HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 023 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, February 14, 2012

Chair

Ms. Jean Crowder

Standing Committee on Access to Information, Privacy and Ethics

Tuesday, February 14, 2012

● (1130)

[*English*]

The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): Good morning. Welcome to meeting number 23 on the statutory review of the Lobbying Act. Welcome to our witnesses.

Witnesses, for your information, I expect your presentations to be 10 minutes long for each witness, for the Canadian Bar Association and the professor.

When we come to the question and answer portion of our meeting, the first round of questioning will be seven minutes, and that will include both the member's question to you and your response, and I will cut you off if necessary.

I will begin with the Canadian Bar Association. I don't know who's taking the lead, but would you also introduce your colleagues? Thank you.

Ms. Judy Hunter (Lawyer, Legislation and Law Reform, Canadian Bar Association): Yes, I will. Thank you very much.

Good morning, committee members.

My name is Judy Hunter. I'm a staff lawyer with the Canadian Bar Association. I want to thank you for the invitation to present the CBA's views to you today on the five-year statutory review of the Lobbying Act.

I'd like to tell you a little bit about the CBA. It's a national association of over 37,000 lawyers, law students, notaries, and academics, and an important aspect of the CBA's mandate is seeking improvements in the law and the administration of justice. That is the perspective from which we appear before you today.

The CBA's brief was prepared by members of an ad hoc working group composed of lawyers with special knowledge of and expertise in the Lobbying Act, including Mr. Jack Hughes and Mr. Guy Giorno. Mr. Giorno will begin and will be followed by Mr. Hughes. Both are prepared to answer any questions from the committee.

Thank you.

[*Translation*]

Mr. Guy Giorno (Member, Canadian Bar Association): Passage of this law reflected Parliament's determination that lobbyist registration and reporting were necessary to principles of democracy, the rule of law, government transparency and accountability, and confidence in the integrity of government decision-making.

[*English*]

The CBA, being a strong proponent of the rule of law and democracy, supports the objectives of the Lobbying Act. Our submission recommends amendments to the act intended to improve and strengthen transparency and accountability as well as to ensure fairness and consistency in the application and administration of the act. We endorse many of the lobbying commissioner's recommendations to strengthen the act. In particular, the CBA makes eight recommendations.

First, we propose to eliminate the “significant part” test. In other words, this means removing the minimum volume threshold for registering in-house lobbying. We agree with the commissioner that this provision is difficult to interpret and enforce. The current provisions allow some corporations and organizations to avoid registering their lobbying activities. Moreover, and perhaps most significantly, the current threshold lets a former designated public office holder avoid the five-year lobbying ban by working as an in-house lobbyist for a corporation for less than 20% of his or her time.

Second, we propose a complementary amendment that would harmonize disclosure rules for corporations and associations. Quite simply, under the current law, when an association is required to register, it must name every employee who lobbies. On the other hand, when a company is required to register, it must name only some of the employees who lobby. Lobbying by corporation should not be any less transparent than lobbying by non-profit groups. We propose that each corporation return include the name of every employee whose duties include lobbying.

Third, we propose that board members, directors, partners, and sole proprietors, when they lobby, be registered as in-house lobbyists, not as consultants. They certainly are not consultants. Treating them as consultants is confusing, and it places an unnecessary administrative burden on individuals, a burden that is more appropriately borne by the company or the organization than by individual board members. Treating board members as in-house lobbyists would streamline the implementation without lessening transparency and disclosure. In fact, by placing all lobbying activity for a company or organization under a single return, the change would actually enhance transparency and accountability. This is the approach taken by Alberta, British Columbia, Manitoba, and Quebec.

Fourth, we believe that monthly reports should be more transparent by, one, as recommended by the commissioner, naming the in-house lobbyists who are meeting with the designated public office holders, and two, naming all the public office holders present at these meetings with designated public office holders. This change could be made by amending the regulation or by amending the act.

Fifth, we endorse the commissioner's request for statutory power to impose administrative monetary penalties for contraventions of the act or the code, subject to a statutory review or appeal process. Currently there is no penalty for breach of the code. Administrative monetary penalties would fill this gap. At the same time, if people are now to face sanctions for breach of the code, it is only appropriate that the code be incorporated into the act or the regulations.

As for breaches of the act, these allegations are currently referred to the RCMP, which investigates. The RCMP and the crown attorney determine whether charges should be laid. In the history of the federal lobbying regime, no charges have ever been brought.

I speak from personal experience as a former public office holder. While I was in office, a former official, someone subject to the five-year ban, tried to arrange a meeting between me and his client. Consistent with our policy automatically to refer any suspected wrongdoing to the appropriate authorities, I reported the matter to the lobbying commissioner, who referred it to the RCMP. Subsequently, I met with and gave evidence to the RCMP investigators. I never heard the result of the RCMP investigation, but the commissioner's latest annual report indicates that after every single Lobbying Act investigation, the RCMP declined to lay charges. This must include the case I had referred, even though it involved a clear and blatant attempt to arrange a meeting contrary to the five-year ban.

● (1135)

Under the current system of RCMP investigation, serious incidents of non-compliance result in no practical consequences for the lobbyists. Allowing for administrative monetary penalties will fill this void.

To be clear, the CBA does not support removing the offence provisions from the act. We believe that administrative monetary penalties and prosecution for offences should coexist as alternative and mutually exclusive processes under the act.

Mr. Jack Hughes (Member, Canadian Bar Association): Sixth, as a technical matter, we believe that the commissioner's current administrative review process should be enshrined in the act. Our submission lists a number of reasons why this amendment would improve the administration of justice.

Seventh, we believe that Parliament should follow the lead of those provincial legislatures that prohibit people from lobbying government at the same time as they have a contract to advise government on the same subject matter. Alberta, British Columbia, Manitoba, and Quebec have decided to prohibit this blatant conflict of interest. So should Canada.

Eighth, and finally, we note that the post-service lobbying restrictions for many public office holders are divided between the Lobbying Act, administered by the Commissioner of Lobbying, and the Conflict of Interest Act, administered by the Conflict of Interest and Ethics Commissioner. The categories of office holders who are affected are different, the durations of the restrictions are different, and the restrictions themselves are different. We see merit in harmonizing the restrictions under one act or the other, though the CBA does not take a position as to which one.

In closing, we appreciate that this committee has heard from various stakeholder groups, including representatives of the professional lobbying industry. While many lawyers on occasion act as registered lobbyists, both as consultants or in-house, the CBA has sought to approach this review from a different perspective, namely, strengthening the administration of justice and upholding the rule of law. To that end, the members of our working group were chosen because of their collective experience and legal expertise in interpreting, applying, and advising on lobbying transparency legislation across Canada. We are therefore grateful for this opportunity.

We would be pleased to answer any questions you may have.

Thank you.

● (1140)

The Chair: That's great. Thank you very much for your succinct presentation.

[*Translation*]

Mr. Hudon, you have the floor for 10 minutes.

