andrews: Thank you, Madam Chair.

Welcome, folks, and thanks for coming today.

Mr. Chenier, I'm going to start with you. In your presentation you talked about knowing the client, and that the clients are well aware of which lobbyists are connected with which political parties. Obviously they further their careers by doing that. A lot of the lobbyists are commentators on radio shows. Some of them actually go out of their way to do commentary. Some of the lobbyists get paid to do commentary, and the more commentary they do, the more connected they are seen to be.

I guess this is where rule 8 comes in. What rules...or how do we curtail this? How do we legislate that you can't do this? It's a really grey area. I don't know if you can help us out there a little bit. Do you get my drift?

Mr. John Chenier: Oh, I get your drift. That is probably the thorniest problem the commissioner has to deal with. You've dealt with war rooms, working on campaigns, and being part of campaign teams. But when you get to this region where someone is a spokesperson for the party in the media, it is obviously a difficult situation.

My own view is that if you wish to be a spokesperson, you shouldn't be a lobbyist. That's the way it should be.

Mr. Scott Andrews: Then some people say they're the official spokesperson, or they're not the official spokesperson.

Mr. John Chenier: It doesn't matter. If you're there representing the views of the party, then you're perceived as being for the party.

Mr. Scott Andrews: Can we put it in the Lobbying Act that they aren't allowed to do that?

Mr. John Chenier: Again, it comes back to how the commissioner interprets rule 8 under the Conflict of Interest Act. She went down that path before the election. She's been challenged on the notion that if I am a spokesperson for the party in the media, I'm not really a spokesperson; I've just been invited by the media, and I'm not really a representative of the party.

Mr. Scott Andrews: Some of them are getting paid by the media to do this.

Mr. John Chenier: Of course you get paid by the media to do this. You're supposed to.

That's not the problem. The problem isn't that the media pays them; it's the fact that they represent the party and they also lobby. They represent the party on a very public stance. Everyone knows that, and it's used in the marketing material.

Mr. Scott Andrews: It's pretty good advertising.

Mr. John Chenier: Right.

It seems to me that if you want to be a commentator on political affairs, that's fine. Just don't be a lobbyist.

Mr. Scott Andrews: Ms. Yates, I want to go back. We started talking about broadening the definition of lobbying. In particular, you touched on government relations firms. In my opinion, they don't lobby—and we're talking about DPOHs if they go to a government relations firm. They advise clients on how to do things. It's not really lobbying because they don't make that contact, but there's significant gain for their clients. It sort of crosses over with the conflict of interest rules.

How do we square the circle? Will broadening the definition cut down on that? I'm finding it difficult to find out how to pinpoint that one.

● (1150)

Prof. Stéphanie Yates: I'm not sure I understand the question. Do you mean if you broaden the definition, what would be the effect?

Mr. Scott Andrews: Would you catch those people who don't actually lobby but wield more influence? Was that your recommendation?

[*Translation*]

Prof. Stéphanie Yates: I think so. If we look at the American definition, it talks about contacts or direct communication with public office holders. But it also talks about all the efforts in support of preparing for those contacts. Of course, people should be penalized if they do not comply with the legislation. With this expanded definition, the commissioner must also have greater power of sanction. Otherwise, it would be at the whim of the lobbyists to say that they do not establish contacts, but that, in the work that they do, this falls under lobbying because they are developing a potential contact. That would be up to them to declare.

What can be done to make sure that this information is in the registry? Well, that is why the commissioner should have the power of sanction and check if those preparatory activities are actually registered. If that's not the case, she should be able to penalize the offenders.

To be clear, I think that this measure—this expanded definition that works well for the United States—should be applied here as long as the commissioner actually has oversight and greater power of sanction when it comes to enforcing the act.

[*English*]

Mr. Scott Andrews: The Conflict of Interest Commissioner.... If a former public officer goes to them and gets cleared from being in a conflict of interest, should the two commissioners work together in any sort of fashion to make sure there's no loophole there?

[*Translation*]

Prof. Stéphanie Yates: That might be something to explore. It sort of goes back to asking ourselves whether public office holders should also register the lobbying activities they are subject to. There might be some cooperation, but I think we have to be careful if we want to require public office holders to disclose lobbying activities as well. That might lead to a significant bureaucratic burden, especially if we also start having rules specifically for public office holders and other people who also have to register the lobbying activities they are subject to.

[*English*]

Mr. Scott Andrews: Thank you very much.

Mr. Conacher, you mentioned loopholes several times and closing these loopholes. I was finding it a little bit difficult to actually pinpoint the loopholes you're talking about. You talked about the 20% rule and then....

First of all, have you read the commissioner's recommendations to us? Are you familiar with all of her recommendations?

Mr. Duff Conacher: Yes.

Mr. Scott Andrews: If we enacted all those recommendations from the commissioner, would that close the loopholes you were talking about?

Mr. Duff Conacher: No, because you would still have the loophole open that if you're unpaid you can lobby in secret. That's very dangerous, because cabinet ministers leave, they have a healthy pension, or they get some other job, and then friends call them and they make calls for their friends, and they don't charge their friends. That's very influential lobbying. They've just left cabinet, they know all the people, and they have to be careful for a couple of years under the Conflict of Interest Act, but they don't have to register to lobby.

Secondly—

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

Could you please conclude?

Mr. Duff Conacher: I'll just say that if you lobby about the enforcement or administration of a law, regulation, or program, you also don't have to register, and the commissioner has not touched that with her recommendations. You do have to look—in terms of a cooling-off period and these rules—at the Conflict of Interest Act.

We'll be applying to come back to the committee to talk about that. It affects what you just talked about with the other witnesses as well. There is a rule that former public office-holders can never share with a client information they learned while on the job. That rule is not being enforced under the Conflict of Interest Act, and if it were, these people who are being hired to just give advice but not actually do the lobbying would not be doing their jobs. That's why they're hired. They're hired to give that secret information they learned on the job.

The Chair: Thank you, Mr. Conacher.