Prof. Raymond Hudon (Professor, Department of Political Science, Université Laval): Good morning. Thank you for the invitation. I am very honoured.

If I may, I will be making my presentation in French because I still believe that I am in a bilingual country.

Let's talk about lobbying. Today I'm going to be making quite a different presentation. First of all, you know that I am a political science professor at Laval University and that I work on the questions surrounding this topic. Nevertheless, today I will be taking a much more general approach, one that I would say is much more philosophic.

I believe that lobbying is at the heart of the problems we are currently experiencing in our democracy, but perhaps not for the reasons that spontaneously spring to mind. The general public has a lack of confidence—we all know this—in public office holders, especially elected officials and soon even parliamentary institutions. Given that some very competent people who appeared before me have already drawn comparisons between legislation as I have already done myself for the lobbying commissioner in Quebec, I decided, this morning, to do another type of exercise. You may find it too general and not sufficiently relevant. I will let you judge for yourselves. I will begin with three questions that are so fundamental that they will surprise you.

[*English*]

What is lobbying? Who is a lobbyist? Who is a public office holder?

[*Translation*]

Without wanting to insult you and without coming out and saying that the current legislation is not welcome—quite the opposite, I think that it should be maintained—I do believe that it is not really hitting the mark, given the way that this phenomenon of lobbying has evolved. This practice has changed dramatically over the past few decades. Since the Lobbyists Registration Act was passed in 1988, many things have changed, leading me to my three general questions.

As a preamble, I will quote from the French National Assembly in order to explain my positions clearly. In 2009, in Paris, the French National Assembly introduced a lobbyist registry. It was said, and I quote:

> Lobbying is considered a form of expression for civil society.

In order to justify the registry, it was added that:

> [...] lobbying can help the National Assembly be consistent in its approach to economic, social, scientific and cultural change, and spur democratic, sound and effective policy.

We are not talking about gossip and tabloid newspapers here. We are talking about "a democratic, sound and effective policy".

This is now being said in the land of Jacobinism and interest in the common good. We have to understand what this means. Up until recently, the French did not want to have anything to do with lobbying because it was viewed, at the outset, as being simply scandalous.

[*English*]

What's lobbying?

[*Translation*]

I'm going to restrict myself to the basic question. Moreover, if you read the brief, entitled "Simple Questions for Complex Problems", you will see that although the questions are very simple, they cover very complicated subjects.

What is lobbying? I will begin by looking at our Canadian and American legislation. This legislation does not apply everywhere in the United States, because the federal American law I am going to refer to makes some very clear exceptions. Our provincial and federal laws define lobbying as being a

[*English*]

written or oral contact with the public office holder.

[*Translation*]

But now this is marginal in the practice of lobbying. In other words, the act that we are now intelligently reviewing, and this must be done, covers only a small percentage of what today constitutes the practice of lobbying. I think that we need to be aware of this. The spirit in which we work is therefore dramatically different. You are no doubt aware of this, but I would nevertheless remind you about the basic difference between the concept of lobbying contact and lobbying activity. Lobbying activity involves preliminary research, the development of strategies and so on and so forth. However, today this is primarily the stage where people focus their efforts.

I could elaborate further on this issue, but I am going to immediately go to my second point because it has a direct impact. Who is a lobbyist? Is it the individual who writes to or contacts the public office holders? But what about the person in the office who prepares a strategy and is paid by the lobbying firm, is he or she not a lobbyist? This is an important point which, moreover, has an impact on the post-employment cooling off period rule that the Canadian Bar Association representatives referred to repeatedly.

Of course, if you are not the one who makes contact with a public office holder, you are not breaking the law. Nevertheless, without quoting any names, you are aware that, in Quebec City as is the case in Ottawa, some former ministers did not wait five years before finding themselves good jobs in legal firms, even if they themselves were not lawyers. I will let you guess why. I am not condemning these people, but in order to cover these cases, I would argue that our legislation is inadequate. This may be a radical point of view, but I do feel that we need to be aware of and point out this shortcoming.

I will now talk to you about the new type of public office holders. Let us use an example which, although it does not pertain to anyone here, is something you are already knowledgeable about. If not, you will be interested in finding out about this matter. Here, in Ottawa, people have in all likelihood heard about the mayor of Quebec City and his arena. Recently, the mayor appointed somebody from the private sector to, in particular, negotiate in his name with Quebecor. Is this individual, who is at the helm of an insurance company and is completely competent—this is not what is at issue here—a public office holder? This individual is acting on behalf of a public office holder. You know that the Quebec City mayor is quite innovative when it comes to certain practices, but he is opening up an extremely important door in this case as it pertains to the legislation we are currently studying.

Given the way that things are evolving, we have to rethink the law. We cannot claim that we are setting the parameters for lobbying through this bill, or if we are, we are doing so in a very marginal way. Personally, I think that we need to give some thought to all of this. You recently had an election and there will soon be one in Quebec. You therefore know that there has been a worrisome decline in voter turnout over the past few years. According to some studies, this decline is not over. If such bills, regardless of whether they pertain to access to information or lobbying, lead people to believe that we are not making every possible effort to make our practices transparent, voters will tune out even more. And I do not believe that this is what we want for the future of our democracy.

● (1145)

Having said that, a final caveat is necessary. I am absolutely not proposing the establishment of a detective state. We have to be intelligent, but at the same time, we can do so in two ways. We must be aware of what is happening and go about it intelligently, that is to say in a well-balanced and level-headed way.

Thank you, there will no doubt be some questions. I am well aware of the fact that this is not an orthodox presentation. However, I think it was time to give it.

● (1150)

[*English*]

The Chair: *Merci, Monsieur Hudon.*

Now we'll go to the members' round. Welcome, Mr. Martin, to the committee for today.

We'll begin with you for seven minutes.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you very much, Madam Chair, and thank you to our witnesses today, the Canadian Bar Association and Professor Hudon, for your very welcome contributions to this debate.

Notwithstanding our best efforts, even through the Federal Accountability Act, to tie a bell around lobbyists' necks in a more effective way, we continue to be frustrated by what we see as the undue influence of well-connected political/Conservative lobbyists, both registered and unregistered, which we believe continues to undermine our democracy. More and more, we see access and influence becoming marketable commodities on Parliament Hill, and we believe we are at the precipice of a slippery slope towards the American model, where nothing happens if you aren't accompanied by a well-connected expensive political lobbyist. So in spite of our best efforts, it still comes down to who you know in the PMO.

I'm very interested to hear the representation from the Canadian Bar Association or the recommendation urging or at least ratifying the plea of the lobbyist registrar that they must be allowed to assign penalties. I can't believe the RCMP has never found anything wrong with anything that anybody has even done on Parliament Hill associated with influence peddling.

The difference between influence peddling and lobbying is about five years in prison. Illegal lobbying, I should say. There is such a thing as legal lobbying.

I guess in the context of the presentations we've heard, and even with the recommendations made, how do we protect ourselves from somebody as unscrupulous as a Bruce Carson skulking around in the corridors of power, peddling influence in a completely illegal fashion, but apparently getting meetings with important people? Is there any amount of regulation or even legislation that can actually stop someone who is determined to break the law? It takes two to tango. You can't lobby illegally without a willing partner. Rahim Jaffer would have been wandering around like some lost sheep in the hallways had he not been able to actually get meetings with people to promote and advance his own initiatives.

Perhaps, Mr. Giorno, you can tell us, for the bar association, is there anything in your recommendations that would actually give us some satisfaction to put a stop to the Bruce Carsons of the world or to put a stop to the well-connected guys who work hard to elect a government and then immediately step back and start selling access to that government, like the John Reynolds and the Tim Powers, the Geoff Norquays and the Ken Boessenkools, and the Monte Solbergs? And all these guys who aren't even registered as lobbyists but who are peddling influence on Parliament HIll with a preliminary phone call to open the door.... If you've still got the key to the PMO, maybe you shouldn't be selling access on Parliament Hill.

Is there any satisfaction in the recommendations that you have brought before us today that would lead us to believe that we can stop this kind of quasi-criminal activity, even if the RCMP won't prosecute?

Mr. Jack Hughes: Thank you, Madam Chair, for the question.

Mr. Giorno will deal with it in substance, but just as a general rule, as our colleague Ms. Hunter said, we are members of the CBA. We're also lawyers in individual law firms, and we are obviously not in a position today to speak about any specific cases. I appreciate that the member's question was more general in nature, and I'll let Mr. Giorno speak to those specifics. That was our proviso, that unfortunately we will not be able to deal with specific issues today.

Mr. Guy Giorno: The CBA doesn't have a position on individual cases, but the CBA has made recommendations that I think will address, Madam Chair, a lot of the concerns raised by Mr. Martin.

We believe that giving the commissioner the power to impose administrative monetary penalties will ensure that lobbyists who breach the code.... Mr. Martin has referred to a former member of Parliament who breached the code and there was no sanction except for a report in Parliament, and now the commissioner would be able to impose monetary penalties.

I should add that in the jurisdictions that allow for administrative monetary penalties to be enforced, they're not a few hundred dollars. I believe the statutory limit in Alberta and British Columbia is $25,000, a significant amount. That's the first comment.

The second is that removing the 20% rule, removing the 20% threshold, will make it easier to see who is lobbying and who is not, and therefore who is breaking the law or who is lobbying without being registered and who is not. It will also make the five-year ban more easily enforceable.

The Canadian Bar Association, as an institution, has long upheld the rule of law and the administration of justice. We believe that giving regulators like Karen Shepherd, the Commissioner of Lobbying, the tools the regulators need to enforce the act, and to ensure there are sanctions for violation, is the way to address that concern.

● (1155)

Mr. Pat Martin: Would you agree with me, Mr. Giorno, that there is a proliferation of these well-connected political influence peddlers, not unlike in the days of Brian Mulroney, where Frank Moores and Fred Doucet and all these guys worked hard to put the Prime Minister in power and then immediately stepped one step back and started selling access to that Prime Minister for contingency fees and hourly fees?

When you say a penalty of $25,000, the 10% contingency fee that Rahim Jaffer hoped to achieve in his illegal lobbying would have been 10% of a $150 million bonus that he was trying to achieve for his clients. So the contingency fees can be 30%. It's illegal as hell, but it's happening all around us, Mr. Giorno. You were just here.

Are we being aggressive enough to try to preserve democracy so these guys aren't undermining everything that's good and decent about the notion of relatively equal access to government's great largesse, not better access and privileged access for those with deeper pockets or a friend in the PMO?

The Chair: A brief response, please. The time is up.

Mr. Guy Giorno: Sure, Madam Chair, very quickly.

I was citing Alberta and B.C. only as examples. Committee members will make their recommendations. Newfoundland and Labrador, for example, has a provision that allows, as a penalty, for profits made by lobbyists to be disgorged and paid back to the crown. There are different models.

In short, almost all of the specific claims Mr. Martin has made, if those things did exist, represent violations of the act as it now stands. Most of what Mr. Martin has described, if it was existing, would be illegal today without even amending the act.

The Chair: Great. Thank you.

Mr. Del Mastro, for seven minutes.

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

Perhaps Mr. Martin ran out of names to drop. I could probably give him a list of everybody in our caucus maybe. He might want to drop those names as well.

Mr. Pat Martin: [*Inaudible—Editor*]

Mr. Del Mastro: What would life be without some good name dropping, Madam Chair?

The Chair: Order, please.

Mr. Del Mastro, just one moment, please.

Mr. Martin, Mr. Del Mastro has the floor, so I would ask you to allow him his seven minutes, and we'll give you an opportunity if you're in the rotation again.

Mr. Del Mastro.

Mr. Pat Martin: I have a point of order.

The Chair: Mr. Martin.

Mr. Pat Martin: From what Mr. Del Mastro just said, I'd be happy to table a list of well-connected Conservative lobbyists who are operating legally and illegally, beating down the doors of the PMO on behalf of their clients.

The Chair: Mr. Martin, I'm not sure that's a point of order.

Mr. Del Mastro, continue with your seven minutes, please.

Mr. Dean Del Mastro: Thank you.

The Chair: We, of course, did stop the clock for this interchange.

Mr. Dean Del Mastro: Thank you, Madam Chairman. I'd be happy to see Mr. Martin's list of well-connected Conservatives. I think that would be good nighttime reading for me; I could get a few laughs before I go to bed.

I welcome today's witnesses. It's very interesting. I want to thank you for the very substantive recommendations that we've heard today specifically around the Lobbying Act. I believe we are hearing some very good testimony on how we can strengthen this act, because ultimately this is about transparency, about making sure people have faith in our democracy.

I wanted to begin with the Canadian Bar Association and ask them —you didn't touch on it but it has come up a number of times— specifically about rule 8. There was a big article yesterday that was written that talked about the fact that...I would actually argue that overwhelmingly the exceeding majority of people want to follow the rules. They just want to know what the rules are and in some cases the rules aren't as clear as they should be, and you've made some recommendations on that.

Rule 8 has been subject to interpretation. Are there any recommendations that the Canadian Bar Association has around rule 8?

● (1200)

Mr. Jack Hughes: Thank you, Madam Chair.

As the member may know, the CBA issued an opinion on rule 8. Neither Mr. Giorno nor I contributed to that opinion.

One of the issues clearly is the interpretation of the Lobbyists' Code of Conduct. And one of the recommendations we have in our brief is that if the committee and Parliament ultimately decide to empower the commissioner to issue administrative monetary penalties for contraventions of the code, there should either be a concurrent or a consecutive review of the code itself to enhance it. As Mr. Giorno said in his presentation, we believe that the code should in fact be enshrined in the act itself under those circumstances. The CBA position is that under those circumstances it's time to look at the code and see what could be done to help clarify it, so that those who are following it and who are required to follow it have a clearer and better understanding of what their obligations are, and also for the commissioner's benefit, to facilitate the administration of justice.