Mr. Mayes you have seven minutes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Madam Chair.

Thank you to the witnesses for being here today.

Our government, since 2006, has tried to address.... I think we've made great strides in trying to provide citizens a more open and transparent government. This exercise today proves we're serious about this and trying to improve the Lobbying Act.

All of you are experts in this field. I'm just wondering if there are any models in other countries you have observed that you feel are good models, or are we leading the way in terms of lobbying?

Mr. Chenier.

● (1155)

Mr. John Chenier: There are so many different ways in which different countries have approached this. The one common feature is that there's always resistance from the lobby community.

I've been watching Europe for the last 10 years, where they have been trying to institute some sort of lobby laws. The lobbying community there is growing like Topsy, especially in Brussels and the European Community.

There is always great resistance.

Similarly, when you pass a law, it's hard to judge the law without judging the application of the law or what the result has been. For example, I could say the law passed in the U.S. by the last Congress —after some terrible scandals—went quite a way. They have fee disclosure and a stronger definition of lobbying and things like that, but still, there's obviously mass avoidance taking place. They have conflict of interest rules as well, but they get around that.

To point to particular legislation, I think you could say the ideal legislation is one thing, but how it's played out or how it's enforced is usually a totally different can of....

Mr. Duff Conacher: I'll speak to that.

The Chair: Mr. Conacher.

Mr. Duff Conacher: The problem with all the provinces that have implemented the law is that they followed the federal model—this has generally been done around the world—wherein the lobbyist is required to disclose lobbying. Then the problems have always been what the definitions are of lobbyist and lobbying. There are huge loopholes.

The way it always should have been done—and no country has done this—is to reverse the onus and have the people in government and in all the parties, all the staffers, disclosing anyone who communicates to them about their decisions. Then you don't run into all these problems, because it doesn't matter whether the person who is doing the communication is paid or unpaid, or doing it 20% of their time or 100% of their time, or whether it's oral or pre-arranged communication. It doesn't matter: it's any type of communication.

So you could reverse the whole onus—that would help—or close the loopholes. I think you can close all the loopholes without any danger of capturing your constituents who are just contacting you every so often about a policy concern by putting in words like "someone who plays a significant role, paid or unpaid, in an organized effort". If they communicate with you in any way, then they have to register. Then you'd have a much better system that would essentially end secret, unethical lobbying.

Also, you could put in a couple of other rules specifically for anyone who has been in government, because an individual calling on behalf of a friend is not an organized effort. It's just a casual call, but you definitely want to cover those people because, again, cabinet ministers are very influential when they leave. They usually can get other jobs and they don't need to be paid to do lobbying. If you don't close that loophole, they won't be captured, and you really want to capture them.

The Chair: Mr. Chenier.

Mr. John Chenier: I just want to add that it's not only "who", but what they're doing, so it goes beyond just having their name on the registry. That's essentially what we had in 1989: a name on the registry. It's also who they're seeing, what they're doing, and why they're doing it, which is the important part of the transparency as well. How much information do you require from the lobbyist in terms of their activities and who they're seeing?

I must say that the last modification of the act took a giant step in forcing the disclosure of who they're seeing. Now, you still don't know who all was at the meeting, and you don't know what they were really talking about, so in terms of transparency we still have a way to go. But it's the activity, as well as the people, that is very important in any legislation.

Mr. Colin Mayes: Is there ethical lobbying and unethical lobbying? For instance, healthy lobbying.... When you're sitting as mayor and getting reports from staff on issues and making decisions from those reports, that's kind of lobbying you as an elected official.

Then you have people who today can access you through the Internet and send you reports on their position, so you're being lobbied again. But I value that. I can look at these issues, balance them out, and understand both sides of the issue on any given subject.

Is it not more important to discern the unethical lobbying, where they're saying, okay, if you do this for me, or if you implement this, you're going to see support politically or financially, or some sort of benefit...? How do you discern that, especially with the technology today and the access they have to the public office holder?

● (1200)

Mr. Duff Conacher: The difficulty, though, is that—

Mr. Colin Mayes: I'd like to hear from Madam Yates first, if you don't mind, as she hasn't had an opportunity.

[*Translation*]

Prof. Stéphanie Yates: Before I answer the question, I'd like to go back to the first one, which was whether there are inspiring examples elsewhere in the world.

I agree that no legislation is necessarily perfect. But to come back to the American example, I think the definition of lobbying adopted by the American legislator seems quite relevant. It includes preparation, strategic advice and calls that aren't strictly lobbying within the meaning of our act, but that fall under this idea of influence.

In fact, people are very cynical when they see a former minister leaving his duties, and becoming a strategic advisor, and not a lobbyist, with a consulting firm the next day. While I'm not saying that the American model is the model to use, when it comes to the definition of lobbying, I think there's something very interesting in that model.

To come back to the question about ethical lobbying compared with non-ethical lobbying, I think there's a significant risk of deviation. I think the Canadian legislation needs to build on transparency. We will get to that stage when we are truly transparent, especially when it comes to ethical and non-ethical activities. In that respect, saying that certain activities from charity or community organizations don't need to be registered because they're obviously ethical may result in some deviation. I think transparency must prevail.

[*English*]

The Chair: We're well out of time on that question. I will allow a very brief response from Mr. Chenier and Mr. Conacher.

Mr. Chenier.

Mr. John Chenier: I have just two points. One, it's easier in the U.S. to define lobbying because lobbying is not tax deductible. Their national customs and revenue has defined what is lobbying and what is lobbying activity, and therefore expenses are not tax deductible.

The other thing is that it's not a question of ethical or unethical; it's a question of people having the choice of whether they want to register the activity or not. It still remains that people can make that choice. They can skirt the law. They can decide, “I'm going to go this way so that I don't have to register or be visible in the process”.

The Chair: Thank you, Mr. Chenier.

Mr. Conacher, just briefly, please.

Mr. Duff Conacher: If you don't have full transparency, if you leave a loophole open, then it will be exploited by unethical lobbyists. So get the full transparency, close all the loopholes, and then the public will decide and be able to track whether unethical lobbying is happening.

The Chair: Thank you, Mr. Conacher.

Monsieur Dusseault, cinq minutes.

[*Translation*]

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

I'd first like to ask Mrs. Yates a question.

You spoke about preparation activities for use with lobbying contacts, which is everything done before the lobbyist as such has gone to see a public office holder. This reminds me a bit of the Stockwell Day story. I think you touched on it briefly, without mentioning it directly. He was the minister and then moved to the private sector to do preparation or consultation work and tried to show the lobbyists how to do the job.

Do you think this should be regulated? I have the impression that these people can open a lot of doors and that they can have a lot of influence, without lobbying themselves, by telling others how to do it and who to go and see.

Prof. Stéphanie Yates: That's right.

I didn't mention that specific example in the brief, but I mentioned a recent example from Quebec. When we talk about the cynicism and suspicion of the population toward politics, it's those type of situations that make sure that people become very cynical toward politics.

I think that by broadening the definition of the word "lobbying", we could include these types of preparation or strategic activities in what constitutes a lobbying activity. Therefore, as someone said, these people should be subject to the same post-mandate rules of five years and, so, could not occupy their job as they are now. This would contribute greatly to revitalizing our political system and restore the public's confidence in all things political.

Mr. Pierre-Luc Dusseault: How would it be disclosed? Would the lobbyist say that the preparation was done by a consultant?

● (1205)

Prof. Stéphanie Yates: As for the methods of disclosure, the legislator would have to look into the matter a little more. But it would be possible to arrive at that. In fact, the five-year rule would say that it couldn't be done because it would constitute lobbying. So there would be no disclosure because the person would simply not do it.

Mr. Pierre-Luc Dusseault: My next question is for Mr. Conacher.

I haven't yet heard you speak about meetings of a somewhat social nature or meetings that were not necessarily planned. For example, I'm thinking about the Albany Club, where Conservatives and ministers meet fairly often. They say that it's for social meetings and that they don't discuss matters as such.

The Albany Club is only one example, but don't you think that this type of meeting should be registered and much more documented?

Mr. Duff Conacher: Thank you. I'll answer in English. My French is rusty.

[*English*]

Yes, all communications that are decisions have to be disclosed. That's the rule that should be in place. It's very important. Again, if the promise had been kept in 2006.... The promise by the Conservatives was that ministers and senior public officials would be required to disclose their contacts with lobbyists—meaning all communications—and instead, only oral and pre-arranged communications are required to be disclosed. Not everyone who is at the meeting has to be disclosed. The commissioners talked about that, and others.

And yes, for any conversation, any type of communication that's about decisions, that has to be the rule; it has to be disclosed on the registry in the communication reports. Again, you're not going to stop it all. You're not going to stop the conversations on the back nine of the golf course—no one is ever going to be able to stop those—but make it illegal, at least, to not register and disclose those conversations.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you.

My next question is for Mr. Chenier.

It concerns the RCMP and its follow-up on the files that the commissioner submits to it. There was no follow-up in any of the cases. Do you think the commissioner should instead be given some authority of investigation and that the commissioner have those files in hand, rather than always entrusting them to the RCMP?

[*English*]

Mr. John Chenier: Yes, on all counts. All the cases that have been referred to the RCMP in the past, including the first one we referred way back in 1992 or 1993, have been dropped for one reason or another, for one technicality or another. Either it was unpaid lobbying or it was beyond the terms. The first one was a six-month rule; it was beyond six months. Then it was beyond two years, which is why we have the ten-year rule now, that you can investigate and lay charges on breaches to the act. Many of these are not what you would call serious enough to the RCMP, at any rate, to warrant a lot of resources.

I concur with what Mr. Conacher said about being proactive. Actually going out and doing audits in terms of whether the activities and the registrations match, with more powers to investigate and have administrative penalties, I think would do wonders for the act.

The Chair: Thank you, Mr. Chenier.

Your time is up, Monsieur Dusseault.

Mr. Dreeshen, for five minutes.

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

I have a couple of points. First of all, there was a comment made by my colleague about Stockwell Day and the work he was doing. I suggest that when you have someone who is trying to show people how they should be following the rules so that they aren't being accused of being secret and unethical lobbyists.... I know he would understand what that situation is. When we just throw that out as an example of something that's bad, I think this is actually an example that would enhance the types of things that you are talking about. If there are changes that come, one would assume that this would also be part of what someone in his position would perhaps talk about.

The other part that I wanted to mention goes back to your comments about backbenchers and whether or not they are on committees. If they are, there should be a four- or five-year, or whatever, timeframe before they or their 20-year-old staffers who come with them to the committees.... I don't think people should be led to believe that it is an occasion that happens once in a while. All backbenchers are on at least one committee—most of us are on two committees—so you can recognize the gravity of what you are saying. It isn't just an occasional thing that backbenchers do.

I guess the other aspect is this. Madam Yates, you spoke about groups where contributions over a certain sum of money.... You felt it was important that that be emphasized, and that there could be updates in case there are dollars coming in from different groups and organizations. That's another issue that I wouldn't mind getting a little bit more information on.

Mr. Conacher had a comment first, if you want to start.

● (1210)

Mr. Duff Conacher: Sure.

When this committee looks at the Conflict of Interest Act, which I imagine will be on your agenda soon, because the five-year review deadline is coming up, you will have this issue. You will be looking at this rule that says that former public office holders covered by that act are never allowed to give advice to any client, ever, using information they learned on the job that is not accessible to the public.

That's the question to ask about what people like Stockwell Day are doing. Are they giving advice without using any of the information they learned while cabinet ministers that is not accessible to the public? What is being done to enforce that rule? The Ethics Commissioner is not doing any audits. And former public office holders don't even have to inform her when they leave office. She doesn't even know where they've gone and what they're doing, in many cases.