Madam Chair, I will just add to a point on Mr. Martin's question. Contingency fees are currently prohibited by the Lobbying Act. That, again, would be a type of conduct that is currently prohibited under the act as well.

Mr. Dean Del Mastro: And enforceable by the RCMP.

Mr. Jack Hughes: Yes, and enforceable.

Mr. Dean Del Mastro: Thank you very much.

One of the recommendations that you seem to make, again in the interest of transparency, is that everyone should register, and a list of who attends should in fact be reported. This, I think, strikes to the heart of transparency. But we've heard concerns raised by the NDP. In fact, Mr. Angus, at a previous meeting, specifically talked about this. He said:

> There are people who come to me because they have to give me information, because they're concerned about what's happening. There's secrecy [and there are] privacy rights.

Is there room for secrecy within the Lobbying Act? It would seem to me that if you're seeking to be transparent, this is exactly what we're speaking about. Transparency should apply to everyone, all parties, and everyone, frankly, who operates under the auspices of this act. Would you agree?

Mr. Jack Hughes: Thank you, Madam Chair, for that question.

I think that, again, what types of communications are covered by the act, what is considered lobbying or registrable lobbying within the confines of the act, may help assist that question. If an individual were to go to their member of Parliament with a concern about a particular issue, if it didn't fall within one of the established categories of communication for which registration and, potentially, reporting is required, then that may not be captured. But certainly the CBA position as a whole is that the greater the accountability and the greater the transparency, the easier the administration of justice and the more confidence there would be in the system as a whole.

Mr. Dean Del Mastro: I'm interested in the recommendation in your report of moving, specifically, the five-year ban for former public office holders from the Lobbying Act to the Conflict of Interest Act. I have that in your submission.

Mr. Guy Giorno: That's an older version.

Mr. Dean Del Mastro: Is it? So I have version 1.0. Okay, no problem.

Mr. Guy Giorno: The current recommendation is to move it from one to the other but not to specify which one.

Mr. Dean Del Mastro: Okay. It's interesting. We haven't actually heard that specifically recommended one way or the other, only that it's confusing the way it operates right now.

Obviously, that's in trying to make it flow better. Again, we're trying to define this line so that people are aware of what the rules are so that they're not crossing into territory that could potentially get them into trouble. Is that why the recommendation exists?

Mr. Jack Hughes: Thank you, Madam Chair.

Absolutely, that's correct. There have certainly been circumstances where a former public office holder is contemplating potential conduct or activities or employment after they leave office and have to actually consult with both the Commissioner of Lobbying and the Conflict of Interest and Ethics Commissioner. It is not impossible. Again, the restrictions are different in the respective pieces of legislation. They may get different advice or slightly different advice, or even at times potentially conflicting advice. From a CBA perspective, we just think it would assist the administration of justice and it would help clarify the obligations on former public office holders if all post-employment restrictions were centralized, harmonized, and under the purview of a single authority, although, as we say, we think Parliament is in a better position to determine which authority that should be.

Mr. Dean Del Mastro: Thank you.

Mr. Hudon, I'd invite you to take the opportunity to respond to any of the questions I may have asked. In addition to that, it seems that you've done some international study as well. In your opinion, how is Canada doing as compared to other comparable countries with respect to transparency in this regard?

● (1205)

Prof. Raymond Hudon: In fact, we must note from the beginning that there are two countries where there is legislation on lobbying, where, with very few exceptions...Vietnam and so on. There are very few exceptions—in Germany. Many countries have simply....

[*Translation*]

Several countries have simply abandoned the idea of passing legislation on this issue. I believe Scotland is an example. In fact, I make reference to that in my brief. I met with some people from the Standards Committee of the Scottish Parliament in 2000. They wanted extremely strict legislation. They did not want to see any repetition of the Westminster scandals. All parties agreed on that.

A bill was tabled in 2002 that was insignificant, to put it one way, with all due respect for Scottish parliamentarians. It did not mean anything. The bill was never passed, so in fact there is nothing. The same thing happened recently in the United Kingdom.

It is extremely difficult. One must be aware of the fact that what we are discussing today is extremely sensitive. Making representations to public office holders is a foundation of democracy. Transparency is as well. We must demand transparency, but such a thing is more recent in our cultures.

[*English*]

The Chair: Excuse me, Monsieur, we're well over time. Do you have a concluding statement? Thank you very much.

Thank you, Mr. Del Mastro.

Mr. Andrews, you have seven minutes.

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

Welcome, guests.

I have three areas I'd like to cover in my round of questioning. My first area was covered under the five-year ban, but I want to ask you a question. I think your recommendation about having those two things come under a single authority is very interesting. You don't seem to want to comment on which one is better than the other. We've heard there should be a sliding scale of office holders and all that. I'm just curious why you wouldn't want to give us some direction on one that's better than the other.

Mr. Guy Giorno: The short answer is, the working group couldn't come to a consensus because they are actually different arguments. The argument for consolidating under the Conflict of Interest Act and the Conflict of Interest and Ethics Commissioner is that she and that statute are responsible for most post-employment restrictions. The argument for consolidating under the Lobbying Act and the jurisdictional lobbying commissioner is that the act and she and her office have specialized expertise in determining what lobbying is.

In addition, the group of designated public office holders is not the same as the group reporting public office holders. It's only the lobbying commissioner, her staff, and the act that deal with members of Parliament as designated public office holders. Mary Dawson, the Conflict of Interest and Ethics Commissioner, doesn't deal with MPs as reporting public office holders under the Conflict of Interest Act. So there are arguments for consolidation under both, and that's why we didn't settle on one or the other.

Mr. Scott Andrews: Okay, because it does overlap. I made the argument between government relations firms and lobbying firms: one will go conflict of interest and one will go to the lobbying commissioner. So I think your recommendation is very good, and I think we should pursue that.

The second question I had, Mr. Giorno, is about your experience with the RCMP. You're right, they have never prosecuted any.... Can you give us a little bit more insight into this? Do you think the problem is with resources with the RCMP, or could it be with their knowledge of the act? Is there something there that we should dive into with the RCMP?

Mr. Guy Giorno: I don't know. Certainly, this is something the committee is well placed to do. In fact, the committee can call them before it and talk about that. That may be something you may wish to pursue. All I know is what happened. There seemed to be a clear-cut case, and he was investigated. As far as I know—given that the commissioner in her report talked about her process—when she gets them back from the RCMP with nothing done, she then opens her own process. As far as I know, that file is still open with her.

Mr. Scott Andrews: Okay. What kind of questions would you ask the RCMP? Give us some direction. If we called them to come before us, what kind of line of questioning should we take with the RCMP?

Mr. Guy Giorno: You might ask about their resources and their training. Certainly, this brings into play the advice they receive from prosecutors, and the standard applied by prosecutors, which I believe is a reasonable prospect, a substantial likelihood of conviction. Those are areas that committee members may wish to probe. Obviously, something is happening, because nothing is happening.

● (1210)

Mr. Scott Andrews: Yes, we agree, and hopefully we'll get the RCMP in here.