It's actually a Conflict of Interest Act rule. That's why I urge you to make changes not just to the Lobbying Act. Make relevant and related changes to the other laws. These two laws very much work together, and there are some conflicts between them now and lots of questions about enforcement, on both sides.

Mr. Earl Dreeshen: Madame Yates.

[*Translation*]

Prof. Stéphanie Yates: We're talking about the distrust and cynicism of the public toward politics. But if these groups had to disclose their sources of funding, there would be much more transparency. We've recently heard in the media about Friends of Science, which presented itself as a group that questions the role of human activity on climate change. The group is made up of scientists and researchers from the University of Calgary. Finally, it came out that the group was funded in part by a company in the energy sector, Talisman Energy.

I think this type of situation contributes to building the distrust of the public toward politics. We should simply add a field to the registry and require groups that engage in lobbying to reveal their major sources of funding so we can know which backer has an influence on their lobbying activities. It's a simple change that could help reduce the public's distrust.

[*English*]

The Chair: Mr. Dreeshen, you have 20 seconds.

Mr. Earl Dreeshen: Thank you. I really don't have enough time to go back into a lot of this.

Mr. Conacher, you suggest the concept of transparency, and you look at suspicion. You have already indicated that because you choose not to register, you are suggesting that you feel there's something wrong. Are there other people in your organization, then, who are lobbying who you demand follow the rules? Is this simply something you do yourself?

Mr. Duff Conacher: No. As I mentioned, I was the only staff person. I'm now a board member of Democracy Watch.

I have very publicly stated that since I was here three times, pointing out the loopholes, and the government refused each time, I was going to de-register, because I didn't have to be registered, and that until the loopholes were closed, I would not register again.

I have been before committee three more times, and every time the committee and the government have continued to ignore the loopholes and have allowed secret, unethical lobbying.

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

Monsieur Morin pour cinq minutes.

[*Translation*]

Mr. Dany Morin (Chicoutimi—Le Fjord, NDP): Thank you, Madam Chair.

It's clear, as Mr. Conacher said, that this act has far too many loopholes. The Conservative government is being lax when it comes to lobbying, which was also the case with the previous Liberal government.

My question is for Mrs. Yates.

You're quite familiar with the topic. For 2010-2011, only 5,129 lobbyists registered in the Registry of Lobbyists. Do you really think only 5,129 lobbyists are engaging in lobbying activities in Ottawa?

● (1215)

Prof. Stéphanie Yates: This question refers back to the famous definition of what constitutes lobbying. If we consider that it's a communication activity, so contact between a lobbyist and a public office holder, 5,000 may seem an appropriate or logical number. But if we take into account all the preparation behind these activities, I think it's fair to say that the number of people hired by this industry is much higher than that. I think a broadened definition would allow us to take into account all those people whose work contributes to the single contact or the single communication.

Mr. Dany Morin: Thank you.

The way I understand it, true lobbying is much broader. There are a lot of people who do not register. It's interesting.

Last Tuesday, the commissioner for British Columbia said that when its members instituted administrative penalties in their legislature, registration in their registry increased by 70%. I think there must be a coercive effect. When people realize that they aren't required to register for various reasons, they find loopholes to get out of doing so. They don't register so that they might avoid the paperwork or avoid being in problematic situations. I think it's very important, and I think you agree with that, that this needs to be broadened.

Do you also agree with administrative penalties?

Prof. Stéphanie Yates: Absolutely.

I concluded my brief with that aspect. I think the commissioner's concerns are founded, in that she conducted reviews and inquiries, and that didn't necessarily resonate with the RCMP for various reasons. There should really be a regime that I believe she calls an intermediate regime, where we would have administrative penalties that would target breaches of the act and the code of conduct.

Mr. Dany Morin: Thank you.

You also mentioned that eliminating provisions relating to the significant part of a person's duties—so 20%—is a good thing. But I have a small problem with that. Don't you think that this will lead to a gap between the lobbying activities of large firms, which dedicate 100% of their time to lobbying, and small non-profit organizations that meet with a public office holder once or twice a year?

Prof. Stéphanie Yates: In my brief, I clearly stated that I am in favour of keeping the concept of the 20% threshold. I think it's important to keep it just so we can target lobbying as it is currently understood, including preparation activities, and not the lone citizen who meets with his or her MP twice a year. The threshold is operational. It's possible to keep it, but we need to plug the gaps by broadening the definition of lobbying.

Mr. Dany Morin: Thank you very much for those clarifications.

Since we're talking about improvements that we could make to the Lobbying Act, I'd like to know whether you think some aspects should remain intact because they work well and should not be changed.

Prof. Stéphanie Yates: I think a lot of improvements were made when the act was reviewed in 2008. The very fact that the commissioner is independent is, in my opinion, an essential ingredient to the proper functioning of the act.

Also, when we compare the various registries, it's obvious that the Canadian registry is fairly complete, even though I support the fact that we should perhaps add certain fields, particularly to clarify the funding of certain organizations. Nevertheless, the registry generally includes much more relevant and useful information.

Mr. Dany Morin: Okay.

Mr. Conacher, did you want to add anything?

[*English*]

Mr. Duff Conacher: If I could say one brief thing about administrative penalties, a representative from the Government Relations Institute of Canada, when he testified, and also Joe Jordan, both said that when the commissioner reports that someone's violated the lobbyists' code, it's a serious penalty and no one would want to hire that person again. That's simply not a true claim. Michael McSweeney of the Cement Association of Canada was found to violate rule 8 of the Lobbyists' Code of Conduct and then he was promoted by the association to be president and CEO.

Will Stewart, in the same situation, when he was found guilty by the commissioner of violating the code for assisting Lisa Raitt with a fundraising event...I checked the registry and he has not lost one client since he was found to be in violation of the code. So that's an argument as to why administrative penalties are definitely needed.

In terms of what you should definitely not recommend changing, the Government Relations Institute of Canada said, "We're not talking about simpler rules or looser rules", when they were here, but they are, actually. They want rule 8 gutted and turned over to the Ethics Commissioner. If that's done, then lobbyists will be allowed to do whatever they want for politicians and public officials they are lobbying, and also to give anything they want to them, because the Ethics Commissioner says there's no conflict of interest created when lobbyists fund raise for politicians they're lobbying and things like that. So the GRIC does want looser, weaker rules, and you should not gut rule 8. It's the most important thing.

● (1220)

The Chair: Thank you, Mr. Conacher.

Mr. Duff Conacher: We spent 10 years in court trying to finally get it enforced, and if it's gutted now, you're going back to the free-for-all where they'll be trading favours again, as there was back to Confederation.

The Chair: Thank you, Mr. Conacher.

Mr. Chenier, we're over time, but did you have a very brief comment on this?

Mr. John Chenier: Very brief, the difficulty has always been to define what lobbying is. That has always been the loophole that people have used. It was initially an attempt to influence, and, therefore, for the first 10 years we had lobbyists calling to just get information—they weren't attempting to influence a decision—and then they would advise their clients. They did not have to register at all for that activity.

When the attempt to influence was removed and it became just contacting a public official, that brought more people out to register. But it seems to me that the definition of lobbying, as Ms. Yates has said, has to be expanded to include the preparatory work, the strategizing, and everything else, which is what good people do.

The Chair: Thank you, Mr. Chenier.

Mrs. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Madam Chair, and my thanks to our witnesses here today. We've certainly seen some interesting presentations.

I'd like to go back, Mr. Chenier, to the definition of lobbying. You were just getting started on telling us a little bit about it.

Ms. Yates, you said you would support keeping the 20% rule but broaden its definition.

I would ask each of you to expand on how you would broaden that definition. Some of the witnesses talked about travel time being included in that 20%. Maybe you could address that as well.

Mr. John Chenier: I'm afraid I have to disagree somewhat with Ms. Yates on the 20% rule. I think it does have to be changed. I think it does have to be removed, and removed in such a way that we don't include all the people who are coming on lobby days, like constituents. On the other hand, it does capture what I consider to be the major loophole—people coming and being very active and effective in a campaign for maybe two or three days, but not appearing at all on the registry.

As to the definition of lobbying, the lobby community, by and large, from the period, say, 1889 to 2000, chose whether or not they wanted to register. They chose whether they wanted to be visible on the registry or not. It was not compulsory for most of the paid consultant lobbyists, because they don't really do a lot of lobbying on their own. They do a lot of information gathering, and they know who to see. As long as you didn't have to arrange the meetings, you didn't have to register. They could, as we say, take on an undertaking, advise the client, design the lobby campaign, tell everybody who to see, gather all the information that they needed about where the government stood on the issue, who was going to make the decision, when it was going to be made, and then bring in the troops, normally the client who understood the issue, to visit the government officials.

As long as the other people made the arrangements for these meetings, this was not registered activity. They could come to town, spend three to five days making their case, press their issue, leave town, and there would be no trace of that lobby campaign happening. None. Legally, it was not required.

When they changed the rule from an attempt to influence to contacting a public official, then that activity became visible. If you were contacting a public official to get information, you were skirting it whether or not you decided to register. Most people decided to register.

We still have people who can plan a strategy, know who to speak to, advise people who to talk to, what the issues are, get people to find the current information—and they don't appear in the registry at all. That comes down to your definition of lobbying.

If you have an undertaking, and you're advising a client on what to do, then, to me, that's lobbying. Whether or not you actually do the personal contacting is irrelevant.

● (1225)

[*Translation*]

Prof. Stéphanie Yates: As for the 20% rule, I think the objective is the same. We want to be able to target the true lobbyists and ensure that the individual citizen or single community organization that knocks on an MP's door once or twice every six months doesn't have to register.

Mr. Chenier said that rules need to be made to establish that distinction between true lobbyists and occasional lobbyists, if we can call them that. The 20% rule is just a tool. It isn't perfect, but it's what we found. A distinction is made by saying that if someone lobbies for more than 20% of their time, that person is a true lobbyist. The problem is that, since the definition includes only that part of the communication with the public office holder, that means that all the activities that Mr. Chenier was talking about are not taken into consideration. If we broaden the definition to include all those activities, including the travel expenses, I think that most of the lobbyists would very quickly reach that 20% threshold. Then we would be able to make the distinction between true lobbyists and occasional lobbyists, who go and see his or her MP once every six months. That person would very likely not reach the 20% rate and would not have to register. The 20% rule isn't perfect and people can always try to get around it, but by broadening the definition, I think we'd be able to respect the spirit of the act behind that rule.

Let's go back to what shouldn't be changed, which is the question the member asked. In Quebec, we have a distinction between the lobbying done by profit-oriented organizations and lobbying done by non-profit organizations. As I wrote in my brief, this creates a two-tier system. It gives selective transparency and, in my opinion, the last thing we want to do is eliminate the 20% rule, which would introduce this two-tier system where non-profit organizations would not have to register. That's the danger of eliminating the 20% rule.

To wrap up, in the United States, the fourth largest lobby is the American Association of Retired Persons, a non-profit organization. Among the things that should not change, above all else, it's introducing this distinction.

[*English*]

The Chair: Thank you, Ms. Yates.

We're well over time, Mrs. Davidson.

Monsieur Dusseault, pour cinq minutes.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Madam Chair.

I still have a few quick questions to ask.

First, I found the Bruce Carson matter particularly surprising when I heard about it through the significant media coverage it got. At the time, there were very minimal penalties, if any. But if there were penalties, how much could they be? For example, Mr. Carson engaged in lobbying and could have had a contract for about $250 million. do you really think that small penalties—I think it's $25,000 in British Columbia and in Ontario—would be enough? Do you think that people who lobby for such large contracts and for so much money are really going to fear those penalties?