My third question is regarding your recommendations on eliminating the distinction between in-house lobbyist corporations and organizations, and the third point, which is allowing board members, corporations, to be included. You say that goes a little bit further than what the lobbying commissioner recommends. Did I hear that correctly?

Mr. Guy Giorno: No. I believe where we went further than the lobbying commissioner was in the monthly reporting. She wants to have all the lobbyists' names recorded, and we want it to go further and add not just the lobbyists' names but the names of public office holders present at the meeting who are not designated public office holders.

But in respect of the others, some of those are areas she hasn't touched on, so she did not make a recommendation—for example, on directors of corporate boards or organization boards being treated as in-house lobbyists. That's a CBA submission.

Mr. Scott Andrews: Okay.

That's a very good recommendation, because there are board members who would do some of this work and they wouldn't fall under anything.

Mr. Guy Giorno: In fact, Madam Chair, when we look at the registry of lobbyists—this is sort of instructive—about 85% of lobbyists on the registry are in-house lobbyists and 15% are designated as consultants. But of that 15%, roughly one third are not really consultants; they're actually directors of corporations, and, actually, I think most of them are directors of farm producer organizations, who must register as consultant lobbyists because the act doesn't permit them to be treated as in-house lobbyists for those organizations and entities.

Mr. Scott Andrews: Thank you very much.

The Chair: Thank you.

Mrs. Davidson, you have seven minutes.

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

Thanks to our guests here this afternoon. We're certainly getting some valuable information. Certainly having it laid out in recommendations is beneficial to us.

I have a couple of questions.

Some of our previous testimony—as well as the commissioner's recommendation—recommended statutory immunity for the commissioner. Can any of you comment on that?

Mr. Guy Giorno: It's not something the CBA working group discussed.

I think, speaking personally rather than for the CBA, neither of us would have a problem with that. It's quite common for regulators to have that protection to ensure they can fearlessly go about doing their job.

Mrs. Patricia Davidson: Mr. Hudon.

Prof. Raymond Hudon: I have no opinion on that.

Mrs. Patricia Davidson: But you don't have a problem with that?

Prof. Raymond Hudon: No, in fact what I say...

[*Translation*]

I would require that anyone who acts on a particular file be identified.

[*English*]

Mrs. Patricia Davidson: Okay, thank you.

Mr. Hudon, I'm not sure if I heard you comment on the administrative monetary penalties. Do you think the commissioner should have the ability to impose the monetary penalty?

Prof. Raymond Hudon: Well, it's...

[*Translation*]

I have in the past been reluctant regarding this request from Quebec's lobbying commissioner. Given the progress on these issues over the past few years, it would perhaps be appropriate that the lobbying commissioner himself or herself be able to file complaints or institute proceedings. Otherwise, we lose track of files in the red tape and the limitation period comes up when files are transferred from one office to another.

I would authorize the lobbying commissioner to institute proceedings and impose monetary penalties.

[*English*]

Mrs. Patricia Davidson: Thank you.

Mr. Giorno, you talked a little bit about some of the provincial legislation—at least I think it was you who spoke about that—and some of the differences between the different provinces and the federal legislation. Can you just outline what those differences are, which way you feel is the most beneficial way for us, and whether we should be moving towards that? Is that what you're recommending or not?

Mr. Guy Giorno: That actually opens up a very large area. The reason it opens up a large area is that the Lobbyists Registration Act was the first lobbying transparency law in the country. Provincial legislatures then followed suit. Ontario and Nova Scotia have very weak acts because their acts basically reflect the way the federal law was 15 years ago. Then the federal law was amended. The strongest laws in the country are not the federal law but the lobbying transparency and accountability laws in Quebec and Newfoundland and Labrador.

I would urge the committee—I know you've heard from the regulators—to look at the Quebec statute and the Newfoundland and Labrador statute. They are among the toughest in the country.

Specific recommendations that the CBA has made that align with provincial laws administer the monetary penalties. They're on the books in Alberta and British Columbia. It's something that CBA recommends this committee look at and adopt as a federal model. Treating directors of companies as in-house lobbyists, which they are, is done in Quebec, Alberta, and British Columbia. It will be done in Manitoba when their law—which just passed—is proclaimed. That's another area.

There is the elimination of the 20% rule. There is no 20% rule in the City of Toronto bylaw. There is no 20% rule in Quebec. They have a triple threshold that doesn't approach that. This 20% is not carved in stone in other jurisdictions either. The CBA thinks the 20% could be removed.

I could go on. I'd be happy to follow up in writing with points of similarity and difference between the acts, if that would be of help to committee members. That would be a Guy Giorno submission, not a CBA submission, because the working group didn't go to the extent of doing an entire national cross-jurisdictional analysis.

● (1215)

Mrs. Patricia Davidson: When you talk about eliminating or changing the 20% rule, what should it look like? Should it be totally gone or should it just be redefined?

There's always been a grey area about what's considered part of that 20%. We've had discussions about whether a lobbyist from Vancouver has to include his travel time, as opposed to a lobbyist from Ottawa.

Can you make some comments on how you think it should look?

Mr. Guy Giorno: The short answer is that we should eliminate the 20% rule, which would eliminate those questions. Then you simply rely on the definition of registral activity in the statute, which involves a communication between a public office holder, for compensation, and an employee or consultant, about one of an enumerated list of decisions or the arrangement of a meeting.

The complicated analyses of travel time and prep time were introduced in the calculation of the 20%. Eliminate the 20% rule and you eliminate all those confusing questions.

Mrs. Patricia Davidson: Do you have a comment on that, Mr. Hudon?

Prof. Raymond Hudon: I agree.

[*Translation*]

I agree entirely. In effect, that resulted in red herrings and in extremely arbitrary calculations. I come back to my former position and I wholeheartedly agree with the Canadian Bar Association in this regard. We talk about lobbying at 20%, 10%, 19%. At some point in time it all becomes absurd.

Were we to eliminate that rule, I think we would promote greater transparency. I'm not certain that it would follow automatically, but at least it would be a signal in that regard.

[*English*]

Mrs. Patricia Davidson: Thank you.

The Chair: Mr. Dusseault.

M. Dusseault pour cinq minutes.

[*Translation*]

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

I thank the witnesses for appearing before us today.

I have a question on a topic that was touched upon. It deals with more informal meetings that were not arranged in advance. Take the example of the Hy's Steakhouse case, for example, where there were meetings that were not necessarily planned. There is also the example of the Albany Club. It is said that these are social encounters. This involves both lobbyists and public office holders. These meetings were not organized in advance, but there probably were discussions on certain issues.

I would also like to discuss a document that Mr. Giorno sent to the City of Ottawa when the city wanted to set up a lobbyists registry. You wrote it in December 2011. I will quote you in English because we were unable to find the document in French.

● (1220)

[*English*]

> Continue to cover all types of lobbying communication (oral and written, formal and informal).

[*Translation*]

Is it therefore still your position, as far as the federal registry is concerned, that you wish to go and search through even informal discussions?