[*English*]

Mr. Duff Conacher: The Bruce Carson situation points out two things. First, the media found it out, not the Commissioner of Lobbying. It's part of the scandal that no audits are being done to find out who's even meeting with ministers. I mean, that would be a very simple thing. The commissioner currently has the power to do that under her general enforcement administrative powers, but she's not. She's sitting back and waiting for the media to discover situations.

Second, if someone is going to profit greatly from a contract, it doesn't mean you need to have a penalty that equals the size of the contract to get them to register, as long as it's a significant penalty. You heard the commissioners in three provinces say they already have that power, and the Ontario commissioner wants it.

A penalty of $25,000 is adequate, I think. You can't go too high or it becomes quasi-criminal, and then you have an issue of whether an administrative tribunal can, under the charter, levy such a high penalty. So there is a dollar amount above which you can't really go, or you'll get into the problem of having an administrative tribunal with the power to levy that penalty.

● (1230)

Mr. John Chenier: I would also say that having the power to fine someone communicates a message to the public as well. If there's a $25,000 penalty and the penalty is indeed applied, then people say, "Oh, wow, the maximum was applied here."

But when you have no penalties whatsoever, other than a mentioning, it's sort of like, "Tsk, tsk. That's really bad." It gives the wrong impression as to whether this is really bad or really good. Having that penalty in place and imposing it communicates a message beyond the monetary amount.

The Chair: We're going to Ms. Yates first and then we'll come back to Mr. Conacher.

[*Translation*]

Prof. Stéphanie Yates: Very briefly, I want to point out that I support what you just said. I think the symbolic aspect of the financial penalty is also important. For administrative reasons, I think that I would trust in what is done in other jurisdictions.

Mr. Pierre-Luc Dusseault: Perhaps I could make a brief comment.

[*English*]

Mr. Duff Conacher: Very briefly, if you don't want to come back in five years and say, we have administrative penalties now, and they're not really working, make them minimum penalties, not maximum. If there is a maximum penalty of $25,000, then you'll see the commissioner levy penalties of $500 for the next five years. Set some standards for various violations such that there will be minimum amounts paid, for sure, and require her to impose them.

[*Translation*]

Mr. Pierre-Luc Dusseault: I want to add a brief comment about what you said before, Mrs. Yates, about the 20% issue.

You seem to agree with keeping a certain percentage, 20% for example, if the definition is broadened, which means that the true lobbyists, with all the work they do, would dedicate 20% of their time to it. But I have a quick question about those lobbyists who are very influential and who, perhaps with 5% of their time and with no preparation or perhaps by communicating by telephone, are really engaging in very influential lobbying. But they are not dedicating 20% of their time to it. The definition may be very broad, but yet it would mean that some very influential people are still going to fly under the radar because they are not dedicating 20% of their time to it.

Prof. Stéphanie Yates: All the same, it's important to mention that the act stipulates that it's either the person him or herself who reaches this 20% threshold or a group of people within the same organization. So it's cumulative. If four people each lobby for 5% of their time, the 20% threshold is reached. In that regard, the 20% proportion is clearly a rule and it can't be perfect. Perhaps it could be reduced to 15%. We should look into that. But the fact that it's cumulative makes it possible to avoid such a situation. A person who makes an important call that accounts for only 5% of his or her activities generally works within an organization where other people will also engage in lobbying activities. So the 20% threshold can be reached cumulatively and very quickly.

[*English*]

The Chair: Your time is up, Monsieur Dusseault. Thank you.

Mr. Butt, you have five minutes.

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

Thank you, witnesses, for being here today.

Under the current legislation we have a very broad definition of "designated public office holder"; it covers a whole bunch of people. In your view, is it enough? Is it too broad? Should it be more specific? Should fewer office holders be covered?

There is an argument that's made that some of us, because we're sitting on the back bench, perhaps don't have as much influence as a cabinet minister or a parliamentary secretary or people working in the Prime Minister's Office would have. Are you satisfied with the current definition of who is covered under the DPOH, or do you think it should be broader or narrower, from each of your perspectives?

Mr. Duff Conacher: For the purpose of transparency, I think it should be as broad as it is. And it does cover staff. That's good, because you wouldn't want to allow a politician to be indirectly lobbied by having the person lobby that person's staff and not register the contact because the registration is not required.

For the purpose of the cooling-off period, as I've suggested there should be a sliding scale. Bring some fairness into that part of the act.

It was really the only way, without going through passing a bill, that the government could deal with the issue of requiring communications to be disclosed in response to the Rahim Jaffer situation, but it was too blunt, because it then also extended the five-year cooling off period to every single MP. Again, there should be a sliding scale, based on your power and influence.

● (1235)

Mr. John Chenier: Yes, I think it should be expanded one more level in the federal public service. Right now it stops at the ADM level, and most policy analysis and development is done below that level, so most of the lobbying is directed at people below that level. You try to get to the person who's holding the pen as often as possible.

I would suggest, if I were doing it, that it should be down to the director general level and further. Unfortunately, then you start to really crowd up the registry. But certainly the director general level would be a step in the right direction.

Also, it's very unclear—to me, anyway, and I think to lobbyists as well—what needs to be reported. I think we need greater clarity about what contacts with public office holders need to be reported.

[*Translation*]

Prof. Stéphanie Yates: I agree with my two colleagues. From a perspective of transparency, I think the idea is not to reduce, but to keep that broad definition, at the cost of broadening certain other positions. However, it's important to take the concept of the waiting period into account. I think a five-year waiting period is extremely excessive for a political advisor of the leader of the official opposition who did not necessarily have access to privileged information. It seems essential to me to introduce that scale.

[*English*]

Mr. Brad Butt: Fair enough.

We've talked a little bit about the difference between a formal, pre-arranged meeting—somebody books a meeting, they come to my office, they tell me what their view of the world is, they register that meeting, they go away—versus me casually bumping into someone somewhere: I happen to be at the same restaurant they're at, they come over to the table for two seconds and mention something to me as a DPOH.

How do you see those casual contacts? We bump into 50 or 60 people a day. I can't keep track of what everybody has said to me on every single day on all kinds of different issues in a casual sense versus a structured meeting, whether physically sitting down with me and we're going through something....

How do you propose that type of contact or communication being registered? How is the lobbyist—and if the decision is that MPs have to keep track of those as well so that there are some checks and balances, which I think some of the witnesses have said might be an option for us to look at, how are we going to keep track of all of that?

Mr. Duff Conacher: The lobbyist will disclose it. That's what the Internet is for. The government has just trumpeted the fact that 250,000 data sets from StatsCan have been put up online and now are searchable in broad data form so that people can manipulate them and put them into applications for mobile phones.

It's easy. If they're required to disclose all communications, these people will disclose all communications.

If you leave a loophole, the loophole will be exploited. There's a loophole left in the U.S. where you're not allowed to buy a politician a sit-down dinner. Now they go and stand at the bar and eat snack food. That's not considered dinner food.

You can't leave those loopholes open. They will be exploited.

The Chair: Thank you.

Ms. Yates and Mr. Chenier, I'll allow you a brief comment, because we're over time.

[*Translation*]

Prof. Stéphanie Yates: The question is quite relevant. I would tend to eliminate the distinction between arranged communications and communications that have not been arranged. All communications should be registered in the registry.

I know that the fact that public office holders also have to report communications they have been party to has also been much discussed by this committee. I wouldn't try to go that route, quite simply because of the bureaucratic burden it would lead to. You are all very busy people. If you had to report all those communications, I think it would be very burdensome and would not necessarily be the best way to invest taxpayers' money.

[*English*]

The Chair: Thank you, Ms. Yates.

Mr. Chenier.

Mr. John Chenier: I guess I would say you should know when you're being lobbied or not, whether it's casual or not. You're going to say that a short encounter on the street is not a lobby, but if someone sort of pins you down and for 10 or 15 minutes explains their position, whether they ran into you in a restaurant or whether they're in your office, you would know that they're lobbying.

The Chair: Thank you, Mr. Chenier.

Mr. Andrews, for five minutes.

Mr. Scott Andrews: I'm going to come back to that debate in a second, but I want to finish my conversation with Mr. Conacher that we started earlier.

You said you support the recommendations the commissioner has made. They're solid recommendations. The ones over and above the commissioner...you talked about the volunteer lobbying. Is that the only one?

When you talk about volunteer lobbying, and one friend calls another friend to offer advice, do you have any evidence that this is actually going on?

● (1240)

Mr. Duff Conacher: The problem with this issue is that what's going on is secret, so everyone says it doesn't exist. There have been rumours in the past, for example, of corporations using retired executives who were no longer employees of the corporation to do their lobbying, so it didn't have to be registered. They were being paid a pension, but they weren't being paid as an employee, and therefore did not have to register those calls, even though they might have spent more than 20% of their retired time doing it.

Mr. Scott Andrews: If one friend calls another friend, how are you going to catch that?

Mr. Duff Conacher: You make it illegal. That's the best you can do. You will never end either secret donations or secret lobbying, no matter what regime you ever put in. You will always have Swiss bank accounts and bank accounts in other countries with secret money in them, and you will always have secret lobbying. But make it illegal. Require all the communications to be disclosed.

The commissioner is not requiring all communications to be disclosed. That's one of the flaws with her recommendations. There's just absolutely no reason for it. A person contacts you about your decisions...and I agree with what Mr. Chenier said. At whatever level you're in, in the public service or opposition party or government, if they're contacting you about your decisions and communicating with you in any way about your decisions, require them, paid or unpaid... if it's about the enforcement or the administration or the changing of a law, whether it's 20% of the time or 100% time, require them to disclose it. That's what the Internet is for. It will be searchable and people will be able to track who—

Mr. Scott Andrews: As a lawmaker, I find it difficult to make a law that you can't enforce.

Mr. Duff Conacher: You can't legislate morality. Every law is violated by someone. If you use that argument, by analogy you would never pass any laws and would cancel all the laws that we have.

Mr. Scott Andrews: Most laws that you make are enforceable, and you can get to the bottom of something.

Mr. Duff Conacher: Right, so what we have now—

Mr. Scott Andrews: What you're proposing is.... You can't catch anybody.

Mr. Duff Conacher: No. What we have now is a system like a stop sign on a rural road at midnight. If you go through it, there is no one sitting there watching, because one car goes through every half hour. That's the enforcement system and those are the rules that we currently have.

You need to make it more like some of the toughest rules and laws and the toughest enforcement systems that we have. You have a better chance of getting caught parking illegally in any city in Canada than you have as a former cabinet minister doing secret, illegal lobbying.

That's perverse.

Mr. Scott Andrews: Okay. Let's just park that one for a minute.

Outside the recommendations by the commissioner, is that the only other, additional recommendation you'd make?

Mr. Duff Conacher: No. Also, as I have said in terms of enforcement, she's not doing any audits. She's sitting back and not reporting on what she's doing regularly, so that we don't even know whether she's doing her job properly. I'll have more on that next week, actually—an analysis for you that you can ask questions about when she's here on the 16th.

There are lots of complaints that have not ever been ruled on for years and years, as well as other issues requiring disclosure—amounts spent on lobbying efforts....

Mr. Scott Andrews: Could you, after you leave, summarize your specific recommendations?

Mr. Duff Conacher: We have our submission, and the very first page of it has the ten recommendations.

Mr. Scott Andrews: Okay. Getting back to the public office holders, I've asked the question a couple of times now about closing the circle—putting some onus on us to report, so that someone can match up the context. Do you see value in that? Is this something we should be doing now?

The Chair: You have 30 seconds left, so I'm going to ask the three of you to give a brief response each.

Mr. Chenier.

Mr. John Chenier: I believe there is a component of the act right now that allows the commissioner to call a public office holder to see whether these reports jibe. One could attack this either by having a more proactive commissioner or by requiring public office holders to disclose.

The Chair: Ms. Yates.