I would like to hear you on this point.

[*English*]

Mr. Guy Giorno: Thank you.

The CBA working group did not take a position on this particular issue, although the group is aware of other recommendations. My personal view is that the commissioner is right that this needs to be expanded. But Madam Chair, I should clarify this.

Under federal law there are two regimes. There's general registration and then there's specific monthly reporting. Everything the member has referred to—dinner at Hy's, cocktails, walking the dog and trying to lobby—all of that activity is registrable right now under current law if you do it. The only gap is that not all of those chance encounters are covered under monthly reporting.

My personal view is that monthly reporting should be expanded to cover that. In fact, if members wish to refer to the Senate committee in 2006, that was my position back then. It's my personal position today.

Since the member has referred to my submission, Madam Chair, I would be happy to send to the clerk my submission to the City of Ottawa council in both languages for the record.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you.

Mr. Hudon, do you have any comments on the issue of informal meetings?

Prof. Raymond Hudon: It is difficult to prevent these informal meetings, but at the same time, I would say that lobbying activity does not have to be planned and deliberate in order to constitute lobbying activity.

Where should the line be drawn? I clearly stated in my conclusion earlier on that it was not a question of setting up a detective state. But we cannot stray from the rules regarding citizens who, for their part, want to know, but perhaps they want to know too much. They are somewhat curious and it is of course a certain kind of yellow journalism, if I can put it that way. As I was saying a while ago, it's a very difficult line to draw in the sand. As far as transparency and representations are concerned, both are legitimate and democratic. That is where we have to show some intelligence.

Let's go back to informal meetings. I think that in some respects, we have forgotten something in all of our activities, which is judgment. We cannot constantly rely on rules, with all due respect to legal professionals. Anglophones have an old adage which is not an invitation to commit offences, as I emphasize, but it says the following: rules are made to be broken. Therefore, the more rules you create, the more people will try to get around them.

There has to be a measure of reasonableness in all of this. I am not in a position to state what the rules should be, to say "this is the truth or this is where the line should be drawn". I do not have that authority and I think that in your discussions among yourselves you will be able to find where that line should be drawn.

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Monsieur Dusseault, you have five seconds.

[*Translation*]

Mr. Pierre-Luc Dusseault: On another subject, what is your opinion of people who organize these meetings, such as Stockwell Day? In the reports, it is not mentioned that they acted on the file. What do you think about that?

[*English*]

The Chair: Thank you, Monsieur Dusseault.

A very brief answer.

[*Translation*]

Prof. Raymond Hudon: That is exactly what I was pointing out earlier on when I asked the following question: who is a lobbyist?

It is precisely that. We are more and more aware that lobbying activity covers that. That is why, for example—I have not raised this yet—I would support declaring lobbyists' expenses, as is done in the United States, and not simply individual ones. It is an issue of reporting expenses, as we do in Quebec. If that was the case, it could then be included in the reports.

The Chair: Thank you, Mr. Hudon.

[*English*]

Mr. Butt, for five minutes.

● (1225)

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

Thank you all for being here today. We very much appreciate it.

We've heard a fair bit from a number of witnesses now about the administrative monetary penalty option we may recommend, which may be an improvement to the act. That may be much wiser than referrals to the RCMP that get lost in the shuffle and everything else. It may be a good penalty that will keep everybody on the straight and narrow.

My biggest concern, if we go that route, and I'd like some advice from you, is what you see as the appeal mechanism for someone who has been charged an administrative monetary penalty. How would they appeal that decision? How would they make an argument that they were not fairly treated or that the information wasn't correct, or whatever? Or do you see the commissioner's final decision on an AMP as being it?

Do you have any advice for us on what we may build in as an appeal mechanism for the individual who's been identified in this administrative monetary penalty?

Mr. Jack Hughes: Thank you, Madam Chair. I thank the member for the question.

The CBA position is that yes, there should be some form of appeal process. It should be an administrative process. In most cases with AMP penalties, it's a paper review process. It can be to the commissioner or some other authority. You can contest the actual imposition of the penalty itself or the quantum of the penalty, if it's felt to be too excessive for the circumstances, or those types of matters. The CBA position is that absolutely, there should be an opportunity for the individual on whom the penalty is—

Mr. Brad Butt: Would that be outside of the lobbying commissioner's office, or would you see an internal appeal process within her office?

Mr. Jack Hughes: It could be within her office. Given her status as an independent officer of Parliament, I think it would be difficult to have an authority above her within government. But there could be an internal review process or a reconsideration based on other facts if, for example, the individual felt that not all of the information was before the commissioner when she made her initial decision. It could be that type of situation.

Mr. Brad Butt: Okay. The other—

Mr. Guy Giorno: I'd simply add that there are a range of internal reviews. The Conflict of Interest and Ethics Commissioner has in place in her office a review process before she imposes her own administrative monetary penalties.

Mr. Brad Butt: Okay.

Go ahead, Professor Hudon.

[*Translation*]

Prof. Raymond Hudon: Very briefly, I would say that I support an appeal mechanism. That is why I said I had very strong reservations regarding the lobbying commissioner of Quebec's request that he be given the power to pursue offenders directly. In fact, that would become extremely arbitrary. We can trust the people who are in those positions, but at the same time, to be arbitrary is to be human. I believe that the right of appeal could protect people. A lobbyist should not be found guilty in advance. He has a right to defend himself if necessary. We can have confidence in the commissioner. It is not a sign of lack of trust, it is simply a way of protecting individuals.

[*English*]

Mr. Brad Butt: I'd be curious to know the definition of designated public office holder right now. Is it too broad? I mean, it covers me as a government member the same way it does an opposition member. It covers many senior bureaucrats, etc. In your view, is it too broad? Maybe it should be broader and should cover more people. Should it cover fewer? Should there be different levels depending on the position you served in? A cabinet minister would be at a certain level, versus a backbench MP, who would be at a different level.

What are your thoughts on the definition we currently have of a designated public office holder, and do you have any recommendations for change?

[*Translation*]

Prof. Raymond Hudon: I think that the definition should be reviewed to include people who are not currently covered by it. I gave the City of Quebec and its mayor as an example. That's a public and well-known example, but there could be others. I'm sure there are others.

As a matter of fact, that brings me to another comment I should have made earlier. I think that we have to take a look at the phenomenon of revolving doors. They turn, people come in, people come out and so forth. Earlier, someone mentioned Stockwell Day. He's not the only one. I don't want to target anyone in particular, but this is a phenomenon that is spreading. In fact, there is research about this now. It's a phenomenon that's spreading and that has not been studied in Canada. There's a lot of data in the U.S. about this. I think that we should take a look at what happens when a designated public office holder ends his mandate either because he's forced to or by choice. That brings us back to a question that was asked earlier. It has to be included. Otherwise designated public office holders will simply designate people who are not covered by the act.

● (1230)

The Chair: Thank you, Mr. Hudon.

[*English*]

Mr. Giorno, I'll allow you a very brief response. Time is well up.