[*Translation*]

Prof. Stéphanie Yates: In an ideal world, I would say yes, but given the bureaucratic burden it would create, I'll say no.

[*English*]

The Chair: Mr. Conacher.

Mr. Duff Conacher: I don't see any reason why. We have this thing called the Internet. It's searchable. It's very easy to upload stuff. There's no great burden to putting more information on the Internet.

● (1245)

The Chair: Thank you.

Mr. Del Mastro.

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

Some of the comments that have been made today, I have to say, are bordering on ridiculous. If something is secret, illegal, I have no idea how you can possibly confirm that these things even occur. If they do, I'm certainly not aware of them, and if it is secret, you're not aware of it.

It seems to me that you're impugning the reputations of a lot of good people. In fact, I would argue that some of the things you're suggesting, Mr. Conacher, would actually persuade good people not to even run for public office, because you want to track people, after they leave office, into their private life. I just think there are a lot of good people who probably have an interest in this file who are listening to this committee and are probably saying, "My goodness, once again I'm being painted with a brush of somehow being sleazy or unethical."

There are people who work in GR who are just good people. Their morals are not, in my view, something most Canadians would have any.... Their motives and their morals and everything about them is decent, and they provide a public service. It seems to me that in some of your testimony what you're suggesting is that Ottawa is run and influenced by a bunch of secret, sleazy influence-peddlers who are in fact directing money.

I have to tell you, I've been here six years, and that is not my experience.

Mr. Duff Conacher: Actually, I haven't said anything that you've attributed to me. I have said that the system would not catch anyone doing that. That's all I have said. I haven't said anyone is doing it; I haven't said anyone has the motive to do it. The system would not catch them.

In terms of five years after you leave, if you're a former public office holder, you have to report during that five-year cooling-off period to the Commissioner of Lobbying, if you are doing lobbying. The law already covers people in the five years into their private lives; the Conservatives brought that in. I guess you disagree with your government's own bill that made that change, which according to you invades people's lives for five years after they leave office.

Mr. Dean Del Mastro: No, I was making that comment, in fairness—

Mr. Duff Conacher: No: the fundamental issue is conflict of interest. We're trying to prevent conflicts of interest. We're trying to have ethical government that's open, and the system does not require open, ethical government right now. The commissioner is not doing audits, so it's very easy for a former cabinet minister to be doing communications. And they can do them without having to register. It's all legal.

As a result, you have a system that's wide open to abuse. But I have not said once that anyone is abusing it. I've said the system is the scandal because it allows for abuse—legally.

Mr. Dean Del Mastro: But I think it's fair to say that in your communications, you're leading people to believe that these holes are there, and that because these holes are there, these things are happening.

Mr. Duff Conacher: I have never said it.

Mr. Dean Del Mastro: Well, but that's—

Mr. Duff Conacher: I have never said it in the last 18 years.

The Chair: Mr. Del Mastro has the floor.

Mr. Dean Del Mastro: Thank you.

The Chair: Mr. Conacher will have an opportunity to respond.

Mr. Dean Del Mastro: I'm just suggesting that the innuendo in your comments leads people to believe that this is the system we have in Ottawa, and it's not.

Mr. Duff Conacher: You're inferring something that I have not implied.

Mr. Dean Del Mastro: Okay. Fine.

I do want to ask you about rule 8. People who are opposed to rule 8, or who certainly find rule 8 confusing because it isn't always applied consistently, or, if it's applied consistently, are not always aware of what the rules are, contend that they are voters, that they have democratic rights, and that participating in their democracy is not something that they feel they should be excluded from.

I'm sympathetic to that argument. I understand your concern around how loyalties may in fact affect people's judgment later on, but I haven't seen that.

Now, what would you say to these individuals who are in fact covered by rule 8...? And by the way, I'm not suggesting that we repeal rule 8.

Could you respond to their argument that it's taking away their democratic right to participate in democracy?

Mr. Duff Conacher: The Federal Court of Appeal has already ruled unanimously on that and said that you have to prevent conflicts of interest. You don't have democratic good government if you don't. And when a lobbyist does something that causes the politician or public official to feel an obligation to return the favour because it's a gift, or it's services provided, it's fundraising or whatever, then the lobbyist has crossed the line and created a conflict of interest.

Every Supreme Court ruling, every court ruling in most developed countries in the world, says the same thing, at the UN, the OECD, all the standards: you have to prevent conflicts of interest. And rule 8 does, finally; after we spent nine years in court to finally get a Federal Court of Appeal ruling, they rejected an old interpretation of rule 8 that didn't prevent anything. It didn't prevent lobbyists from doing anything.

● (1250)

The Chair: Thank you, Mr. Conacher.

Mr. Duff Conacher: So now it's finally in force, and it has to be upheld.

Mr. Dean Del Mastro: Thank you.

The Chair: Thank you, Mr. Del Mastro and Mr. Conacher.

I have one brief question for you, Ms. Yates. You were talking about the 20% rule and maintaining it. Some other witnesses had raised the issue around travel time, and you mentioned travel time.

Those of us from the western part of this country can take up to ten hours of travel, and somebody who's in downtown Ottawa can drive across the street. Are you still suggesting that travel time is included in the activities? How do you compensate for the vastly different travel schedules in this huge country of ours?

[*Translation*]

Prof. Stéphanie Yates: In the definition of lobbying, I would include all the preparation activities. If the definition of lobbying was broadened to include all those preparation activities, the time spent travelling would become a relatively minor component, whether it's one hour or 10. If we included all the preparation time, I think it wouldn't necessarily become a discriminating factor. There would be many other activities and other efforts to consider. Under those conditions, travel would be included in the same category as preparation. In short, as part of a broadened definition, I don't think the time allocated for travel would become a discriminating factor.

[*English*]

The Chair: Great. Thanks, Ms. Yates.

I want to thank our witnesses for coming today and for providing some challenging questions and comments for the committee to consider.

I want to thank you, committee members, for your participation.

The meeting is adjourned until Tuesday.

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