Mr. Guy Giorno: Very briefly, the CBA has no position on that. You can take from the negative recommendation the CBA is not advocating changing that.

I'll add this. When you're looking at who is a designated public office holder, what counts is not what you know, it's who you know, because the restriction is on making contacts. It's not important that someone had secret information, or didn't, in his or her head; it's important that he or she knows that.

My personal view is that senators and members of the House of Commons absolutely fall into the category of people who have contacts they can utilize for profit when they leave and should be covered by the ban.

The Chair: Great. Thank you.

[*Translation*]

Mr. Morin, you have five minutes.

Mr. Dany Morin (Chicoutimi—Le Fjord, NDP): Thank you, Madam Chair. My question is for Mr. Giorno.

My colleague, Mr. Martin, talked about this earlier, but the answer you gave him did not satisfy me. I will therefore continue in the same vein.

Do you find it interesting that ever since the Lobbying Act came into being and that all these cases were sent to the RCMP, no charges have been laid? Do you find it strange that none of these cases led to any penalties or verdict?

[*English*]

Mr. Guy Giorno: Madam Chair, the CBA has no position on that. I do, personally. My answer to the member is yes.

[*Translation*]

Mr. Dany Morin: You find that strange.

[*English*]

Mr. Guy Giorno: My answer is I do think it is strange. Yes, I think it is strange.

[*Translation*]

Mr. Dany Morin: Thank you for pointing that out, Mr. Giorno.

As my colleague, Pierre-Luc Dusseault, will explain later, the NDP thinks it's very important that the RCMP representatives testify and explain themselves before the Standing Committee on Access to Information, Privacy and Ethics. As I mentioned, their offices seem to be a black hole when it comes to these complaints. We want answers.

With regard to all these stories, do you think it would be a good idea for representatives of the RCMP or of the Public Prosecution Service of Canada to testify before the Standing Committee on Access to Information, Privacy and Ethics?

[*English*]

Mr. Guy Giorno: The CBA has no position on that. I do, personally. My answer is yes.

[*Translation*]

Mr. Dany Morin: Thank you very much, that's very interesting. I hope that our Conservative colleagues will share your opinion. Representatives of the RCMP and of the Public Prosecution Service of Canada must explain themselves before the committee.

My next question was already broached by my colleague. In the report that you produced entitled

[*English*]

Supporting Ottawa's new lobbyist registry: making a strong proposal even stronger. Presentation to the Governance Renewal Sub-Committee

[*Translation*]

dated December 1, 2001, there was a reference to the way lobbying rules were dealt with by other levels of government. In your opinion, were there any charges laid by other governments that resulted in sanctions?

[*English*]

Mr. Guy Giorno: The short answer, Madam Chair, to the member's question is yes, there are two jurisdictions in Canada where penalties have been imposed on lobbyists. One is British Columbia, where there's been one conviction. The most active and aggressive enforcement of the rules governing lobbying and lobbying transparency is in Quebec, where the lobbying commissioner has brought many convictions. By last count, I believe there were 21 convictions. These are against a total of seven people. The penalties have included fines. Also, the commissioner there has the power to impose bans on lobbying activity, so there have been not just fines in Quebec but also penalty periods where those people could not lobby.

[*Translation*]

Mr. Dany Morin: I'd like to confirm what you said earlier. Did I understand you correctly when you said that you were in favour of the five-year limit for former designated public office holders? Do you think that that aspect of the law is adequate?

[*English*]

Mr. Guy Giorno: Again, I'm losing track between CBA positions and mine, so I'm just going to answer personally here.

● (1235)

[*Translation*]

Mr. Dany Morin: I understand full well that you have a position as an organization but it's especially your personal opinion that interests me, since you were very close to power for many years.

[*English*]

Mr. Guy Giorno: My personal opinion is that the five-year ban is appropriate and ought to remain. It ought to extend, as it does now, to the current group of designated public office holders, which would include MPs and senators.

[*Translation*]

Mr. Dany Morin: Thank you very much.

Do I have any time left?

The Chair: You have 50 seconds left.

Mr. Dany Morin: Can my colleague ask a question?

The Chair: It has to be a brief question, please.

Mr. Pierre-Luc Dusseault: You talked a bit about the five-year waiting period. I think that I share your opinion in this regard. Your personal experience in the corridors of power must also remind you of certain things. Your five-year waiting period is not yet over. I think that you stopped being a designated public office holders less than five years ago. I imagine that you still have a lot of contacts within the Prime Minister's Office. A five-year waiting period is sufficient; that goes without saying. We should keep that five-year standard. I agree with you on that position. Having that many contacts in such an influential office—

[*English*]

The Chair: Monsieur Dusseault, if you want the witness to answer, please wrap up.

[*Translation*]

Mr. Pierre-Luc Dusseault: I wanted to point out your position and find out if Mr. Hudon was in agreement on that.

Prof. Raymond Hudon: Yes, I think the five-year rule is adequate. However, we mustn't exaggerate. Contacts do evaporate quickly and the apparatus evolves quite rapidly. This is minimal protection. The one- or two-year rule that we have in current legislation is probably insufficient.

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Giorno, did you have a brief comment on that before I go to Mr. Calkins?

Mr. Guy Giorno: No, thank you.

The Chair: Thank you.

Mr. Calkins, for five minutes.

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

I appreciate the debate that is going on here. As you can tell, we have several issues before us. We have recommendations from various organizations that have appeared before this committee prior to you who have recommended precisely the opposite, or have recommended changes that would be substantially different from what we've heard today. I'm glad to see that the Canadian Bar Association seems to be fairly consistent with what the commissioner herself has recommended. I think that's great.

As you know, the Conservative government took great pride in 2006 in bringing forward the Federal Accountability Act. This is the five-year review of how that has been working to date. This is quite important work that all parliamentarians are seized with here today. I think we need to get to the meat and crux of the matter.

I'm curious about some of the questions that have arisen before. We've had testimony from an individual who said there was a particular example whereby the lobbyist in question was investigated by the lobbying commissioner and the particular designated public office holder was investigated by the ethics commissioner. The ethics commissioner found no wrongdoing on behalf of the public office holder, yet there was continuing investigation against the lobbyist under the same set of facts and circumstances arising out of a similar meeting.

This goes to your earlier comments in regard to the consistency between the two offices and how they could or should be harmonized. My question is to both sets of witnesses here. Are there any examples whereby the offices of maybe the ethics and the lobbying commissioners should be merged into a single office? Are there any examples of where that happens in Canada? Are there any examples of where that happens around the world, in order to maybe put the same investigative tools and administrative penalties, and the same investigation...? It seems to me to be a duplication if you have an investigation going on by one commissioner arising out of a set of circumstances and one by another commissioner arising out of the same set of circumstances. Would any of you like to comment on that?

Mr. Guy Giorno: I'll comment on that. I'll comment personally because I don't think the CBA has a developed position on all of that, although it touches on the CBA recommendation. The short answer is that there is consolidation in some jurisdictions. Ontario is one, where the integrity commissioner and the lobbyists registrar are the same person. B.C. used to have the information and privacy commissioner acting as the lobbyists registrar. That has now been separated. I think one of the provinces has the registrar of commercial registrations being responsible for lobbyists. So that's possible.

With respect to the specifics here, it's important to remember that many of the witnesses you've heard are consultant lobbyists. As far as I know, the committee has not heard from any in-house lobbyists, who represent 90% of the lobbyists. You have to understand that the Lobbying Act doesn't exist for lobbyists; it exists for the public. Lobbyists have a particular point of view. They have their own beefs. It's important for the committee to take lobbyists' beefs with a grain of salt.

The lobbyist who was making that particular complaint perhaps failed to realize that there are two different statutes with different rules. In fact, the code of conduct for lobbyists contains different wording from the Conflict of Interest Act. Therefore, you have the same facts and the same situation, but with different statutory wording, and you may well have different conclusions. As I said, that's something the lobbyists may not have been apprised of, or may not have been forthcoming about in presenting the beef to the committee.

● (1240)

Mr. Blaine Calkins: Mr. Hudon, do you know of any cases nationally or internationally?

[*Translation*]

Prof. Raymond Hudon: Other than what Mr. Giorno has reported, the answer is no. However, I'd like to point out that the severity of the Quebec legislation has often been alluded to. For my part, I consider it one of the least strict for one reason. It's very strict when it comes to consulting lobbyists, but organizational lobbyists are not affected in Quebec. So here again, it's a very partial law.

Moreover, the prosecutions or penalties imposed are a very recent trend. This has developed in the past two or three years. The former lobbying commissioner, Mr. Côté, didn't particularly stress that and really didn't operate that way. This is very recent and I think that has to be pointed out. There have indeed been many investigations recently. I wouldn't say it's being done on an ad hoc basis depending on circumstances, but it is a recent phenomenon.

[*English*]

The Chair: You have 30 seconds, Mr. Calkins.

Mr. Blaine Calkins: Oh, that's it?

In my last question I just want to address the issue of due process. I think my colleague, Mr. Butt, talked about that. I find it a little bit interesting that the position of the Canadian Bar Association would be administrative monetary penalties. Subsequent to the appeals process, Mr. Giorno, you spoke relatively eloquently about that. It would seem a little bit disconcerting to anybody I think to find themselves in a situation where they're not afforded due process, where they're not afforded any opportunity to face their accusers, and in a process where an administrative monetary penalty is applied.

Can you see any circumstances that we as parliamentarians should be aware of where that can happen?

Mr. Guy Giorno: Again, I'll speak personally because I don't want to tie the CBA to this. That is the uninformed, inaccurate, biased position of many consultant lobbyists. That's a distortion of the commissioner's process.

By the way, CBA is recommending a review and an appeal, to be clear. The commissioner's process already ensures that lobbyists who are the subject of inquiries have full knowledge and full disclosure of all the allegations against them, and they're allowed to respond. They're given time to respond.

I have heard people call her process into disrepute, and that is based on a misleading, biased, distorted, and falsified view of her process. The lobbyists who come before this committee making those allegations should know better.

But I add that when the witness list is larded with consultant lobbyists who have a biased point of view, this is what comes of that kind of consultation.

The Chair: Thank you, and your time is up, Mr. Calkins.

Before I thank the witnesses, Mr. Giorno actually offered the committee two documents: one was his presentation to the Ottawa council, and the second one was that he offered to do a comparison between federal legislation and provincial legislation. If the committee is interested in that, I'll ask Mr. Giorno to submit that to the clerk.

Is everybody all right with that?

Some hon. members: Agreed.

The Chair: Mr. Giorno, I thank you for that offer. If you could submit that to the clerk, we'll get that distributed to the committee members.

I want to thank the witnesses very much for your appearance today and for your testimony.

Given the limited time we have left, we have a motion being proposed by Monsieur Dusseault, and we're going to move right to the motion.

I'll just ask the witnesses to excuse yourselves. You're welcome to stay present.

We're not going to suspend. We're just going to go to Monsieur Dusseault for his motion.

[*Translation*]

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

There are two motions.

[*English*]

The Chair: Are you moving that?

[*Translation*]

Mr. Pierre-Luc Dusseault: Yes, I'm tabling two motions. I will read them.

[*English*]

The Chair: Sorry.

Mr. Del Mastro, on a point of order.

Mr. Dean Del Mastro: On a point of order, I'd just request, as is usual practice here at the committee, that we move in camera for consideration of motions, Madam Chairman.

Mr. Pat Martin: You can't make a motion on a point of order, can you? How can you make a motion on a point of order?

The Chair: My understanding is you can't.

Mr. Dean Del Mastro: I'm not making a motion; I'm requesting that we move to standard procedure.

The Chair: Sorry. You were on a point of order, Mr. Del Mastro.

Mr. Dean Del Mastro: This is a procedural point of order that we move in camera, as is normal practice here at the committee.

The Chair: It's a motion, as I understand it, and you're on a point of order.

Monsieur Dusseault has the floor. That's not a point of order; that's moving a motion. My understanding is you can't move a motion on a point of order.

[*Translation*]

Mr. Pierre-Luc Dusseault: I'd already tabled a motion.

[*English*]

Mr. Dean Del Mastro: Can I request to be first on the list?

The Chair: You can be first on the list after Monsieur Dusseault.

I recognize Mr. Dusseault. He has the floor.

Just for the committee's information, those motions were distributed publicly.

Monsieur Dusseault, for your motion.

[*Translation*]

Mr. Pierre-Luc Dusseault: The first motion reads as follows: That, in light of witness testimony heard regarding offences under the Lobbyist Registration Act, the Standing Committee on Access to Information, Privacy and Ethics call representatives of the Office of the Public Prosecution Service of Canada to testify with regard to the interpretation of the provisions of the act.

● (1245)

[*English*]

The Chair: You can speak to that motion since you have the floor, Monsieur Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: It says at the beginning "in light of witness testimony heard". As Messrs. Giorno and Hudon reiterated here today, it's important to hear from representatives from the RCMP so that they can explain how they operate and why they did not follow up in all these cases. The RCMP's function is important under the Lobbyists Registration Act. Therefore, if we examine the Lobbyists Registration Act, I think it would be important to hear these people and find out what they have to say about this.

The other motion is about—

[*English*]

The Chair: I'm sorry, Monsieur Dusseault, you can only move one motion at a time, so if you could, stay on your current motion.

[*Translation*]

Mr. Pierre-Luc Dusseault: Well, I hope that all members of the committee will agree with the witnesses who indicated that in their opinion they agreed with us that the committee should hear people from the RCMP.

[*English*]

The Chair: Mr. Del Mastro, you have the floor.

Mr. Dean Del Mastro: Thank you.

I move that the committee move in camera for consideration of the motion.

The Chair: It's not debatable.

(Motion agreed to)

The Chair: We'll suspend while we move in camera.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca